

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1193 of 2013**

Mundiya @ Balram S/o Aasharam Aged About 28 Years Caste Bhatra, Occupation Agriculture, R/o. Vill. Belputi Khaspara, P.S. Karpawand, Distt. Bastar at Jagdalpur (C.G.)

---- Appellant**Versus**

State Of Chhattisgarh Acting Through: SHO PS Karpawand, Distt. Bastar at Jagdalpur(C.G.)

---- Respondent

For Appellant	: Shri Virendra Verma, Advocate on behalf of Shri A.K. Gupta, Advocate
For State/Respondent	: Smt. Shobha Kashyap, Dy. G.A.

HON'BLE SHRI JUSTICE CHANDRA BHUSHAN BAJPAI
JUDGMENT

16/11/2016

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 10.10.2013 passed by the Sessions Judge, Bastar at Jagdalpur (CG) in ST No.50/2012, whereby and whereunder the learned trial Judge after holding the accused/appellant guilty for committing culpable homicide not amounting to murder without any intention, convicted under Section 304 Part II IPC and sentenced to undergo R.I. for 7 years along with fine sentence of Rs.10,000/-, in default of payment of fine to undergo R.I. for 1 year. Further directed that the period of detention from 22.3.2012 till the date of judgment shall be set off under Section 428

Cr.P.C. By the said judgment the trial Court instead charges framed under Section 302 read with Section 34 IPC convicted the accused/appellant for a lesser offence under Section 304 Part II IPC. The trial judge also acquitted other co-accused -Hukum and Malti for the offence under Section 302 read with Section 34 IPC.

2. The conviction is impugned on the ground that without there being any iota of evidence, the Court below has convicted and sentenced the appellant as aforementioned and thereby committed illegality.

3. As per case of the prosecution, on 21.3.2012, at about 7.30 am at village Belputi, the present accused/applicant along with other co-accused was fencing the kitchen garden. Jogendra reached to the spot and objected for the additional fencing of the land. With the said objection, the accused/appellant along with other co-accused assaulted Jogendra at the back side of the neck with an axe, thereafter, Jogendra fell down. He was immediately taken to Bakawand Hospital. The incident was witnessed by the eye-witnesses. Brother of Jogendra lodged First Information Report Ex. P/4 and merg intimation Ex.P/5. The Investigating Officer prepared the spot map after giving notice to the witnesses and inquest Ex. P/8 on the body was prepared. The body was sent for postmortem. PW-2, Dr. R.K. Chaturvedi conducted the postmortem and noticed one incised wound backside of the neck of 3.5 x 2 x 2 cm; muscles and arteries were cut. Also noticed fracture on the occipital bone and gave his report as Ex.P/1. As per report cause of death was

due to haemorrhage and shock as a result of head injury caused by sharp edged weapon. The injury was ante mortem in nature and the death was homicidal. During investigation, the Investigating Officer had seized blood stained and plain soil and after disclosure statement of the accused, blood stained axe and the cloth of the accused were seized. All the 3 accused were arrested. After completion of the investigation charge sheet has been filed before the Judicial Magistrate First Class, Jagdalpur, who in turn registered the Cr. Case No.135/12 and vide committal order dated 7.5.2012 committed the matter for trial. The learned Sessions Judge framed charges under Section 302 read with Section 34 IPC against all the 3 accused.

4. In order to prove the guilt of the accused, prosecution examined as many as 8 witnesses. Statements of all the 3 accused were recorded under Section 313 Cr.P.C. in which they denied the circumstances appearing against them, pleaded innocence and false implication in the crime in question. After affording opportunity of hearing to the parties, the learned Sessions Judge acquitted the other co-accused and convicted and sentenced the appellant as above.

5. I have heard learned counsel for the parties and perused the judgment impugned and the record of the trial Court.

6. Learned Counsel for the appellant vehemently argued that as directed he is not contesting the instant appeal on conviction part,

whereby, the present appellant has been convicted for a lesser offence under Section 304 Part II IPC, but he is confining his arguments for the quantum of substantive jail sentence only. He further submits that the accused/ appellant had remained in jail for 4 years and 7 months 24 days till date. He was aged about 28 years on the date of incident. He is a member of Scheduled Tribe, illiterate and marginal farmer earning his bread anyhow and on account of sudden provocation, this incident has happened. The State had not preferred any appeal against the appeal for his conviction on the lesser Section. With this his conviction under Section 304 Part II attains finality for the moment. He had assaulted only once and had not misused the opportunity to assault more than once. There is no minimum sentence prescribed for the offence under Section 304 Part II IPC. He was not having any criminal antecedent and he will not commit any offence in future. He is not in a position to engage any counsel to defend him. On request, High Court Legal Aid committee appointed a counsel to defend him. Looking to the entire facts and circumstances, he may be sentenced for the period already undergone by him.

7. Per contra, learned Counsel for the State has opposed the arguments advanced on behalf of the accused/appellant and would submit that as the appellant assaulted the deceased by sharp edged weapon, the axe who was objecting the appellant not to fence more land, the Court below has duly sentenced the appellant. An

innocent person has lost his life who was making intervention for the right cause, hence, the appeal may be dismissed on all the grounds.

8. In order to appreciate the arguments, I have heard Learned Counsel for the parties, perused the judgment impugned and record of the Court below.

9. From minute examination of the witnesses makes it clear that upon considering the entire material, the trial Court has convicted the accused/appellant for a lesser offence under Section 304 Part II IPC and as the State has not preferred any appeal against the conviction for lesser offence, the present conviction of the appellant under Section 304 Part II IPC comes to finality. Also the accused / appellant is aged about 28 years of a remote area and he belongs to the member of Scheduled Tribe community though the deceased also belongs to same community. There is no minimum sentence prescribed for the offence under Section 304 Part II IPC. The accused/appellant was not in a position to engage a lawyer to defend through legal aid provided to the appellant. Also the appellant has not filed any application for suspension of sentence and grant of bail. Looking to the entire material and as there is no minimum sentence prescribed, the ends of justice would be served if the appellant be convicted for the period already undergone.

10. Consequently, the appeal is allowed in part. Conviction of the appellant under Section 304 Part II IPC is hereby affirmed. The fine sentence of Rs.10,000/- is also affirmed. If the said amount is not

paid then the concerned authorities are directed to serve the default part of the sentence as mentioned in para 18 of the judgment of Court below. The accused/appellant is sentenced for the period already undergone instead, R.I. for 7 years awarded by the trial Court. The accused/appellant is in jail, he be released forthwith if not required in any case after depositing the fine sentence and if not deposited, after serving the default part of the sentence in lieu of fine.

Sd/

(Chandra Bhushan Bajpai)
JUDGE