

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 121 of 2010

Ujal Singh, Aged 60 years, S/o. Dhanu Bhujia, R/o. Village Koyba,
Police Station Devbhog, District Raipur (C.G.)

---- Appellant

Versus

State of Chhattisgarh, Through Police Station Mainpur, District
Raipur (C.G.)

---- Respondent

For Appellant : Mr. Dharendra Mishra, Advocate
For Respondent : Mr. Wasim Miyan, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma

Judgement on Board

31.03.2018

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 11.04.2007 passed by the Additional Sessions Judge, Gariyaband, Session Division Raipur (C.G.) in Sessions Trial No. 07/2007, wherein the trial Court convicted the accused/appellant under Section 304 Part-II of the IPC and sentenced him to undergo R.I. for 10 years.
2. In the present case, name of the deceased Malobai, who was the wife of the appellant.
3. As per the prosecution case, on 24.10. 2006, a report was lodged by Sadaram Gond, wherein it is alleged that an

altercation took place between the appellant and the deceased on 20.10.2006 at about 11.00 AM. The appellant assaulted on the stomach of the deceased with wooden stool (*Pidha*) and fled away from the spot. The matter was reported to Police Station Mainpur. After completion of investigation, charge sheet was filed before the trial Court wherein the trial Court framed charges as mentioned above to which the appellant did not plead guilty. The trial Court conducted the trial and after completion of evidence of the prosecution side, statement of the appellant under Section 313 of the Cr.P.C. was recorded and after completion of trial, the trial Judge considering the material available on record by the impugned judgement convicted and sentenced the appellant as mentioned above.

4. Learned counsel for the appellant submits that the prosecution has failed to prove the case under Section 302 of the IPC and the eye witness of the case Vijay Kumar (PW-4) has not supported the case of the prosecution. Learned counsel further confines his argument to the sentence part only and prays to reduce the jail sentence awarded to the appellant to the period already undergone by him.

5. Per contra, learned State counsel supporting the impugned judgement has submitted that the judgement of the trial Court is strictly in accordance with the law and well founded and there is no illegality or infirmity in it warranting any interference by this Court.

6. I have heard counsel for the parties and perused the material on record.

7. Postmortem of the deceased was conducted by Dr. Aruna Beck (PW-1) and he noticed the following injuries

(I) Contusion in the size $4\frac{1}{2} \times 5$ ' over left hypochondrium.

(II) Contusion in the size $4 \times \frac{1}{2} \times 5$ ' on left hypochondrium region
fracture on left twelfth rib.

(III) Mild splenomegaly with rupture $1\frac{1}{2} \times 1\frac{1}{2}$ ' on concave side,
blood clots within the capsule of spleen and at the hilum.

It is opined by the expert that the death is caused due to excessive haemorrhage due to rupture of spleen and rupture was caused due to fracture of twelfth rib and duration of death since 36 to 48 hours of the examination. As per opinion of the expert death was homicidal in nature.

8. Sadanram (PW-1) and Vijay Kumar (PW-4) are the eye-witness of the incident. Both have deposed that deceased Malobai was assaulted by the appellant by one wooden stool. Version of these witnesses is unshaken during the cross-examination and there is nothing on record to disbelieve their testimony and on the basis of their evidence it is established that it is the appellant who has caused injury on the body of the deceased and the same was fatal. From the evidence of both the witnesses it is established that prior to the incident there were some altercation took place between the appellant and the deceased and on the spur of moment the appellant assaulted the

deceased, therefore, the act of the appellant was unintentional and the case of the appellant falls under section 304 Part II of the IPC. In the opinion of this Court the findings of the trial court is not liable to be interfered with and looking to the evidence adduced by the prosecution, conviction of the appellant is hereby affirmed.

9. Heard on the sentence part. The appellant is in jail since 25.10.2006 to 18.12.2011 and he has completed terms of 5 years, in our view, the period already undergone by the appellant would be sufficient for the offence under Section 304 Part II of the IPC, therefore, he is sentenced to the period of imprisonment already undergone by him. However, the fine amount imposed by the trial Court upon the appellant shall remain intact. The appellant be released forthwith, if not required in any other case.

10. Accordingly, the appeal is partly allowed while maintaining the conviction under Section 304 Part II of the IPC. The appellant is sentenced to the period already undergone by him.

Sd/-

(Ram Prasanna Sharma)
JUDGE