

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1039 of 2018**

- Vishwajit Bharadwaj S/o Sahasram, Aged About 17 Years, R/o Village Patharri, Police Out Post Hardibazar, P.S. Kusmunda, District Korba Chhattisgarh Through Natural Guardian Sahasram Bhardwarj S/o Cherkaram, Aged About 45 Years, R/o Village Patharri, Police Out Post Hardibazar, P. S. Kusmunda Dist. Korba Chhattisgarh, District : Korba, Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh Through The Station House Officer, P.S. Kusmunda Dist. Korba Chhattisgarh, District : Korba, Chhattisgarh

---- Respondent

For Appellant : Shri Akhtar Hussain, Advocate.

For Respondent/State: Shri Lav Sharma, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgment on Board****08/02/2019**

1. This appeal has been preferred against judgment dated 28-06-2018 passed in Special (Child) Criminal Case No.05/2016 by the Child Court, Katghora, District Korba, C.G. convicting the appellant under Section 302 of the IPC and sentencing him with S.I. for 10 years along with fine Rs.2,000/- with default stipulation.
2. The case of the prosecution, in brief, is this, that, on 02-08-2016 deceased Narayan Prasad Tandan was present in front of his house when the appellant along with co-accused persons came on the spot using abusive language for him and threatening him. The deceased was then assaulted with hands and fists by this appellant and other co-accused persons. When the deceased fell down on the ground this appellant struck on his head with a stone, then the other

witnesses came and intervened. The deceased was immediately shifted to the hospital where he was declared dead. Morgue intimation Ex.-P/8 was recorded in the police station and inquest was conducted. The postmortem report Ex.-P/3 disclosed that cause of death of the deceased was shock which has resulted due to head injury. Chhannibai (PW-3) has lodged the FIR Ex.-P/9 on the same day in the police station, on the basis of which, offence under Section 302, 34 of the IPC was registered against this appellant and co-accused persons. Numbered FIR Ex.-P/14 was separately recorded in Police Station Kusmunda. The investigation was conducted, seizure of articles were made on the basis of memorandum statement given by co-accused persons. Other investigation proceedings were also carried out. Statement of the witnesses were recorded under Section 161 of the Cr.P.C. After completion of the investigation charge sheet was filed. This appellant being juvenile was presented for trial before the Juvenile Justice Board. The Juvenile Justice Board after making assessment under Section 15 of Juvenile Justice (Care and Protection of Children) Act, 2015 passed a preliminary order dated 23-11-2016 and held that the appellant was fit to be tried in Child Court as adult. On that basis the case was transferred to the Child Court at Katghora.

3. The appellant was charged with offence under Section 302/34 of the IPC, to which he denied and prayed for trial.
4. On completion of the prosecution evidence, the appellant was examined under Section 313 of the Cr.P.C., in which he denied all the

incriminating evidence brought against him by the prosecution, pleaded innocence and false implication. Two witness were examined in defence.

5. On completion of the trial, the impugned judgment was passed in which the appellant has been convicted and sentenced as aforementioned.
6. It is submitted by learned counsel for the appellant that this appellant has been erroneously convicted by the trial Court. All the eye-witnesses who have given statement are closely related to the deceased, therefore, they are interested witnesses and their statement should not have been relied upon for conviction of this appellant. It is a case of single injury on the head of the deceased. The prosecution story that death occurred because of the assault made by this appellant has been challenged in defence, in which, the defence witnesses have deposed that the deceased was in drunken condition therefore he fell down and suffered with the injury, which has not at all been considered in the impugned judgment. Therefore, on these circumstances, the prosecution story had been doubtful and not supported with the cogent and reliable evidence. Hence, the appellant was entitled for acquittal. In the alternative, it is prayed that if this Court is not convinced to acquit the appellant and set aside the conviction against him, then the sentence of imprisonment imposed upon him by the trial Court may be reduced to the period already undergone by him in jail.
7. Per contra, learned counsel for the State opposes the grounds raised in the appeal and the submission made by learned counsel

for the appellant in this respect and submits that the prosecution has proved its case beyond reasonable doubt. All the eye-witnesses JagdishTandan (PW-1), Janakram Tandan (PW-2) Chhannibai (PW-3) have given clear statement before the Court which has remained unrebutted. The postmortem examination of the deceased has further confirmed that because of the injury caused by this appellant by using stone the deceased suffered head injury which has resulted in his death. The evidence produced in defence is afterthought which has been created and availability of these witness has not been questioned while cross-examining the witnesses of prosecution. Therefore, no case is made out for acquittal.

8. Heard learned counsel for the parties and perused the record of the trial Court.
9. Chhannibai (PW-3) is wife of the deceased, she has stated that on the date and time of the incident the deceased had some dispute with Janakram, Darasram and others who were present on the spot with respect to construction of CC road in front of his house. Thereafter, this dispute turned into quarrel and all of a sudden other co-accused persons namely Sahasram, Budhwarabai along with this appellant firstly threatened and then assaulted him with hands and fists and made him fall in the ground. She has witnessed this appellant assaulting the deceased with stone on his head. Thereafter, the deceased was declared dead in the hospital. She has lodged the morgue intimation Ex.-P/8 and the FIR Ex.-P/9. In cross-examination, her statement has remained unrebutted and there is no such statement made by her so as to hold that her statement made in her

examination-in-chief has been contradicted.

10. Jagdish Tandan (PW-1) and Janakram Tandan (PW-2) have fully supported the version of Chhannibai (PW-3) and proved their presence on the spot when the incident took place and about witnessing this appellant assaulting the deceased with stone on his head, which has remained unrebutted in their cross-examination.
11. Doctor A.N. Kanwar (PW-10) has conducted the postmortem of deceased Narayan Prasad Tandan. Regarding the findings in the examination, in his report Ex.-P/3 he has stated, that cause of death of the deceased was head injury, which had resulted in shock involving the brain. In cross-examination he has not made any admission, so as to hold that the deceased may have died because of some other causes.
12. Rest of the witnesses have stated about the procedures which may not be considered as there is evidence of eye-witnesses who saw the appellant present on the spot, who saw him assaulting the deceased with stone and also witnessed the injury caused to the deceased. Result of this assault is clear that Narayan Prasad Tandan had immediately expired and the medical report clearly supports that the death was due to the head injury caused to him.
13. The defence witness Hemant Kumar (DW-1) and Kantibai (DW-2) have stated that they arrived on the spot and saw the deceased lying in ground and they were told by Chhannibai (PW-3) that the deceased had fallen down in drunken condition and has bled to death. Chhannibai (PW-3) has been cross-examined by the defence and there is no single question put to her in this respect that the deceased has fallen down in drunken condition and neither any question was put

to her in this respect, that she made this statement to the defence witnesses. Therefore, it is clearly made out that version of the defence witnesses is afterthought, which cannot be held sufficient to rebut and challenge the credibility of the witnesses of prosecution.

14. After close scrutiny and due consideration of the relevant evidence present in the record of the trial Court, I am of this opinion the prosecution has proved it with evidence beyond reasonable doubt that it was the appellant who had caused fatal injury to the deceased and that injury itself resulted into death of the deceased.
15. Considered on the correctness of the conviction of the appellant in this case as to whether the appellant had intended to cause death of the deceased. From the circumstances that have been narrated by the witnesses present on the spot it is clear that firstly some dispute arose, then quarrel followed and this appellant was a member in the party of the assailants. Therefore, it has appeared that there had not been no motive on the part of this appellant to cause death of the deceased, neither it has appeared that he had intention to cause his death because it happened in a spur of moment that this appellant picked up a stone and struck on the head of the deceased with a purpose of injuring him and that injury has resulted into death of the deceased. Hence, according to the circumstances in this case, this incident false under the definition of culpable homicide not amounting to murder as an exception. Therefore, the offence committed by the appellant false under Section 304 Part-II of the IPC.
16. After due consideration and on the basis of finding arrived at, this

appeal is allowed in part. Conviction of the appellant under Section 302 of the IPC is set aside, instead of that, now the appellant is convicted under Section 304 Part-II of the IPC and he being a juvenile and has been tried as an adult, for this reason, he is being sentenced with simple imprisonment for 3 years.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Aadil