

(2014) 03 CHH CK 0003
In the Chhattisgarh High Court
Case No : Criminal. Appeal No. 309/2003

Fazal Hussain

APPELLANT

Vs

State of Chhattisgarh

RESPONDENT

Date of Decision : 04-03-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 304

Citation : (2014) 2 CGLJ 615 : (2014) 3 MPJR 37

Hon'ble Judges : P. Sam Koshy, J

Bench : Single Bench

Advocate : Rajendra Tripathi, Advocate for the Appellant; Aditya Sharma, PL, Advocate for the Respondent

Final Decision : Dismissed

Judgement

P. Sam Koshy, J.

1. By way of the instant appeal, the appellant has challenged the judgment of conviction and sentence dated 26.2.03 passed by 1st Additional Sessions Judge, Raigarh in Sessions Trial No. 129/2000. By way of the said judgment, the appellant has been convicted u/s 304 Part II IPC and sentenced to undergo RI for 3 years with fine of Rs. 500 with usual default stipulations. Case of the prosecution is the about 15 days earlier to 3.6.2000, Malti Bai (PW-1) and Chandra Yadav (PW-3), mother and father of victim Narayan, (a mentally unsound person) had taken him for treatment to the accused/appellant at village Jamgaon. For the said treatment, the accused/appellant had charged Rs. 2,000 and as a part of the treatment, the accused/appellant started whipping the victim and also used a chain lathi/danda for beating him. In continuation of the said treatment, again on 2.6.2000, the accused/appellant had assaulted the victim on various parts of his body due to which, on the same day victim Narayan succumbed to the blows given by the accused/appellant. On the very next date i.e. 3.6.2000, Malti Bai (PW-1), mother of deceased Narayan reported the matter to P.S. Chakradharnagr in respect of the sudden death of her mentally ill son.

Subsequently, investigation was conducted and thereafter Crime No. 73/2000 was registered against the accused/appellant for the offence u/s 302 IPC. Based on this, the accused/appellant was arrested on 4.6.2000 and at his instance, seizure of a bamboo stick and an iron chain was recovered.

2. Subsequently, charge sheet was prepared and the case was put for trial before the court of Chief Judicial Magistrate, Raigarh who in turn, committed the matter to the Sessions Court where the case was registered as Sessions Case No. 129/2000 before the court of Sessions Judge, Raigarh.

3. The trial court, after concluding the evidence and on considering the submissions put forth by the prosecution as well as from the defence, vide its judgment dated 26.2.03 found that no case against the accused/appellant u/s 302 IPC was made out and similarly neither did the evidence show that act on the part of the accused/appellant would fall u/s 304 Part I IPC and therefore, the trial court finally convicted the accused/appellant u/s 304 Part II IPC holding that the accused/appellant has done the act with the knowledge that the blows that he had given to deceased Narayan, were likely to have caused death but without any intention to cause death or to cause such bodily injury as is likely to cause death. Thus convicting the accused/appellant for the offence u/s 304 Part II IPC sentenced him mentioned above.

4. It is this judgment dated 26.2.2003 which is under challenge in the instant appeal.

5. Counsel for the accused/appellant submits that the case against the accused/appellant is not made out for the offence u/s 304 II IPC as the accused/appellant had neither attacked deceased Narayan with an intention to causing any bodily injury nor was his intention to cause death of the deceased in any manner. He further submits that in fact the parents of deceased Narayan had voluntarily and willingly brought him to the house of the accused/appellant for treating him for the mental ailment that he was suffering. According to the counsel for the accused/appellant, the appellant used to treat such type of people by whipping and that at times, the persons with the said disability used to get well also and it was with the same intention that the appellant had whipped and assaulted deceased Narayan in the instant case also. However, on 2.6.2000, all of a sudden, deceased Narayan died at the residence of the accused/appellant and thus a case has been made out against the accused/appellant.

