

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 622 of 2004**

- Tajuddin S/o Rahman Musalman, aged about 41 years, Occupation : Agriculturist, resident of village Harigaon, Police Station, Ramkola, Police Chowki, Raghunath Nagar, District Surguja (C.G.).

---- Appellant**Versus**

- State Of Chhattisgarh Through : The Police Station, Basantpur, District Surguja (C.G.)

---- Respondent

For Appellant	:	Smt. Savita Tiwari, Advocate.
For Respondent	:	Shri Ravindra Agrawal, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board**By Pritinker Diwaker, J****29/06/2017**

This appeal arises out of the judgment of conviction and order of sentence dated 26.06.2004 passed by the Special Judge (constituted under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989), Ambikapur, Surguja, in Special Sessions Trial No.3/2003 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life.

02. As per the prosecution case, there was dispute between

the appellant and the deceased namely Nabalak over the forest land and both used to claim their possession over the said land. On 29.06.2002 quarrel took place between the accused/appellant, deceased and his family members and it is said that the accused/appellant caused spade injury on the body of the deceased and that deceased also caused injury to the appellant. The deceased succumbed to the injuries caused by the appellant, whereas the accused/appellant is said to have suffered injuries on his neck, shoulder and remained in hospital for about one and half month. On 29.06.2002 at 9.20 pm, merg intimation Ex.P/16 was recorded at the instance of Babulal (PW/5), son of the deceased, and immediately thereafter at 9.25 pm FIR Ex.P/5 was registered against the accused/appellant under Section 302 IPC. On the report Ex.D/4 lodged by the accused/appellant offence under Section 307 was registered against the deceased Nabalak. On 30.06.2002 inquest on the body of deceased was prepared vide Ex.P/4 and dead body was sent for postmortem to Govt. Hospital, Wadrafnagar where Dr. R.B. Prajapati (PW/7) conducted postmortem on the body of deceased and gave his report Ex.P/8 opining the cause of death to be shock due to hemorrhage resulting from head and facial injuries and death was homicidal in nature. After filing of charge sheet, the trial Court framed the charge against the accused/appellant u/s 302 IPC and Section 3 (2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

03. In order to prove the complicity of the accused/appellant in the crime in question, the prosecution has examined 9 witnesses. Statement of the accused under Section 313 Cr.P.C. was also recorded in which he denied his guilt and pleaded innocence and false implication in the case.

04. After hearing the parties the Court below has convicted and sentenced the accused/appellant as mentioned above in paragraph No.1 of this judgment.

05. Counsel for the accused/appellant submits as under:

(i) That the accused/appellant has been falsely implicated in the crime in question.

(ii) That Kalawati (PW/4) is daughter-in-law of the deceased and being interested witness she has falsely implicated the accused/appellant.

(iii) That the incident took place all of a sudden without premeditation in the heat of passion and, therefore, the case of the appellant would fall under Exception 4 to Section 300 IPC and he can be convicted under Section 304 Part-I or II IPC. It has been further argued that the accused/appellant has already remained in jail for more than six years and four months and, therefore, after converting his sentence into Section 304 Part-I IPC of II, his sentence may be reduced to the period already undergone by him.

06. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that

conviction of the accused/appellant is strictly in accordance with law and there is no infirmity in the same.

07. We have heard learned counsel for the parties and perused the material available on record.

08. Smt. Kalawati (PW/4) is daughter-in-law of the deceased. She has stated that she knew the accused/appellant and his two son. On the date of incident at about 4.00 pm, the accused/appellant and his two son were ploughing their field and had called her father-in-law (deceased). When her father-in-law reached the field of the accused/appellant, some altercation took place between them in which accused/appellant caused injuries to the deceased by spade. Wife of the accused/appellant also said that “दौड़ो दौड़ो और साले चमार को मारो”, on which appellant's two sons also came there and caused injuries by axe. She has further stated that upon hearing her cries, Kisun, Govind, Mehilal and other persons also reached there, however, by that time his father-in-law had expired. In cross-examination she remained firm and but for minor contradiction nothing could be elicited from her cross-examination to discredit her testimony. Rajaram (PW/3) is witness to inquest Ex.P/4. He has stated that after hearing the cries of PW/4, he reached the place of occurrence. Jawahir Singh (PW/1) is witness to seizure memo Ex.P/1 and Ex./2 by which one club, spade, axe and bloodstained soil were seized and has duly supported the prosecution case. Babulal (PW/5) is son of the deceased, who lodged the FIR Ex.P/5. He has

stated that he was informed by Ramkishun, son of Shivraj Gond that the accused/appellant and his two sons have killed his father. Amir Sai Vike (PW/6) is the Patwari who prepared spot map vide Ex.P/7. He has stated that the land in question for which the dispute was pending was the forest land. Dr. R.B. Prajapati (PW/7) is the witness who conducted postmortem examination on the body of the deceased and gave his report Ex.P/8 describing the injuries noticed by him as under:

