

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1071 of 2002**

Baru Ram S/o Shri Remdha Ram, Aged about 40 years R/o Village Charneetola, Karrikona, P.S. Sanna, Distt. Jashpur Nagar (C.G.).

---- Appellant**Versus**

State of Chhattisgarh

---- Respondent

For Appellant	:	Ms. Laxmin Tondey, Advocate
For Respondent	:	Mr. Alok Nigam, Govt. Advocate

Hon'ble Shri Justice Arvind Singh Chandel**Order on Board****18/11/2019**

1. This appeal has been preferred against the judgment dated 19/09/2002 passed in Sessions Trial No. 140/2002 by the Additional Sessions Judge, (FTC), Jashpur Nagar (C.G.), whereby the Appellant has been convicted under Section 304 Part-II of the Indian Penal Code and sentenced to undergo RI for 5 years and to pay fine of Rs. 1000/- with default stipulation.
2. Facts of the case are that on 31/05/2002, Deceased Hari Uraon in the company of Shivnath, Seeman and the wife of both along with Ratiram was drinking and taking meals. Meanwhile, after taking meal, the wives of Seeman and Shivnath came out from the house. After some time, the Deceased also came out. Seeman suspecting the conduct of Hariram and his wife. He came out and making quarries from

Deceased and during this hot altercation, the Deceased and Seeman started grappling. Seeing this, the Appellant protested them not to quarrel, but they did not stop. As that time, the Deceased intended to assault to Seeman, then in order to safeguard his body, the Appellant assaulted the Deceased by a wood, due to that the Deceased died. The matter was reported. During course of investigation, inquest proceeding was done vide Ex.P-3. The postmortem was conducted by Dr. G.J. Lakda (PW7). His report is Ex.P-8. There was fracture found in parietal region of the Deceased. The wood used in the assault was seized from the Appellant. After completion of investigation, a charge-sheet was filed. Trial Court framed the charges under Section 302 of the IPC. As many as 9 prosecution witnesses have been examined. No 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 acquitted the Appellant from the charge framed under Section 302 of the IPC, however, he has been convicted 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 the Deceased want to kill him and in his defence, he had assaulted the Deceased. There was no intention of the Appellant to kill the Deceased, neither he was having the knowledge that his assault would have caused death to the

Deceased. He further submits that the Appellant has undergone about 2 years 3 months and 14 days out of total jail sentence of 5 years, he has no criminal antecedent and he is facing the *lis* since 2002, 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 5 years, the Appellant has undergone about 2 years 3 months 14 days, he is facing the *lis* since 2002 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 in bail. He be released forthwith, if not required in any other case.

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