

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.M.P. NO. 76 OF 2016

State of Chhattisgarh, through District Magistrate, Surguja (C.G.)

... Appellant

Versus

Samflal S/o Sanwar Kanwar, aged about 31 years, R/o Village Mareya,
P.S. Udaypur, District Surguja (C.G.)

... Respondent

For Appellant-State : Mr. U.K.S. Chandel, Panel Lawyer.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order on Board

Per NAVIN SINHA, C.J.

09/02/2016

1. I.A. No. 1 of 2016 has been filed to condone delay of 34 days in filing the application for grant of leave to appeal.
2. The State assails acquittal of the Respondent from the charge under Section 307 IPC.
3. Learned Counsel for the State submits that the intention to kill was apparent from the nature of the assault made on the head of the victim with an iron hammer, a sensitive part of the human body, causing depressed fracture of the left front parietal bone. Acquittal of the charge under Section 307 IPC and conviction to one year rigorous imprisonment only under Section 335 IPC was not justified. No other issue has been urged before us.
4. We have considered the submissions.
5. The Learned Trial Judge noticed the admission in cross-examination of the injured that he and the Respondent had drunk liquor heavily on that date. The controversy related to a sum of Rs. 100/-. In a drunken condition the Respondent asked the injured to return the

money or loan his wife in lieu of the same, when the assault was made which also caused two lacerated wounds. The Learned Trial Judge on a consideration of the entire facts and circumstances including events preceding and after the assault came to the conclusion that the Respondent appears to have acted on grave and sudden provocation as a man of ordinary common prudence, when the injured asked him to loan his wife and that there was no material to suggest that he ever had an intention to cause death. We find no infirmity in the reasoning of the Learned Trial Judge that the nature of the assault brought the offence under Section 320, Clause 7 IPC. Section 335 IPC provides for a maximum punishment of four years and/or with fine of Rs.2000/- for voluntarily causing grievous hurt on grave and sudden provocation. The Respondent has already undergone custody for one year and 19 days as noticed in the judgment under appeal itself.

6. We find no reason to interfere. Had it been a case of acquittal, matters may have been entirely different. Delay is condoned. The application for grant of leave to appeal is dismissed.

7. In the nature of accusation and the conviction ordered, we are constrained to reiterate our observations in Criminal Miscellaneous Petition No. 122 of 2016 with regard to the State being more circumspect in filing appeals against acquittal in matters like the present.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge