

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 645 of 2014**

Sukul Kumar Yadav S/o Late Sumer Singh, aged about 50 years, R/o Village: Benderchuan, Milan Para, P.S: Pendra, District: Bilaspur, (C.G.)

---- Appellant

Versus

State of Chhattisgarh through Aarakshi Kendra Pendra, District: Bilaspur (C.G.)

---- Respondent

For Appellant	:	Mr. Santosh Bharat, Advocate
For State/Respondent	:	Mr. Alok Nigam, G.A.

Hon'ble Shri Justice Arvind Singh Chandel**Judgment on Board**

01.12.2020

1. This appeal has been preferred against the judgment dated 03.06.2014 passed in S.T. No.57/2013 by the learned Additional Sessions Judge, Pendra Road, District: Bilaspur (C.G.) wherein, the Appellant has been convicted under Section 304 Part-I of IPC and sentenced to undergo RI for 10 years and to pay fine of Rs.100/- with default stipulations.
2. In this case, the name of the deceased is Ramkunwar Yadav who was the mother of the present Appellant. According to the case of prosecution, on 25.08.2013 at about 03:00 P.M. deceased Ramkunwar Yadav called one Baiga namely Tiharu (PW-03) for some treatment. At that time, the Appellant came there and assaulted her mother with the help of an Axe due to which, Ramkunwar Yadav sustained severe injuries on her head and other parts of her body. Due to that, later on she died. The incident was

witnessed by Ramkali (PW-02) & Tiharu (PW-03). The matter was reported by complainant Sukhnandan Singh who is the brother of the present Appellant. On the basis of said report, offence was registered. Post Mortem of body of deceased was conducted by Dr. Hemant Tanwar. His report is Exhibit P-16. During investigation, the statements of the witnesses were recorded under Section 161 of Cr. P.C. After completion of investigation, charge-sheet was filed, the Trial Court framed the charges under Section 302 of IPC against the Appellant. To robe the Appellant, prosecution examined as many as total 07 witnesses. In his statement recorded under Section 313 of Cr.P.C, Appellant abjured the guilt and pleaded his innocence and false implication in the matter. After completion of trial, the Trial Court acquitted the Appellant from the charges framed under Section 302 of IPC instead of that the Trial Court convicted the Appellant and sentenced him as mentioned in Para 01 of this judgment. Hence, this appeal.

3. Learned counsel for the Appellant submits that without there being sufficient and clinching evidence available on record, the Trial Court has wrongly convicted the Appellant. He further submits that though, Ramkali (PW-02) & Tiharu (PW-03) have supported the case of prosecution but there are material contradictions and omissions occurred in their statements. Both, the above witnesses have also admitted that fact that at the time of incident, the mental condition of the Appellant was not stable. Ignoring this fact, Trial Court has wrongly convicted the Appellant. Alternatively, it is argued by the counsel that, out of 10 years of jail sentence imposed upon the Appellant, he has undergone 7 ½ years in jail therefore, it is prayed by counsel that jail sentence awarded to the Appellant may be reduced to the period already undergone by him.

4. On the contrary, learned State Counsel opposed the prayer and supported the impugned judgment.
5. I have heard learned counsel appearing on behalf of the parties and perused the record minutely.
6. There is no dispute on the point that the deceased was the real mother of the Appellant. In the Court statement of PW-03, Tiharu, he categorically stated that when he reached the house of the deceased at that time, the Appellant assaulted him with the help of an Axe, thereafter, when the mother of the Appellant came there, he also assaulted his mother with the help of an Axe due to which she got injured. Other eye-witness Ramkali (PW-02) not supported the above statement of Tiharu and deposed that when she reached the spot, at that time, the Appellant was assaulting his mother with the help of an Axe. Both the above witnesses were remained firm during their cross examination. The statements of these witnesses were also not duly rebutted during their cross examination. From the evidence adduced by the prosecution, it is also established that on the basis of memorandum statement of the Appellant i.e. Exhibit-P/5, one Axe has been also seized from the possession of the present Appellant which was duly examined by Dr. Hemant Tanwar. According to the statements of Dr. Tanwar, the injuries sustained by the deceased were caused by this Axe.
7. On minute examination of above evidence, it makes clear that there is sufficient evidence available on record on the basis of which, it is well established that the Appellant is the person who assaulted the deceased with the help of an Axe, due to that, deceased died. Looking to the evidence produced by the prosecution, in my considered view, the Trial Court has rightly

convicted the Appellant. The conviction of the Appellant under Section 304 Part (I) of IPC is affirmed.

8. With regard to the sentence awarded to the Appellant by the Trial Court, looking to the fact that the Appellant has already undergone more than 07 ½ years in jail, he is also facing the *lis* since 2013 and there is no criminal antecedent against him, I am of the view that the ends of justice would be met if, the jail sentence awarded to him is reduced to the period already undergone by him.
9. Consequently, the appeal is partly allowed.
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