

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 552 of 2000**

Lachhin Son of Ayaturam, aged about 16 years, Resident of village Makdi, Daharipara, Police Station Kondagaon, District Bastar, Madhya Pradesh (Now Chhattisgarh)

---- Appellant

Versus

State of Madhya Pradesh (Now Chhattisgarh)

---- Respondent

For Appellant : Shri Hanuman Prasad Agrawal, Advocate.
For Respondent/State : Smt. Smita Ghai, Panel Lawyer.

Hon'ble Shri Navin Sinha, Chief Justice

Hon'ble Shri P. Sam Koshy, J.

Judgment on Board**Per Navin Sinha, Chief Justice****04/04/2016**

1. The Appellant stands convicted under Section 302 IPC to life imprisonment on 28.1.2000 by the 1st Additional Sessions Judge, Bastar in Sessions Trial No. 310 of 1999.

2. The Appellant was granted bail earlier on 18.7.2000 but for one reason or other could not furnish bail bonds and was granted fresh bail on 23.9.2005. On his failure to mark attendance, the bail bonds were forfeited on 18.7.2007 and directions issued to initiate recovery proceedings of the bond amount. The office note dated 15.3.2016 states that no report in this regard has been received till date. On 18.3.2016, we directed the case to be listed for hearing within first five cases considering its age and appointment of a Counsel by High Court Legal Services Committee to assist us in the matter.

We have heard Shri Hanuman Prasad Agrawal, Learned Counsel nominated by the High Court Legal Services Committee and the Learned State Counsel. From the records, it emerges as an undisputed fact that according to the prosecution itself, the Appellant was 16 years of age on the date of occurrence. He is therefore entitled to the benefit of Section 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter called 'the Act') which has been interpreted to have retrospective effect.

3. The FIR (Exhibit P-17) was lodged on 21.7.1999 at about 8:30 am by the deceased who was none other than the father of the Appellant with regard to the assault at about 8:00 am on 20.7.1999. The deceased died on 29.7.1999 and his postmortem (Exhibit P-12) conducted by PW-6, Dr. K.K.Nag on 13.7.1999. Death was opined due to shock and homicidal in nature. Prior to the same, the MLC (Exhibit P-14) of the deceased was conducted by Dr. U.S.Navratna on 21.7.1999 itself reporting a stab wound 3"X 1½" X6" by a sharp object dangerous to life.

4. The FIR (Exhibit P-17) was in the nature of a dying declaration by the deceased himself. It stated that the Appellant came back with the cattle after grazing. The deceased asked him to tether the same repeatedly. The Appellant then assaulted the deceased with a knife in the stomach and on the back leading to spilling out of the intestine. His wife, PW-1, Sukhmani and daughter PW-2, Lakhmi intervened but for which the Appellant may have assaulted him again. The Appellant then ran away.

5. Learned Counsel for the Appellant submitted that both PW-1, Sukhmani and PW-2, Lakhmi have turned hostile and have not supported the prosecution case.

6. Learned Counsel for the State submitted that the FIR is in the form of a dying declaration. The MLC was carried out promptly and injuries found dangerous to life. Merely because the deceased may have survived for some days due to

treatment will not take the case out of the ambit of Section 302 IPC. Both PW-1, Sukhmani and PW-2, Lakhmi are eye witness to the occurrence. Even if they have turned hostile, that part of their evidence which corroborates the dying declaration of the deceased is still admissible in evidence. The Appellant was undoubtedly the assailant. The two witnesses were now trying to save the Appellant thinking that the deceased had already died and cannot be brought back to life.

7. We have considered the submissions on behalf of the parties and perused the evidence on record.

8. The deceased was none other than the father of the Appellant. There is no evidence or suggestion on behalf of the Appellant why his father was falsely implicating him as the assailant. To our understanding the fact that the father named his own son as the assailant calls for great courage and fortitude. The deceased himself would be fully aware of the consequences that would follow to the young life if the Appellant was named as an accused, yet the bitter truthfulness of the allegation left the deceased with no choice but to name his own son as the assailant. This, in our opinion, is a very crucial factor to lend credibility to the allegation of the prosecution. There is nothing on record to suggest or doubt that the dying declaration was not genuine much less that the deceased was under no apprehension of death when he lodged the report. The Appellant caused injury dangerous to life evident from the MLC itself. The FIR reveals that but for the intervention of PW-1, Sukhmani and PW-2, Lakhmi, the Appellant would not have hesitated in another assault. The intention to cause death therefore need not detain us any further.

9. The submission that the Appellant never really intended to kill his father but acted in grave and sudden provocation in the immaturity of youth may be a relevant factor for sentence but cannot take away the justification for conviction.

10. From the evidence of PW-1, Sukhmani and PW-2, Lakhmi, it finds corroboration that they were at home alongwith the deceased and the Appellant when the assault took place as mentioned in the FIR. Obviously, they attempted to turn hostile because the accused was none other but their son/brother. In all other material aspects they have corroborated the genesis of the occurrence with regard to the dispute regarding tethering of cattle etc. Likewise, the deceased had scolded the Appellant also finds corroboration.

11. We therefore find no reason to interfere with the conviction of the Appellant but in view of the prosecution case itself that he was below 18 years of age, we direct that the records be forwarded to the concerned Juvenile Justice Board for appropriate sentence under Section 20, Explanation, of the Act considering that he has already spent more than three years in custody, the maximum sentence that could have been imposed under the Act.

12. The appeal is dismissed with the aforesaid directions.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE