

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 2230 of 1999

Judgement reserved on 10.08.2019

Judgement delivered on 11.12.2019

Rath Bai W/o. Doodharam Gond, Aged about 43 years, Resident of
Gatadeeh, Police Station Sarseewa, District Raipur (M.P.)

---- **Appellant**

Versus

State of Madhya Pradesh

---- **Respondent**

For Appellants : Mr. R. S. Patel, Advocate.

For Respondent : Ms. Shriya Mishra, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

CAV Judgment

Challenge in this appeal is to the judgment of conviction and order of sentence dated 10.08.1999 passed by the Additional Sessions Judge, Baloda Bazar District Raipu (C.G.) in Sessions Trial No. 145/1991, wherein the trial Court convicted the accused/appellant under Sections 304 Part II IPC and sentenced her to undergo R.I. for 5 year and to pay fine of Rs. 1000 with default stipulations.

2. Case of the prosecution in brief is that on 01.07.1990 at about 3.00 AM, merg intimation (Ex-P-23) was registered by the applicant

itself in Police Station. Soon after the FIR (Ex-P-22) was registered against her, alleging that the applicant was sowing seeds in her field, where Baldu Gond- the deceased came, uttered abuses and dragged out the appellant from the field which turned into a scuffle in between them. The appellant holding spade in her right hand struck on the head of the deceased till he became unconscious. Thereafter, the appellant informed the incident to her husband who in turn informed the same to the village Kotwar and others. On the basis of merg given by the accused/appellant herself, FIR Ex.P-22 was registered against her for the offence punishable under Section 302 IPC. After completion of investigation charge sheet was filed for the said offence followed by framing of charge accordingly.

3. In order to prove its case the prosecution has examined 20 witnesses in support of its case. Statements of the accused was recorded under Section 313 of the Code of Criminal Procedure in which she denied her guilt and pleaded innocence and false implication in the case.

4. Counsel for the appellant submits that judgment impugned convicting the accused/appellant under Section 304 Part II IPC is not based on the proper appreciation of the evidence of the witnesses. No even a single witnesses there who has seen the accused/appellant assaulting the deceased as a result of which he died. He further submits that even the pick axe said to have been used was recovered from an open place and therefore, it cannot be

said that the accused/appellant had assaulted the deceased with the same.

5. On the other hand, learned Panel Lawyer for the State has supported the finding of the trial Court.

6. Admittedly, none of the witnesses has seen the incident and the matter was brought out and reported to the police only at the instance of the accused/appellant herself. Seizure of pick axe was made on the memorandum of the appellant Ex.P-4 from the spot vide Ex.P-5 which according to the FSL report Ex.P-27 was stained with blood. Said seizure has been proved by Dharamsingh PW-1, who has clearly stated that the pick axe was seized on being disclosed by the accused/appellant herself. PW-4, PW-5, PW-8 and PW-16 are the hearsay witnesses who were informed by others about the death of the deceased. Postmortem report Ex.P-9 duly proved by Dr. Narayan Singh (PW-2) opines the cause of death to be acute cerebral failure due to shock and the death was homicidal in nature. Injury caused in the head of the deceased, according to this witness, could be caused by hard and blunt object. Vide Ex.P-8 six bone pieces of head were also recovered from the spot. Though the pick axe seized under Ex.P-5 was sent for chemical examination yet the prosecution is not in possession of the report received from the laboratory. The bone pieces recovered from the spot have also been opined by the doctor to be of the human body. All these circumstances seen in the light of the evidence on record duly prove that the deceased died on account of the assault made

by the accused/appellant and the prosecution has duly proved the same. At the same time, this Court cannot be ignorant of the position that the incident took place when the accused/appellant was already engaged in sowing of seeds in her field which was opposed by the deceased saying as to why she was doing so in the field which was not of her, to which she told him that it was the field of her father and therefore, she was sowing the seeds. When the deceased tried to take the accused out of the field by catching hold of her hands, he got stuck in the *dhoti* worn by him and in the meanwhile just to get out of his clutches the accused/appellant dealt a pick axe blow on his head and continued doing so until he became unconscious, on account of fear and for the reason that in case he got up again she would not be left safe. Unfortunately, the deceased died on the spot and the matter was reported to police by herself. It is not that she had got the pick axe from elsewhere rather at that time also she was carrying the same while sowing the seeds in the field and the situation became as such that she had to use it for this bloodshed. Obviously, there was no intention on the part of the accused/appellant to eliminate the deceased but of course, while causing injury she was having the knowledge that the injury may cause his death.

7. Being so the Court below has not committed any error in convicting the accused/appellant under Section 304 Part II IPC and the approach of learned judge is based on the evidence collected

by the prosecution. No illegality seems to be there as far as conviction the accused/appellant is concerned.

8. However, as regards sentence, considering the fact that the accused appellant by now is in her eighthes, that the incident had taken place about 29 years back and that she is an old woman and has already remained inside for about 8 months, it would in the interest of justice to reduce the sentence imposed on her to the period already undergone. Order accordingly.

9. Appeal allowed in part.

Sd/-

(Vimla Singh Kapoor)
JUDGE