6. Reliance was placed on the decision of Hon"ble Supreme Court rendered in the matter of State of Punjab vs. Bura Singh and Others, reported in 1995 Supp. (3) Supreme Court Cases 708 wherein also, Hon"ble the Supreme Court, in a case u/s 304 Part II IPC sentenced the appellant with fine of Rs. 5,000 keeping in view the delay caused. For reference, relevant portion of the said judgment is reproduced as under:-

"The occurrence took place more than 10 years ago. We, therefore, do not think it appropriate, at this distant time, to send Bira Singh back to jail by imposing a

substantive sentence of imprisonment on him. Therefore, we sentence him to pay a fine of Rs. 5,000 and in default of payment of fine to undergo one year's rigorous imprisonment for the offence u/s 304 Part II IPC. The fine, when realized, shall be paid to the Amarjit Singh, the deceased.

7. On the contrary, counsel for the respondent/State submits that from the evidence that has come before the court below, particularly that of Malti Bai (PW-1) and Chandra Yadav (PW-3) mother and father respectively of deceased Narayan, it is clear that they have categorically stated before the court below that deceased Narayan was taken to the house of the accused/appellant about 10-12 days back and for all this period, the accused/appellant has been whipping and beating the deceased continuously and it is on account of this assault which the appellant had made, the victim had succumbed. He further submits that even though the intention of the appellant was not to cause death of deceased Narayan, he ought to have realized the fact that as a result of continuous whipping and assault of the last 10-15 days, any human being could receive injuries and even death could occur. He further submits that thus, the case of the prosecution is proved and prayed that the appeal being devoid of merits may be dismissed.

8. On perusal of panchnama (Ex. P-5) of the body, it is reflected that there were injury marks on the entire body of deceased Narayan. However, the said panchnama (Ex. P-5) has not been proved before the court below by independent witnesses as all the witnesses in support of the said panchnama have turned hostile. The fact which may be borne in mind is that admittedly in the instant case, Malti Bai (PW-1) and Chandra Yadav (PW-3) mother and father of deceased Narayan respectively had voluntarily taken him to the house of the present accused/appellant. It is further to be noticed that the mother and father of the deceased knew very well as to the method of treatment which the accused/appellant would be conducting for curing the said ailment which the deceased was suffering from and that for all these 10-15 days prior to the date of death, i.e. 2.6.2000 all along they had accepted the manner in which the accused/appellant was treating the deceased without any protest or objection at any point of time and as such the accused/appellant alone cannot be blamed and the mother and father of deceased Narayan are also equally responsible. In spite of this, from the evidence that has come on record, particularly that of Malti Bai (PW-1), mother of deceased Narayan, it can be safely concluded that death of victim Narayan was because of the assault that the accused/appellant made upon the deceased.

9. Thus, from the evidence that has come on record, I have no hesitation in affirming the conviction of the accused/appellant for the offence u/s 304 Part II IPC.

10. Counsel for the appellant has prayed that a period of 14 years have passed from the date of incident and that the appellant has already undergone jail sentence of about 3-4 months in between and that the order of sentence may be

reduced to the period already undergone. However, if we see the evidence that has come on record, particularly the medical report of deceased Narayan, it would clearly establish the manner in which the victim was whipped and assaulted by the accused/appellant in as much as the entire body of the deceased was having the injury marks as is evident from the medial report.

11. However, in spite of the evidence on record and the nature of assault inflicted by the accused/appellant upon the deceased, if a liberal view is taken for reducing the sentence only on the ground that 14 years have lapsed, then such sympathetic view may result counter productive in the long run and also it would be against the sole societal interest.

12. Hon"ble Supreme Court in Sadhupati Nageswara Rao Vs. State of Andhra Pradesh, has observed that the courts cannot take lenient view in awarding sentence on the ground of sympathy or delay as the same cannot be a ground for reduction of the sentence. The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and the victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated.

13. Even otherwise, if we see the nature of crime committed by the accused/appellant, then under the said facts and circumstances of the case, in my opinion, even the sentence of 3 years RI which has been imposed by the court below to the accused/appellant is on the lower side. Thus, the appeal fails and is accordingly dismissed. The appellant is reported to be on bail. His bail bonds are cancelled. He be arrested and sent back to jail forthwith to serve the remaining part of the sentence imposed on him.