

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 791 of 2015**

- Bhagwan Sai Munda S/o Late Shri Mangal Sai, Aged About 32 Years Occupation- Labour, R/o Village- Madipur, Mathapara, Police Station- Ambikapur, District- Surguja, Chhattisgarh.

---- Appellant**Versus**

- State Of Chhattisgarh Through Police Station - Ambikapur, District- Surguja, Chhattisgarh.

---- Respondent

For Appellant	:	Mr. Rishi Rahul Soni, Advocate
For State/Respondent	:	Mr. Priyanshu Gupta, P.L.

Hon'ble Shri Justice Arvind Singh Chandel**Judgment on Board****25/01/2021**

1. This appeal has been preferred against the judgment dated 13/05/2015 passed in S.T. No.344/2013 by the Sessions Judge, Surguja, (Ambikapur), Chhattisgarh, wherein, the Appellant has been convicted under Section 304 Part-II of the IPC and sentenced to undergo R.I. for 10 years and fine amount of Rs.200/- with default stipulations.
2. In this case, Appellant is the son of the deceased Mangal Sai. According to the case of the prosecution, on the date of incident, accused/ Appellant, his brother Dharam Sai Munda (PW-1) and Mangal Sai (deceased), on the occasion of Rakshabandhan cooked chicken and the same was taken in meal with liquor. At that time the deceased Mangal Sai was in

a state of intoxication and started peeing in the house which was opposed by Dharam Sai (PW-1) but the deceased Mangal Sai assaulted Dharam Sai (PW-1) with the help of axe and thereon, the accused/Appellant snatched the axe from his father and committed murder of his father Mangal Sai (deceased) by assaulting him with the help of axe. After the incident, both appellant and his brother Dharam Sai went to the house of her sister Kanti Devi (PW-7) at night and slept there. On the next day, dead body of Mangal Sai (deceased) was found. On being asked by Kanti Devi (PW-7), Dharam Sai (PW-1) narrated the incident of last night. Thereafter, F.I.R. i.e. Ex.P/6 was lodged by one Gorelal Munda. Merg intimation report i.e. Ex.P/5 was also lodged. Inquest proceedings i.e. Ex.P/8 have been done. Post-mortem i.e. Ex.P/16 of the dead body was conducted by Dr. Sanjay Singh (PW-8). Axe was seized from the possession of the accused/Appellant. During investigation, the statements of the witnesses were recorded under Section 161 of Cr.P.C. After completion of investigation, a charge-sheet was filed. Trial Court framed the charges under Section 302 of IPC against the Appellant. To robe the Appellant, prosecution has examined as many as 10 witnesses. Appellant in his statement recorded under Section 313 of Cr.P.C, has 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 1 of this judgment.
Hence, this appeal.

3. 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 Mangal Sai (deceased) was the father of the Appellant. From the evidence adduced by the prosecution, it appears that at the time of incident, Appellant, Mangal Sai (deceased) and Dharam Sai (PW-1) were in state of intoxication and deceased Mangal Sai assaulted Dharam Sai (PW-1) with the help of an axe. Thereafter, Appellant snatched the axe from deceased Mangal Sai and to save his brother Dharam Sai (PW-1), he assaulted the deceased with the axe. It is further submitted that Appellant is in the jail since 22.8.2013 and out of 10 years of jail sentence imposed upon the Appellant, he has already undergone 7 ½ years of jail sentence, also, there is no criminal antecedent against him, thus, it is prayed that jail sentence awarded to the Appellant may be reduced to the period already undergone by him.
4. 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.
5. I have heard learned Counsel appearing on behalf of the parties and perused the record minutely.

6. Considering the above facts and circumstances of the case, particularly considering the facts that Appellant is the son of the deceased Mangal Sai and at the time of incident, both were in a state of intoxication and to save his brother Dharam Sai (PW-1), appellant assaulted the deceased Mangal Sai with the help of axe, also, that out of jail sentence of 10 years, appellant has already undergone about 7 ½ years in jail and he facing the *lis* since 2013, 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.
7. 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.
8. 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