

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1078 of 2018

Faguram Yadav S/o Late Ramadhar Yadav Aged About 35 Years R/o Village Jhaliyaraas, Aamapara, P. S. Gaadiras, District Sukma Chhattisgarh, District : Sukuma, Chhattisgarh

---- Appellant

Versus

State Of Chhattisgarh Through The P. S. Gaadiras, District Sukma Chhattisgarh, District : Sukuma, Chhattisgarh

---- Respondent

For Appellant	:	Shri Vivek Shrivastava, Advocate
For State	:	Shri K.K. Singh, Govt. Advocate

D.B. : Hon'ble Mr. Justice Manindra Mohan Shrivastava & Hon'ble Mrs. Justice Rajani Dubey

Judgment On Board

21/01/2019

Per Manindra Mohan Shrivastava, J.

1. This appeal is directed against the judgment of conviction and order of sentence dated 19.06.2018 passed by learned Sessions Judge, South Bastar Dantewada in ST No.269 of 2016 whereby and whereunder the appellant has been held guilty of commission of offence under Section 302 IPC and sentenced to undergo life imprisonment with fine of Rs.500/- and in default of payment of fine, additional RI for 3 months.
2. According to the prosecution case, FIR in Ex.P-3 was lodged in the police station by informant Sukku Ram Yadav (PW4) that upon hearing cries, he went to the house of his brother Faguram and there he found that his brother Faguram was holding an agricultural equipment (*nangar*) used to plough the field and he had given assault to his mother and was making further attempt to assault mother. He snatched *nangar* (agricultural equipment) from the hands of his brother and before his mother could be

provided treatment, she succumbed to injury and died. It has been stated that there used to be quarrel between his brother and mother due to which the appellant assaulted his mother and killed. In the postmortem conducted by Dr.P.N. Shandilya (PW3), on the right temporal part of the head one lacerated wound was found which could be caused by hard and blunt object and there was fracture in the right parietal part, brain was damaged leading to internal injury and cause of death was excessive bleeding, hemorrhage as a result of head injury.

3. The appellant was tried for alleged commission of offence after framing charge under Section 302 IPC.
4. In order to prove its case, the prosecution examined number of witnesses particularly Sukku Ram Yadav (PW4), Shankar Yadav (PW5), Lakhmu Yadav (PW6), as the eye witnesses. Relying upon the said ocular testimony, learned trial Court held the appellant guilty of commission of offence punishable under Section 302 IPC and sentenced him as described above.
5. Learned Counsel for the appellant, without raising much quarrel on the aspect of culpability, seeks to confine his arguments on the aspect that the circumstances as emerging from the prosecution evidence itself reveal that on trivial issue, there was a dispute between the appellant and his mother and the appellant, in heat of passion, without premeditation, picked up an agricultural tool and gave singular blow on the head of his mother which unfortunately proved to be fatal, therefore, present would be a case of conversion of sentence from Section 302 IPC to that Section 304 Part-II IPC.
6. On the other hand, learned State counsel supports the impugned judgment of conviction and order of sentence and submits that there is no specific evidence to prove that there was a sudden quarrel between appellant and his mother and in heat of passion without premeditation, singular injury was caused.
7. We have heard learned counsel for the parties and perused the records of the Court below.
8. Sukku Ram Yadav (PW4), brother of the appellant, has deposed that when he heard cries from the house of his brother Faguram, he along with his wife and other residents of village went to the house of Faguram where

they found that Faguram had assaulted his mother with the help of *nagar khotla*, an agricultural equipment, used to plough the field. He further deposed that he had intervened in the assault. He has further deposed that there used to be frequent quarrel between the appellant and his mother because the mother used to scold the appellant that he was not paying proper attention to the work. In cross-examination, however, he admits that he has not seen the appellant assaulting his mother.

9. Though Sankar Yadav (PW5), the son of the appellant, states that his father assaulted the grandmother on the head with the help of *nagar kothla* (agricultural equipment), in his cross-examination, he admits that he had not seen the incident and also admits that he is stating what has been tutored to him.
10. Lakhmu Yadav (PW6) says that he was informed by younger son of Faguram that their mother was assaulted by the appellant and he was informed by son of Faguram that his father, in a state of insanity, had assaulted the mother. In the cross-examination, he admits that when the mother scolded that the appellant- Faguram is not paying attention to his work, the appellant gave an assault.
11. From the evidence of the prosecution as above, it appears that the appellant and his mother Sonai entered into a quarrel because Sonai scolded her son, the appellant, that he was not paying attention to his work and on this quarrel, the appellant picked up an agricultural tool and gave one assault on the head of his mother. This singular assault, unfortunately, led to the death of his mother because of brain damage.
12. From the aforesaid evidence on record, what we infer is that there used to be quarrel between the son and mother and on the date of the incident, the deceased again scolded the appellant that he was not paying attention to his work and enraged by this allegation, the appellant seems to have picked up an agricultural tool lying there and gave one assault to his mother. From the medical evidence, we find that there is only one assault given on the head of the deceased and except this, there is no assault given by the appellant to the deceased. It would, therefore, be a case of assault without premeditation in a sudden quarrel and heat of passion and the appellant may not be intending to kill his own mother. This is also inferred

from the fact that the appellant had suddenly picked up agricultural tool and gave a singular assault on the head. Therefore, present appears to be a fit case where we should alter the conviction of the appellant to that under Section 304 Part-II IPC. Having considered the totality of the circumstances, in our opinion, interest of justice would be served if the appellant is convicted for a period of 7 years.

13.The appeal is accordingly partly allowed. Conviction of the appellant is altered to Section 304 Part-II IPC and sentenced to undergo R.I for 7 years.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Rajani Dubey)
Judge