

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 406 of 2015**

- Devdas S/o Budhram Aged About 37 Years Caste- Madiya, R/o Village Keshbopara- Alnar, P.S.- Parpa (Frejarpur) Civil & Revenue District- Bastar, Chhattisgarh

---- Appellant**Versus**

- State Of C.G. Through: P.S.- Frejarpur, District- Bastar, Chhattisgarh

---- Respondent

For Appellant : Shri C.R. Sahu, Advocate.

For Respondent : Shri UNS Deo, Govt. Advocate.

HON'BLE The Vacation Judge**Judgment On Board****24/05/2017**

1. This appeal is directed against the judgment of conviction and order of sentence dated 1.4.2014 passed by the Sessions Judge, Bastar at Jagdalpur in S.T. No.74/2013 whereby the learned Sessions Judge has convicted the appellant for commission of offence under Section 304 Part-II of the IPC and sentenced him to undergo RI for 5 years and to pay a fine of Rs.10,000/-, in default of payment of fine to further undergo RI for 1 year.
2. The appellant is the younger brother of deceased Man Singh, who died on account of injury caused by the appellant by means of brick. The incident occurred at about 11 am on 31.5.2013. On the previous day i.e. on 30.5.2013, there was marriage of one family

member namely, Loknath, son of Baliram. After the marriage ceremony was over, the family gathered for lunch at about 11 am on 31.5.2013. When the preparations were on for processing the chicken meat, the deceased asked the appellant, his younger brother, as to why he is sitting like elderly person and not assisting in cooking the food, on which the appellant picked up a piece of brick and threw it over chest of the deceased, after which the deceased fell down on the ground and collapsed.

3. On completion of investigation, charge sheet was filed against the appellant for commission of offence under Section 302 of the IPC and on the basis of evidence of eyewitnesses namely, (PW-1) Pandru and (PW-2) Borjo, he has been convicted for committing offence under Section 304 Part-II of the IPC.
4. It is argued that the appellant had no intention to commit culpable homicide or culpable homicide not amounting to murder, therefore, no offence is made out against the appellant. In the alternative, it is argued that the appellant having already suffered about 4 years of imprisonment, he may be released by treating the said period of incarceration as adequate sentence.
5. Learned State Counsel would oppose the prayer on submission that the appellant picked up a big piece of brick and was fully aware that hitting the deceased with brick would occasion his death, as the injury was caused on vital part of the body, therefore, the appellant is not entitled for leniency.
6. On perusal of the record, it would appear that the prosecution case is fully supported by eyewitness account rendered by (PW-1) Pandru and (PW-2) Borjo, therefore, the trial Judge has not

committed any illegality by holding that the appellant has caused the injury suffered by the deceased. However, the issue remains to be decided is what is the offence committed by the appellant and whether he is entitled to be released by holding that imprisonment already suffered by him is adequate enough considering the facts and circumstances of the case.

7. Admittedly, the appellant and the deceased are real brother and had no previous enmity. As a matter of fact, there was no dispute also on the date of the incident except for trivial incident where the deceased requested the appellant to assist in processing the chicken meat. It seems, out of sudden impulse, the appellant picked up a piece of brick and caused injury over the chest of the deceased without any pre-meditation. Piece of brick is not a weapon much less a lethal weapon so as to infer that the appellant had knowledge or intention that it will cause such bodily injury which would occasion death of the deceased. At the worst, the appellant can be said to have knowledge that piece of brick may cause grievous injury. If the appellant had no knowledge or intention to commit culpable homicide, the act committed by him would fall under Section 325 of the IPC and not under Section 304 Part-II of the IPC. Accordingly, the appellant is guilty of committing offence under Section 325 of the IPC.
8. In the result, the appeal is allowed in part. Conviction and sentence imposed on the appellant (including that of fine) under Section 304 Part-II of the IPC are set aside and instead the appellant is convicted under Section 325 of the IPC. The appellant has already remained in jail since after the date of incident i.e. for about 4 years, therefore, the said imprisonment is treated to be

adequate sentence for offence under Section 325 of the IPC. The appellant be released forthwith unless required to be detained in any other case.

Sd/-
Vacation Judge
(Prashant Kumar Mishra)

Barve