

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 859 of 2000**

Saligram S/o Bakhariya, aged about 44 years R/o Khapri, Police Station Patharia, distt. Bilaspur (M.P.) (Now State of Chhattisgarh)

---- Appellant**Versus**

State of M.P. (Now state of Chhattisgarh)

---- Respondent

For Appellant	:	Mr. Barun Kumar Chakrabarty & Mrs. Savita Tiwari, Advocates
For Respondent	:	Mr. Amit Verma, PL

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board**14/11/2019**

1. This appeal has been preferred against the judgment dated 11/02/2000 passed in Sessions Trial No. 515/1997 by the Additional Sessions Judge, Mungeli, Distt. Bilaspur (C.G.), whereby the Appellant has been convicted under Section 304 Part-I of the Indian Penal Code and sentenced to undergo RI for 10 years and to pay fine of Rs. 2000/- with default stipulation.
2. Facts of the case are that on 05/09/1997 at about 9:00 am, Lillu @ Lavkumar (PW13), his brother and mother were working in the field of the Appellant. At that time, Parchi Bai came there. She was moving in the field of Deceased Khemai @ Khabba, on that the Deceased abused her. The son of the Appellant was also roaming in the said field. The Deceased assaulted him by a Lathi, thereafter, a quarrel

took place between the Appellant and the Deceased and the Appellant assaulted the Deceased by a Lathi on his head. Due to that, the Deceased became unconscious and died. The matter was reported by Sudhu (PW1). Inquest proceeding was done vide Ex.P-7. The postmortem was conducted by Dr. P.K. Singh (PW23). The postmortem report is Ex.P-21. During course of investigation on the basis of memorandum statement of the Appellant, a Lathi has been seized vide Ex.P-10. Statement of witnesses under Section 161 of the Cr.P.C were recorded. After completion of investigation, a charge-sheet has been filed. Trial Court framed the charges under Section 302 of the IPC. As many as 26 prosecution witnesses have been examined. One defence witness has been examined. Statement of the Appellant under Section 313 of the Cr.P.C has been recorded, wherein he has pleaded his innocence and false implication in the matter.

3. After trial, the trial Court has been convicted under Section 304 Part-I instead of 302 of the IPC and sentenced as mentioned in paragraph one of this judgment. Hence, this appeal.
4. Learned Counsel appearing for the Appellant submits that he does not want to press this appeal on merits and confines his argument to the sentence part only. He further submits that from the evidence, it is well established that at the time of incident, the Deceased had beaten the son of the Appellant and due to that he went to the spot and both quarreled there. In this quarrel, the Appellant got injured also. There was no intention of the Appellant to commit murder and neither he was having knowledge that the incident would result into the death of the

Deceased. He further submits that the Appellant has undergone about 3 years out of total jail sentence of 10 years, he has no criminal antecedent and he is facing the *lis* since 1997, therefore, he prays that the jail sentence awarded to the Appellant may be reduced to the period already undergone by him.

5. Per contra, learned Counsel appearing for the State supported the impugned judgment and submits that the sentence awarded by the trial Court is just and proper and requires no interference.
6. I have heard learned Counsel appearing on behalf of the parties and perused the record minutely.
7. Considering the above facts and circumstances of the case, particularly considering that out of total jail sentence of 10 years, the Appellant has undergone about 3 years, he is facing the *lis* since 1997 and there is no criminal antecedent against him, I am of the view that the ends of justice would be met if, while upholding the conviction imposed upon the Appellant, the jail sentenced awarded to him is reduced to the period already undergone by him.
8. Consequently, the appeal is partly allowed. The conviction of the Appellant under the aforementioned section is affirmed and he is sentenced to the period already undergone by him. The fine sentence is affirmed.
9. It is reported that the Appellant/accused is on bail. His bail bond is not discharged at this stage and the same shall remain operative for a further period of 6 months in view of the provisions contained in Section 437-A of Cr.P.C.

10. Records of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge

Rahul