

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 144 of 2013**

- Madvi Nadgi S/o Mundi Aged About 22 Years R/o Marrikoder, Patelpara, Ps Mardoom, Distt. Bastar C.G.

---- Appellant0**Versus**

- State Of Chhattisgarh Through Sho, Ps Mardoom, Distt. - Bastar C.G.

---- Respondent

For appellant	: Shri Dharmesh Shrivastava, Advocate
For Respondent/State	: Shri Anand Verma, GA

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Rajani Dubey

Judgment On Board By Manindra Mohan Shrivastava, J.

21/01/2019

This appeal is directed against the impugned judgment of conviction and order of sentence dated 11.12.2012 passed by Sessions Judge Bastar, district Bastar in S.T. No. 49/2012 whereby the appellant has been convicted and sentenced as described below:

Conviction	Sentence
Under Section 302 IPC	Imprisonment for life with fine of Rs. 2,000/-

2. According to the prosecution case, FIR in Ex.P-7 was lodged in the police station on 15.04.2012 by Madvi Sukhram (PW-1) where in it

was reported that informant's father Madda @ Dundi had given Rs. 200/- by way of loan to Bhandari, who died 2-3 months thereafter and his family members were not returning the loan. His father then asked Madvi Nadgi - the appellant who is cousin of Bhandari, to pay the money and if he would not pay the loan this year, he would pluck the tamarind from the tree of Bhandari. Then, Madvi Nadgi objected stating that the tamarind crop belongs to his family. According to this report, informant's father and appellant were seen together fighting with each other on the issue relating to collection of tamarind in which appellant gave assault with the help of knife on the neck of his father. In the merg intimation Ex.P-8, similar story was repeated. In the postmortem report, one injury on the neck was found and according to doctor's opinion, cause of death was excessive bleeding on account of injury on the neck. Appellant was charged of committing offence under Section 302 IPC and was tried for the said offence. Amongst other witnesses PW-2 Nadgi Ram, has deposed that when he had gone to leave his son to school and was coming back, he saw the appellant assaulting the deceased with the help of axe. In his cross-examination, however he admits that he had not seen Nadgi assaulting the deceased but he deposed that he saw the noise of quarrel between them. It is this evidence led by the prosecution which has been relied upon to hold the appellant guilty for the commission of the offence.

3. Counsel for the appellant argued that from the story as depicted in the FIR and merg intimation and also deposition taken from the appellant which is a prosecution document, read along with evidence of PW-2, would only reveal that there was a singular attack which was

without any premeditation and on account of he being a tribal, may alter his conviction to Section 304 IPC.

4. On the other hand, State counsel opposes and submits that merely because there was a quarrel it cannot be said that it was a case covered by exception 4 of Section 300 IPC as there is not enough evidence to show that the assault was without any premeditation, in a sudden quarrel in a heat of passion.

5. We have heard counsel for the parties and perused the records.

6. The story as stated in the FIR merg intimation and in the memorandum of the appellant and which provides the probable basis of the dispute between the parties is that the deceased told the appellant that he would be collecting tamarind for the reason that the appellant's relatives had taken loan from him and as he died without returning loan of Rs. 200/-, deceased was justified in collecting tamarind. It appears that on the road itself, a dispute arose between them at the spot, on account of a very trivial issue of collection of tamarind, which led to singular assault on the neck of the deceased resulting in excessive bleeding and death. There is nothing to show that the appellant and the deceased had any enmity and that the appellant had motive to kill him. There is no preparation because the solitary eyewitness PW-2 has stated that there was a quarrel going on between the deceased and the appellant on the road. In fact PW-2 who is cited as eyewitness, only proves that he had seen the quarrel between the appellant and the deceased.

7. From the aforesaid it is proved that on a trivial issue of

collection of tamarind, a quarrel at the spot arose between the appellant and the deceased and at that time, without any premeditation, in a sudden quarrel, in a heat of passion, the appellant gave assault on the neck of the deceased and this singular assault proved to be fatal to the deceased, resulting in cut of tracheal cartilage leading to bleeding. Therefore, in the totality of the circumstances of the case which has come on record and further taking into consideration that the appellant cannot be said to have acted in a cruel or unusual manner, present appears to be a fit case for alteration of conviction from Section 302 to that under 304 Part II IPC. Appellant has already undergone more than six years and nine months of the sentence and in the circumstances of the case, we are inclined to impose sentence of seven years on the appellant.

8. In the result, appeal is partly allowed. Conviction of the appellant is altered to that under Section 304 Part II IPC and sentence of seven years is imposed.

Sd/-

(Manindra Mohan Shrivastva)
Judge

Sd/-

(Rajani Dubey)
Judge