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Division Bench

IN THE HIGH COURT OF JUDICATURE AT

BILASPUR (C.G)

Criminal Appeal No. 257 of 2010

(Memorandum of Cr. Appeal U/S 374(2) of Cr. P.C)

APPELLANT

(In Jail)

Turchu Bargha S/o Late ^{Sumer} Semuer Bargha,
aged about 32 years, r/o village- Askala,
Jampara, Police Station- Bataoli,
District -Sarguja (C.G)

VERSUS

RESPONDENT

State of Chhattisgarh
Through police Station- Bataoli
District - Sarguja (C.G)

P.R. No. 1559/10

Presented by Shri Shilendra Jami

Dated 25/3/10

3:15 PM

MEMORANDUM OF CRIMINAL APPEAL

UNDER SECTION 374 (2) OF CRIMINAL

PROCEDURE CODE

(27)

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.257 of 2010

APPELLANT:
(In Jail)

Turchu Bargha

Versus

RESPONDENT:

State of Chhattisgarh

{Criminal appeal under Section 374 (2) of the Code of Criminal Procedure, 1973}

Present:

Mrs. Savita Tiwari, counsel for the appellant.

Ms. Pushpa Dwivedi, Panel Lawyer for the State/respondent.

Division Bench: -

Hon'ble Mr. T.P. Sharma and

Hon'ble Mr. I.S. Uboweja, JJ

JUDGMENT

(28-11-2014)

T.P. Sharma, J: -

1. Challenge in this appeal is to the judgment of conviction & order of sentence dated 20-1-2010 passed by the 4th Additional Sessions Judge (FTC), Ambikapur, in Sessions Trial No.433/2005, whereby & whereunder learned Additional Sessions Judge after holding the appellant guilty for causing homicidal death amounting to murder of Ramkumar, while convicting co-accused Setha Bargah under Section 323 of the IPC, convicted the appellant under Section 302 of the IPC and sentenced him to undergo imprisonment of life & pay fine of Rs.1,000/-, in default of payment of fine to further undergo RI for six months.
2. Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted and sentenced the appellant and thereby an committed illegality.
3. As per case of the prosecution, on the fateful evening of 30-10-2005 at about 6 p.m. the appellant asked deceased Ramkumar why he has condemned him as poor and beggar (*gareeb, bheek manga*) and then the appellant assaulted the deceased upon his head by stick. Co-accused Setha also assaulted the deceased over waist and other parts. Brother of the injured namely Rajkumar (PW-4) went to Police Station Batouli and lodged FIR vide Ex.P-5, same was recorded under Sections 294, 506 and 323 read with Section 34 of the IPC. The injured was sent for medical examination to Dr. J.P. Sahu (PW-19) at Community Health Centre, Batouli

who examined the injured vide Exs.P-16 & P-17 and found following injuries: -

1. Lacerated wound over right side of head in the size of 5 c.m. x 0.2 c.m.
2. Abrasion on left knee.
4. Injury was repaired. Injury was grievous in nature. The injured was unconscious. He was referred to District Hospital, Ambikapur where from he was referred to Medical College, Raipur and during the course of travel, he died. Morgue was recorded vide Ex.P-6. After summoning the witnesses vide Ex.P-7, inquest over the dead body of the deceased was prepared vide Ex.P-8. Spot map was prepared vide Ex.P-1. Bloodstained and plain soil were recovered from the spot vide Ex.P-3.
5. Dead body was sent for autopsy to Community Health Centre, Batouli. Dr. Anupam Minj (PW-9) conducted autopsy vide Ex.P-11 and found following injuries:

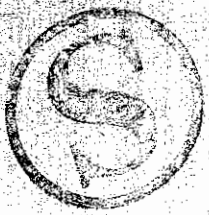
1. Abrasion over left pre-auricular area about ½ c.m. in diameter.
2. Abrasion over left forearm dorsal aspect (mid ⅓) about ½ c.m. in diameter.
3. Multiple abrasions over left knee and upper and left leg 4 in number about 1 c.m. to 2 c.m. in diameter.
4. Abrasion over right shoulder tip of 1 c.m. in diameter and with contusion over right shoulder tip of 2 c.m. in diameter.
5. Contusion over right clavicle lateral end 2 c.m. in diameter.
6. Multiple abrasions over neck 0.5 to 1 c.m. in size.
7. Sutured wound over scalp from right parietal region to left parietal region crossing occipital about 5 c.m. in length.
8. Contusion over back both side about 8 c.m. x 2 c.m. from both scapula, one end horizontal both side 4 c.m. x 2 c.m.

