

**(2019) 02 CHH CK 0201**

**Chhattisgarh High Court**

**Case No:** Criminal Appeal (CRA) No. 301 Of 2012

Gopal Kumar Kunjam

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

**Date of Decision:** Feb. 14, 2019

**Acts Referred:**

- Indian Penal Code, 1860 - Section 304, 323

**Hon'ble Judges:** Ram Prasanna Sharma, J

**Bench:** Single Bench

**Advocate:** Anurag Shrivastava, Raghavendra Verma

**Final Decision:** Dismissed

**Judgement**

Ram Prasanna Sharma, J

1. This appeal is preferred against the judgment dated 15-3- 2012 passed by the Additional Sessions Judge, North Bastar Kanker, (CG) in Session

Trial No. 23 of 2011 wherein the said Court has convicted the appellant for the commission of offence under Sections 304 Part II of IPC and

sentenced him to undergo RI for seven years and to pay fine of Rs.1000/- with default stipulations.

2. In the present case, name of the deceased is Santram. Deceased came to his relative namely Hemraj at village Bheja and from there he along with

Hemraj after having visited Charama were coming in the motorcycle in night and when they reached near Negi Baga temple at village Damkasa, one

person was standing in the middle of the road and was using mobile and also using the torch of mobile and he as alleged detained them and assaulted

Hemraj by fist and at the same time deceased Santram intervened in the matter and he has also been assaulted. They informed the incident to persons namely Devendra, Meghanath and Mukund and that man identified Santram and after some time appellant assaulted the deceased Santram by fist over chest and consequent to which he became unconscious and died on the spot. The matter was reported and investigated and after completion of investigation charge sheet was filed, the appellant did not plead guilty and the trial was conducted. After completion of trial, the trial Court convicted and sentenced the appellant as aforementioned.

3. Learned counsel for the appellant would submit as under:

i) Looking to the statement of Hemraj (PW/1) and other witnesses, it is clear that there was no enmity between appellant and deceased prior to the date of occurrence and the appellant had not possessed any weapon in his hand, therefore, it is a case which falls within mischief of Section 323 of IPC..

ii) The incident took place on the basis of trifling incident on road and the appellant also sustained injury and prosecution has not offered any explanation about the injury of the appellant, therefore, finding of the trial Court is not sustainable.

iii) Fist blow which is alleged to be caused to the deceased is not caused with intention to commit murder..

iv) The trial Court has not evaluated the evidence in its true perspective, therefore, finding of the trial court is liable to be reversed.

4. On the other hand, learned counsel for the respondent would submit that the finding of the trial Court is based on proper marshaling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

6. PW/1 Hemraj, PW/2 Devendra Kumar, PW/3 Mukundram and PW/4 Meghanath have deposed before the trial Court in one voice that it is the appellant who assaulted the deceased by fist and caused injury on his chest, throat and genital organ, that is why the deceased fell down and died on

the spot. All the witnesses have been subjected to searching cross-examination, but nothing could be elicited in favour of defence. There is nothing on record that these witnesses have any grudge against the appellant to role him in false charge.

7. Dr. Arvind Korram (PW/11) who conducted autopsy of the deceased Santram on 9-8-2010 at 3.00 pm at Primary Health Centre, Charama noticed the following injuries.

- i) Contusion hurt over deep fief to miscue of mid axillary rib level 4, 5 and 6th.
- ii) Contusion to haemorrhage spot and on deep fluid and muscle lover lower neck and trachea.
- iii) Fracture of 4th, 5th and 6th ribs and it pierced the middle of 6th and 7th rib left side mid axillary region.

He opined that deceased died due to shock and same is caused because of over bleeding of blood in lungs and the nature of death is homicidal and same is caused since 14 to 18 hours of the examination.

8. Version of this witness is unrebutted and there is no other expert's opinion contrary to opinion of this expert, therefore, it is established that deceased died due to shock and his death is homicidal in nature.

9. Now the point for consideration of this court is whether the act of the appellant falls within mischief of murder or culpable homicide. From the evidence, it is clear that the incident took place between two unknown persons who were the appellant and deceased. Appellant was not having any weapon in his possession. He assaulted the deceased at the spur of moment by fist blow, therefore, his intention to kill the deceased is not established from the facts and circumstances of the case. It is an unintentional act which falls within mischief of culpable homicide punishable under Section 304 Part II of the IPC for which the trial Court convicted the appellant.

10. Looking to the direct evidence and medical evidence, this court has no reason to substitute the contrary finding. Conviction of the appellant for the said offence is hereby affirmed. The trial Court awarded sentence of seven years for the said offence which cannot be termed as harsh, disproportionate or unreasonable. Sentence part is also not liable to be interfered.

11. Accordingly, the appeal being devoid of merit is liable to be and is hereby dismissed. The appellant is reported to be in jail, therefore, no further order for his arrest etc., is required.