- (i) Lacerated wound of 7 x 1 x 1 cm over head, 15 cm above the bridge of nose, red in colour, caused by hard and blunt object. Frontal bone was found fractured. Dura matter torn below fractured bone.
- (ii) Contusion of 6 x 5 cm over chin, red in colour. Mandible bone was found fractured.
- (iii) Contusion of 6 x 5 cm over left side of cheek, red in colour. Left maxillary bone was found fractured.
- (iv) Contusion of 10 cm x 8 cm over left temporal region.

According to the Doctor, all the injuries were antemortem in nature caused by hard and blunt object and cause of death of deceased was shock due to hemorrhage resulting from head injury and facial injuries. The death was homicidal in nature.

09. S.S. Painkra (PW/8) is the Investigating Officer who has duly supported the prosecution case. He has admitted the fact that appellant Tajuddin had also suffered injuries in the

incident and report (Ex.D/4) was lodged by him. He has further stated that the accused/appellant had remained in hospital for about one and half month. As per unexhibited medical report of the accused/appellant, which is available on record, he suffered incised wound of 7 1/2 cm x 1 1/2 cm x 2 1/2 cm over back below the root of neck, red in colour with bleeding. He was complaining pain over left shoulder and chest but no visible injury was seen. As per MLC report, the injury was caused by hard and sharp object. In the FIR Ex.D/4 lodged by the accused/appellant, it has been stated that when he was working in the field, the deceased reached there along with his three son and started beating him and to save himself, he protected himself by pick-axe and during this he assaulted deceased by pick-axe as a result of which deceased also sustained injuries. He has also stated that the deceased had also caused injury to him over his neck by axe.

10. Close scrutiny of the evidence makes it clear that on account of old land dispute regarding possession of the forest land, on 29.06.2002 when the accused/appellant was working in the field, the dispute cropped up between them and during this the accused/appellant is said to have caused injuries to the deceased by pick-axe, whereas the deceased is said to have caused injury on the neck of the accused/appellant by axe. PW/4 has duly supported the incident and categorically stated as to the manner in which the incident took place. It has also come in the report Ex.D/4 lodged by the

accused/appellant that while he was working in the field a quarrel took place between them in which deceased was assaulting him by axe and while saving himself from the assault of deceased he caused injuries to him by pick-axe. Thus, the complicity of the accused/appellant in commission of the offence has duly been proved by the prosecution beyond doubt.

11. The next question which arises for consideration before this Court as to whether the act of the accused/appellant would fall under Exception 4 to Section 300 IPC.

12. On the date of incident when the accused/appellant was working in the disputed field, the deceased and his three sons came there, a quarrel took place between them in which deceased started assaulting him by axe and in order to save himself from the assault of deceased, the accused/appellant also dealt blow by pick-axe. From the evidence of the prosecution witnesses and the report Ex.D/4 lodged by the appellant, the picture emerges that it is only after the appellant was assaulted by the deceased with axe, the present appellant caused injuries to him. Thus, it is crystal clear that when the appellant was provoked by the act of the deceased, he assaulted him by pick-axe leading to his unfortunate death. Thus, considering the facts and circumstances of the case giving rise to the incident whether the appellant assaulted the deceased by pick-axe resulting in his death, we are of the considered opinion that the act of the

accused/appellant does not fall within the ambit of Section 302 IPC and it is covered by Exception 4 to Section 300 IPC. Further, considering the manner in which assault was made by deadly weapon on the vital part head of the deceased as a result of which the frontal bone got fractured and the cause of death was head injury, we are of the opinion that while inflicting such injuries on the person of the deceased the accused/appellant was having intention to cause his death. Being so, he is liable to be convicted under Section 304 Part-I IPC.

13. Accordingly, the conviction of the accused/appellant under Section 302 IPC is altered to Section 304 Part-I IPC and he is sentenced to undergo R.I. for ten years. As per record, the accused/appellant is reported to be on bail. He be taken into custody forthwith and send back to jail for serving out the remaining sentence.

14. The appeal is thus partly allowed.

Sd/-

(Pritinker Diwaker)
JUDGE

Sd/-

(Ram Prasanna Sharma)
JUDGE