Cause of death was head injury and death was homicidal in nature.

6. During the course of investigation, appellant Turchu Bargha was taken into custody, he made discloser statement of stick vide Ex.P-2 and same was recovered at his instance vide Ex.P-4. Co-accused Setha Bargah was also taken into custody, he made disclosure statement of stick vide Ex.P-9 and same was recovered at his instance vide Ex.P-10. Sealed clothes of the

deceased were seized vide Ex.P-13. Bed-head ticket of the injured/deceased is Exs.P-14 & P-15. Statements of the witnesses were recorded under Section 161 of the CrPC.

7. After completion of investigation, charge sheet was filed before the Court of Judicial Magistrate First Class, Ambikapur, who committed the case to the Court of Sessions, Ambikapur from where the 4th Additional Sessions Judge (FTC), Ambikapur received the case on transfer for trial.
8. In order to prove the guilt of the accused persons, the prosecution has examined as many as 20 witnesses. The accused were examined under Section 313 of the CrPC in which they denied the circumstances appearing against them, pleaded innocence and false implication in the crime in question.
9. After providing opportunity of hearing to the parties, learned Additional Sessions Judge convicted & sentenced the appellant as aforementioned.
10. We have heard learned counsel for the parties, perused the judgment and record of the trial Court.
11. Learned counsel for the appellant vehemently argued that conviction of the appellant is substantially based on the evidence of Phulkunwar (PW-1), mother of the deceased, who was present at the time of incident. As per her evidence, on account of telling the deceased as beggar and thief, some altercation and quarrel took place then the appellant assaulted the deceased by stick over head. Evidence of this witness is not sufficient to establish that the appellant has assaulted the deceased with intent to cause his death. Therefore, the act attributed to the appellant does not travel beyond the scope of Section 304 Part-II of the IPC.
12. On the other hand, learned State counsel opposed the appeal and submitted that evidence of Phulkunwar (PW-1) is sufficient to establish the guilt of the appellant in the crime in question and the trial Court has rightly convicted and sentenced the appellant.
13. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the prosecution.
14. In the present case, homicidal death as a result of fatal injuries found over head of deceased Ramkumar has not been substantially disputed on behalf of the appellant. On the other hand also, it is established by evidence of Phulkunwar (PW-1), Rajkumar (PW-4), Dr. J.P. Sahu (PW-19), injury



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reports Exs.P-16 & P-17, evidence of Dr. Anupam Minj (PW-9) and autopsy report Ex.P-11 that death of deceased Ramkumar was homicidal in nature.

15. As regards complicity of the appellant in the crime in question, conviction of the appellant is substantially based on the evidence of Phulkunwar (PW-1), mother of the deceased. As per her evidence, they brought the injured to Batouli hospital from where they took him to Ambikapur hospital, then while they were taking the injured to Raipur, the deceased died. In para 9, she has admitted that both the appellant and the deceased were quarrelling with each other, both were throwing each other (दोनों पटका गये) and both had consumed liquor. Evidence of this witness clearly reveals that this is a case of sudden provocation, the appellant annoyed with the attitude of the deceased then both the persons quarrelled and the appellant assaulted the deceased over his head by stick which has been proved as fatal, though he died after three days. However, at the time of causing such fatal injury, the appellant was having knowledge that by his act, the deceased may die.
16. After appreciating the evidence available on record, the trial Court has convicted and sentenced the appellant under Section 302 of the IPC, but while convicting the appellant under Section 302 of the IPC, the trial Court has not considered the circumstances in which the incident took place and thereby committed an illegality.
17. Consequently, the appeal is partly allowed. Conviction of the appellant under Section 302 of the IPC is altered to Section 304 Part-I of the IPC. The appellant is in custody since 5-11-2005. He is sentenced to RI for nine years and fine of Rs.1,000/-. He has completed the sentence. He be set at liberty at once. He be released forthwith, if not required in any other case.

Soma

Sd/-
T.P. Sharma
Judge

Sd/-
Inder Singh Uboweja
Judge