

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 1848 of 2019

- Ramu Ram Uike, S/o Shri Sukhram, Aged About 20 years, Occupation R/o Village Duggaparali Thana Antagarh, District Uttar Bastar Kanker, Chhattisgarh.

---- Appellant

Versus

- State Of Chhattisgarh Through Police Station House Antagarh, District Uttar Bastar Kanker, Chhattisgarh.

---- Respondent

For Appellant : Shri Gajendra Sahu, Advocate.

For State/Respondent : Shri Rajendra Tripathi, P.L.

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

18/11/2021

1. In the present case, appellant is in jail since 01/01/2016, thereby he has already completed more than 5 years and 10 months out of maximum jail sentence of 7 years as awarded by the trial Court. Looking to the above and with the consent of both the parties, the matter is heard finally.
2. This appeal has been preferred against the impugned judgment dated 29.11.2017 passed in S.T. No.21/2016 by the Additional Sessions

Judge, Bhanupratappur District – North Bastar Kanker, (C.G.) wherein appellant has been convicted and sentenced as under :

<u>Conviction</u>	<u>Sentence</u>
U/s 304 (Part-2) of the I.P.C.	R.I. for 7 years and fine of Rs.1,000/- with default stipulations.

3. According to case of the prosecution, on 30/12/2015 at about 7:00 P.M.,a quarrel took place between the appellant and deceased which was witnessed by Devnu Ram Baghel (PW-4) and Devprasad Baghel (PW-5). It is alleged that at that time, appellant assaulted the deceased Rohit Kumar with the help of a wooden stick on his head due to which he died. Jageshwar Baghel (PW-1) lodged the FIR vide Ex.P-2. Merg intimation vide Ex.P-1 was also registered. Inquest proceeding vide Ex.P-4 was also conducted. During course of investigation, the articles used by the appellant was seized vide seizure memo Ex.P-9. Post-mortem of the deceased was conducted by Dr. Sheetal Dugga (PW-11). Her report is Ex.P-13. Statements of the witnesses were recorded under Section 161 of Cr.P.C. After completion of the investigation, a charge-sheet was filed. Trial Court framed charges. To prove the guilt of the accused/appellant, prosecution has examined as many as 12 witnesses. No defence witness has been examined. Statement of appellant under Section 313 of the Cr.P.C. was recorded, wherein accused/appellant has pleaded innocence and false implication in the matter.
4. After completion of trial, the trial Court has convicted and sentenced the appellant as mentioned in paragraph 2 of this judgment. Hence,

this appeal.

5. Learned Counsel appearing on behalf of the appellant submits that trial Court has wrongly convicted the appellant without there being sufficient and clinching evidence against him. There is no eye-witness in the present case despite of that trial Court has convicted the appellant only on the basis of statements of Devnu Ram Baghel (PW-4) and Devprasad Baghel (PW-5). According to the learned Counsel for the appellant, the statements of above witnesses are not reliable. Therefore, conviction of the appellant is not sustainable.
6. Per contra, learned Counsel appearing for the State supports the impugned judgment and submits that sentence awarded by the trial Court is just and proper and requires no interference.
7. I have heard learned Counsel appearing for the parties, perused the statement of witnesses and other annexed documents available on record minutely.
8. There is no dispute on the point that death of the deceased caused by the appellant is homicidal in nature as stated by Dr. Sheetal Dugga (PW-11) in her report.
9. According to case of the prosecution, Devnu Ram Baghel (PW-4) and Devprasad Baghel (PW-5) are the witnesses before whom the quarrel took place between the appellant and the deceased. Both the witnesses have supported the case of the prosecution. On this point, they both have categorically stated that at the time of incident, when they were present inside the '*kothar*' of Suraj Lal (PW-3), at that time, a quarrel took place between the appellant and the deceased. Then they

both left the spot and informed Suraj Lal (PW-3) about the incident.

The above statement of both the witnesses were not duly rebutted during their cross-examination. They remained firm on this point.

10. Corroborating the statements of the above witnesses, Suraj Lal (PW-3) has also deposed that after receiving the information regarding the incident, when he reached at the spot, he saw the deceased in injured condition. This witness further deposed that after the incident when he met with the appellant, at that time, appellant himself admitted the fact that he assaulted the deceased with the help of a wooden stick (*harra*). The above statement of this witness is also not rebutted during his cross-examination.
11. On minute examination of statements of Devnu Ram Baghel (PW-4) and Devprasad Baghel (PW-5), it is well-established that they both have seen the incident where a quarrel took place between the appellant and the deceased. Thereafter, dead body of the deceased was found in the injured condition in the spot. From the statement of Jageshwar Baghel (PW-1) and Ramesh Baghel (PW-2), it is established that extra judicial confession was made by the appellant before these witnesses regarding the incident. Statement of this witnesses is also not rebutted. Looking to the entire evidence adduced by the prosecution, in my considered view, the trial Court has rightly convicted the appellant. I do not find any infirmity in the order of the trial Court. Thus, conviction of the appellant is affirmed.
12. With regard to the jail sentence of the appellant, considering the fact that appellant has already completed about 5 years and 10 months in the jail, he is not having any previous antecedent, he is a young

person aged about 24-25 years and the facts that he is facing the /is for the last 6 years and the alleged incident took place at the state of intoxication, I am of the view that the ends of justice would be met if, while upholding the conviction imposed upon the appellant, the jail sentence awarded to him under Section 304 (Part 2) of the I.P.C. is reduced from seven years to six years. The fine sentence is affirmed and in default of payment of fine, appellant is liable to undergo further R.I. for six months.

13. Consequently, the appeal is partly allowed to the extent indicated above.
14. Records of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge