

HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A
Crl. A(J) No. 09 of 2022

1. Sri Sanjit Das @ Sanju, son of Sri Manoranjan Das, resident of East Rangamati, P.S. Birganj, Gomati Tripura.

.....Appellant

-V E R S U S-

1. The State of Tripura, represented by the Secretary, Home Department, Government of Tripura, Agartala, West Tripura.

..... Respondent.

B_E_F_O_R_E
HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE ARINDAM LODH

For Appellant(s)	:	Ms. R. Purkayastha, Advocate.
For Respondent(s)	:	Mr. S. Ghosh, Addl. P.P.
Date of hearing	:	17.05.2023
Date of delivery of Judgment and order	:	24.05.2023
Whether fit for reporting	:	YES/NO

JUDGMENT & ORDER

[T. Amarnath Goud, J]

Heard Ms. R. Purkayastha, learned counsel appearing for the appellant and Mr. S. Ghosh, learned Addl. Public Prosecutor, appearing for the respondent-State.

[2] The instant appeal is directed against the judgment and order of conviction and sentence dated 19.12.2020 passed by the learned Sessions Judge, Gomati Judicial District, Udaipur, in connection with case No. S.T. 30 of 2019, whereby and whereunder, the appellant has been convicted under Section-304 (Part-I) of IPC and thereby, sentenced to

suffer Rigorous Imprisonment for life and to pay a fine of Rs. 10,000/- and in default to suffer RI for six months. The appellant is further sentenced to RI for three years and fine of Rs.5,000/- for the offence committed under Section-498A of the IPC with default stipulations. Both the sentences shall run concurrently.

[3] The factual background of the prosecution case is that one Sri Manoranjan Das, father of accused Sanjit Das lodged an oral ejahar on 26.09.2018 to the officer-in-charge of Birganj P.S. stating that 18 years ago his son, the appellant herein, married Smt. Bhulu Rani Das as per Hindu Rites and Customs and after marriage two daughters were born to them. The daughters grew up and in due course of time the elder daughter Smti. Sati Das was given in marriage and the younger one Smti. Sumi Das was studying in Amarpur Girls' School in Class-X. It is further stated in the ejahar that Sanjit used to physically and mentally tortured his wife, the deceased herein, as he had illicit relationship with a woman, namely, Smti. Dalia Das of the same locality.

[4] 15 days before the alleged date of incident one day at about 4.00pm Bhulu Rani found Sanjit Das and Dalia Das in compromising position in the house of Sanjit. The deceased protested the activity of her husband and Dalia Das to which both the accused persons assaulted Bhulu Rani causing injury to her person. On that night at about 9-30pm the complainant called his grand-daughter's husband Nandan Das and through him sent Bhulu Rani to Amarpur hospital but, the accused did not take any initiative for the treatment of his wife. Considering the honour of the family the complainant did not file any case on that day and the matter was resolved by the local people by holding a meeting.

[5] On 25.09.2018 at about 9/10 pm, when the complainant was in his hut and his grand-daughter Sumi was sleeping in her hut at that time

Sanju took his wife towards the road and subsequently, at about 1.15 am in the midnight Sumi called the complainant and told that her mother was missing from the room. Then, he and Sumi went towards the road and found deceased on the entrance gate of the house in senseless condition and in spite of sprinkling water on her person she could not speak. At that time he saw his son Sanjit @ Sanju going towards the south from north on motor bike and while going he asked them to take Bhulu Rani to the room. Thereafter, they brought Bhulu Rani to the room and then he called his elder grand-daughter Sati Rani and her husband Nandan and by an auto rickshaw of Ramkrishna colony they brought Bhulu Rani to Amarapur hospital. At that time Sanju did not give them any company.

[6] Next day in the morning Sanju came to Amarput hospital and in view of the serious condition of Bhulu Rani, she was referred by the doctor to Udaipur hospital. Sanju and Sumi went to Udaipur. On 26.09.2018 at about 11/12am Bhulu Rani died at Udaipur hospital and after her death Sanju fled from the hospital. The complainant brought the dead body of Bhulu Rani from Udaipur after the PM Examination. Lastly, the complainant has stated in the ejahar that Bhulur Rani died due to the assault committed on her by his son Sanjit Das @ Sanju.

[7] On the basis of the oral ejahar of the informant was recorded by the O/C Birganj P.S., Sri Sashi Mohan Debbarma and read over to him to which, he admitted to be correctly written and put his RTI in his presence. Subsequently, the RTI of the informant Monoranjan Das was proved as Exbt. 6/2 during the examination of the O/C Birganj P.S. as PW-11.

[8] Accordingly, the O/C Birganj P.S. registered FIR No.86 of 2018 under Sections-498A/304 of IPC and endorsed the case to SI Bidhan Chandra Sarkar for investigation. On the completion of investigation, the

I.O. submitted charge-sheet against the accused person, namely, Sanjit Das @ Sanju under Sections-498A/304 of IPC and Dalia Das under Sections-323/109 of IPC vide Birganj P.S. charge-sheet No.25 dated 30.05.2019.

[9] On receipt of the charge-sheet, cognizance of offence was taken under Sections-498A/304 of IPC against the accused Sanjit Das and under Sections-323/109 of IPC against the accused Dalia Das by the learned SDJM, Amarpur. Both the accused persons turned up and contested the case and accordingly, the lower Court supplied them with the copies of incriminating documents and subsequently, the case was committed to the Court of learned Sessions Judge, Udaipur, Gomati Tripura on 30.10.2019 for trial of Sanjit Das.

[10] On commitment of the case it was taken up for trial. on 02.12.2019, the learned Sessions Judge, Udaipur, Gomati Tripura framed charge against both the accused person under Sections-498A/304/323 of IPC against accused Sri Sanjit Das @ Sanju and under Sections-323/109 against accused Dalia Das. The charges were read over and explained to the accused persons in Bengali to which they pleaded not guilty and claimed to be tried.

[11] To substantiate the charge, prosecution has adduced as many as 12 witnesses including the complainant of this case mentioned in the appendix attached herewith. The prosecution also relied upon some documentary evidence as well as material object which were also marked as exhibits in connection with the present case as reflected in the attached appendix. The defence case was that of total denial of the allegation of the prosecution and as such the convict-appellant during his examination under Section-313 of Cr. P.C, pleaded his innocence and denied to adduce any witness in support of his defence.

[12] After hearing both the parties, the learned Court below found that the appellant Sanjit Das @ Sanju is guilty for committing offence punishable under Sections-498A and 304 (Part-I) of IPC and the accused Smti. Dalia Das was acquitted from the charge levelled against her and she was set at liberty. For the purpose of reference, the observation of the Court below may be reproduced hereinbelow:

“The convict Sanjit Das @ Sanju is hereby sentenced to rigorous imprisonment for life and fine of Rs.10,000/- (Rupees ten thousand) for the offence under Section-304 Part-I of the IPC. In default to pay the fine he shall undergo further RI for 6(six) months.

The Convict is furthered sentenced to Rigorous Imprisonment for 3(three) years and fine of Rs.5,000/- (Rupees five thousand) for the offence under Section-498A of the IPC. In default to pay the fine he shall undergo further RI for 3(three) months.

Both the sentences shall run consecutively.

The fine money, if realized, shall be paid to the father or mother of the deceased Bhulu Rani Das as compensation.

The period of detention undergone by the convict shall be set off against the term of imprisonment as per provision of Section-428 of the Cr. P.C.”

[13] Being aggrieved by and dissatisfied with the impugned judgment and order of conviction dated 19.12.2020, the present appeal has been preferred before this Court for ends of justice.

[14] Ms. R. Purkayastha, learned counsel appearing for the appellant has submitted that the impugned judgment and order of conviction is absolutely illegal, wrong, perverse, materially irregular, unjust and cannot sustain in law and as such, liable to be set aside. The learned Court below by way of non-reading and improper appreciation of evidence on record arrived at absolutely wrong and erroneous findings causing grave injustice to the appellant.

[15] The learned Court below has failed to consider that the accused is in no way connected with this case as because there is no eye witness in the present case. It has been further stated that the Court below failed to consider that it was not proved that on the date of incident accused was present at the place of occurrence. The learned Court below has also failed to consider that the statements of PWs are based on contradiction and omission and on the basis of contradictory statements no punishment can be justified.

[16] She has further contended that the appellant as falsely implicated in this case only due to personal rivalry. The charge framed against the appellant was under Section-323/304 of IPC as if 323 of IPC come then Section-304 of IPC will not attract. If the charge is framed under Section-498A of IPC, then, how the learned Court below can convict the appellant under Section-304 of IPC. No specific time, date place of occurrence and mode of demand has been mentioned in deposition or examination-in-chief of PWs regarding demand of dowry.

[17] The story of illicit relationship with another co-accused i.e. Dalia Das could not be proved by prosecution during examination-in-chief. From the deposition of eye witnesses i.e. PWs.2 and 3 the presence of the accused during alleged incident at place of occurrence has not been recovered. During deposition of PW-9 i.e. the doctor in his examination in chief has deposed that the haemorrhage and shock due to bleeding from ruptured ectopic pregnancy and sample of uterus along with ovaries was caused due to assault by accused-person i.e. the appellant was not mentioned in his deposition.

[18] The learned Court below ought to have held that the prosecution miserably failed to bring home the charge framed against the accused appellant and consequently, ought to have acquitted the appellant

herein, from the charge levelled against him. But, the learned Court below by wrong appreciation of evidence and misconception of law convicted the appellant and as such, the conviction cannot be sustained. The prosecution has totally failed to establish the charge against the appellant and all the material witnesses have turned hostile. As such, there is no convincing evidence to rely so as to convict the appellant. At the time of the alleged incident the appellant was not present in the house and that has been stated by the PWs in their cross-examination.

[19] She has stated that conviction can be given on hostile witness only if corroborated by other evidence and in support of her contentions, she has relied upon a decision of the Apex Court in ***Bhajju @ Karan Singh v. State of MP***, reported in (2012) 4 SCC 327, wherein it has been held that:

“Not only the facts of this case but also the legal issues involved herein fall in a narrow compass. It is for the reason that the incident in question is not disputed. Pratab (PW-2), Ayub (PW-3) and Lakhanpal (PW-1) , who were later declared hostile by the prosecution and subjected to cross-examination had stated that the deceased had got burnt accidentally while she was cooking food. They have denied any involvement of the appellant/accused as well as the fact that the deceased had told them that the appellant/accused had burnt her by pouring kerosene oil on her. Furthermore, Exhibit D1 is the affidavit stated to have been sworn by the deceased on 30th September, 1995 while she died on 17th October, 1995. In this affidavit, which is the backbone of the defence, a similar stand has been taken by the deceased, Medabai. In this affidavit, it was stated that at the time of swearing-in of the affidavit in the Medical College, she was more or less healthy in all respects. The appellant/accused in his statement under [Section 313](#) of the Criminal Procedure Code, 1973 (for short ‘Cr.P.C.’) has given the usual reply that he knows nothing and that he was not present at his residence at the time of the occurrence.

Now, we shall discuss the effect of hostile witnesses as well as the worth of the defence put forward on behalf of the appellant/accused. Normally, when a witness deposes contrary to the stand of the prosecution and his own statement recorded under [Section 161](#) of the Cr.P.C., the prosecutor, with the permission of the Court, can pray to the Court for declaring that witness hostile and for granting leave to cross-examine the said witness. If such a permission is granted by the Court then the witness is subjected to cross-

examination by the prosecutor as well as an opportunity is provided to the defence to cross-examine such witnesses, if he so desires. In other words, there is a limited examination-in-chief, cross-examination by the prosecutor and cross-examination by the counsel for the accused. It is admissible to use the examination-in-chief as well as the cross-examination of the said witness in so far as it supports the case of the prosecution. It is settled law that the evidence of hostile witnesses can also be relied upon by the prosecution to the extent to which it supports the prosecution version of the incident. The evidence of such witnesses cannot be treated as washed off the records, it remains admissible in trial and there is no legal bar to base the conviction of the accused upon such testimony, if corroborated by other reliable evidence. [Section 154](#) of the Act enables the Court, in its discretion, to permit the person, who calls a witness, to put any question to him which might be put in cross-examination by the adverse party. The view that the evidence of the witness who has been called and cross-examined by the party with the leave of the court, cannot be believed or disbelieved in part and has to be excluded altogether, is not the correct exposition of law. The Courts may rely upon so much of the testimony which supports the case of the prosecution and is corroborated by other evidence. It is also now a settled cannon of criminal jurisprudence that the part which has been allowed to be cross-examined can also be relied upon by the prosecution.”

[20] Another case in *Madhusudan Singh And Another v. State of Bihar*, reported in 1996 11 SCC 248, wherein, the Court has held thus:

“5. The High Court has dealt with the case of Madhusudan Singh in para 23 of the judgment. A perusal of the said paragraph shows that for coming to the conclusion, that he was responsible for misappropriated of 19 qtls. of wheat, reliance has been placed only on the allegations contained in the F.I.R. F.I.R. by itself is not a substantive piece of evidence. It can be used to either contradict or corroborate the maker thereof in the manner provided under the Evidence Act. Nothing has been brought to our notice from the record from which it may be possible to hold that the allegations made in the F.I.R. regarding Madhusudan Singh, A-7 were at all substantiated at the trial by any oral evidence. The allegations contained in the F.I.R. have, thus, not been proved at the trial. That being the position, we do not find it possible to uphold the conviction and sentence of Madhusudan Singh, A-7 for any of the charges.”

[21] She has stated that the thumb impression of the PW-1 in the FIR has been denied by him. From the printed form of FIR also it appears that Dulal Chandra Das was the O/C in charge on that day. Therefore, this creates serious doubt as to the lodging of the FIR and therefore it is contents become in admissible.

[22] Mr. S. Ghosh, learned Addl. P.P. appearing for the respondent-State has submitted that the prosecution has examined 12 witnesses in the case including the informant, children of the deceased, local persons and the Medical and police witnesses. According to him, they have sufficiently proved the case against the accused person beyond shadow of doubt under Sections-498A/304(Part-I)/323/109 of IPC.

[23] He has further contended that though the informant and the daughters of the deceased have turned hostile but they have been confronted with their earlier statement given to the I.O. immediately after the occurrence and their confronted parts of the 161 Cr. P.C. statements have been proved by the IO and recording officer of the case. He has submitted that other than simply giving the suggestion that at the time of incident the accused husband was not present in the house, the defence has not been able to discard the prosecution case and also has failed to explain as to where the accused was at the time of incident. The prosecution case against the accused person has been proved beyond reasonable doubt and he has accordingly urged for conviction of the appellant.

[24] In view of the submissions canvassed by the learned counsel appearing for the parties as reflected above, let us make a short survey of the evidence and material placed on records to justify the conviction and sentence declared against the accused-appellant under Section -304 (Part-I) of IPC. After perusal of the material evidence on record and the circumstances as sketched herein, the main object which needs to be discussed is that whether there was any predetermined intention of the accused to kill his wife. There is presumption that a man knows the natural and likely consequence of his acts.

[25] The inquest report prepared by PW-7, ASI Ratan Banik has stated that in presence of the witnesses mentioned alongside and on

identification made by them, on 26.09.2018 after getting the dead body of deceased lying in the Maternity Ward of Udaipur district Hospital with head pointing towards North, while he was performing duty in District Hospital, engaged himself in preparing the Inquest Report over the dead body of deceased with the assistance of w/c 4491 Abaima Mog and w/c 4476 Rakhi Bandya Malla of Udaipur women P.S. The age of the deceased may be about 40 years. Body complexion dusky, length may be about 5'4" inches. Lean looking physical features, eyes are slightly open. Mouth slightly open. Nose, ears and neck are normal. Black hair is there on the head measuring about 1" inches. Hands and legs are straightway stretched, the colour of palm and feet are almost yellow coloured. Brown coloured blouse, red coloured cloth and brown petty coat are on the wearing of the body.

[26] When the body of deceased was observed properly in front of the witnesses and taking help of the women constable, one light black spot could be found in the thigh of the left leg of the deceased. Beside that no other mark of injury could be found. It reveals from the primary interrogation of the witnesses that, at first (she) was admitted to Amarpur Hospital with the complaint and ailment of stomach ache. It reveals that, on 26.09.2018, in the morning when she was sent to Udaipur District Hospital from that place, she died after some hours. The dead body of the deceased was sent to the morgue of District Hospital under proper Police escort with a view to ascertain the actual cause of the death of the deceased and for Post-mortem examination. So in the inquest report it has been categorically stated by PW-7 that 'Beside that no other mark of injury could be found beside that no other mark of injury could be found'.

[27] PW-9, doctor Nani Gopal Das, in his deposition has deposed that on 26.09.2018 he was posted as medical officer at District Hospital,

Gomati. On that day as per requisition from Women P.S, post-mortem examination was conducted over the dead body of deceased and opined that the cause of death was haemorrhage and shock due to bleeding from ruptured ectopic pregnancy and sample of uterus along with ovaries were preserved and handed over to the investigating officer for doing the needful. All the injuries were ante-mortem in nature and were fresh at the time of death.

[28] PW-5, Smti. Putul Rani Das, has submitted that she heard that the deceased was sick and that is why she died. She was shifted to Amarpur hospital and thereafter she was referred to Udaipur hospital where she died.

[29] PW-1, Monoranjan Das, the complainant of this case has deposed that the convict-appellant is his son and deceased was the wife of his son. One day after coming from the tea stall his granddaughter told him that her mother was lying outside the hut and then he also found Bhulu Rani was lying in front of the gate of the house. Then, they took her to Amarpur hospital and on the next morning she was referred to Udaipur hospital and she was brought to the Udaipur hospital and subsequently, she died. At this stage the witnesses was declared hostile as he had deviated from his previous statement given to the I/O during investigation and the prosecution was allowed to cross examine.

[30] When attention of the witness was drawn to his statement under Section-161 of Cr. P.C. given to the I.O. to which he declined to have stated that his son used to torture his wife, the deceased herein, physically and mentally and he had illicit relationship with Dalia Das and before 15 days of the occurrence the deceased found Sanjit and Dalia in compromising condition and she protested and on that issue the appellant assaulted Bhulu Rani causing serious injuries on her person. The appellant did not give her any treatment and a social meeting was held on this matter.

[31] On 15.09.2018 when he was in his house Sanjit dragged Bhulu Rani outside the house by force and thereafter his granddaughter and he came out and found Bhulu Rani lying in injured condition in front of their gate. He also denied to have lodged ejahar in his house which was recorded by the police officer and stated that he did not put any RTI in the ejahar. The relevant portion of the 161 Cr. P.C. statements was provisionally marked as Exbt.1.

[32] He denied the suggestion put by the learned P.P. that he has not stated the truth to save his son from this case, or to cover up his illicit relationship. He also denied the suggestion that he lodged ejahar with the police officer at his house when he visited his house by putting thumb impression in the ejahar.

[33] But in the cross-examination he stated that on the fateful day his son was not present in the house when Bhulu Rani, the deceased herein, was found injured condition in front of their gate. Getting information the appellant came and brought Bhulu Rani Das to the hospital. He cannot say what was written by the police officer in the ejahar.

[34] PW-2, Smti. Sumi Das, the younger daughter of the deceased and the appellant deposed that the convict-appellant is her father and about 10.00pm she was sleeping in their house and suddenly she found her mother missing from the room and she called her 'dadu' and both of them went outside the house and found her mother in senseless condition near the gate. Then her grandfather called her elder sister and then her elder sister and her husband came and her mother was shifted to Amarpur hospital. But in the cross-examination she has stated that her father was not in the house on the night on which they found her mother in senseless condition near the gate. On being informed by mobile phone her father

went to the hospital. Her father also came to Udaipur hospital while shifting her mother from Amarpur hospital to Udaipur hospital.

[35] PW-3, Smti. Sati Das, the elder daughter of the victim, stated that before the incident she was already married three years ago. She got the information of the incident on 25.09.2018 at night and she and her husband came and found her mother in injured condition. Thereafter, they shifted her to the hospital. In cross-examination she stated that her father was not in the house at that time and on their information he came to Amarpur hospital and from there he came to Udaipur hospital with her mother.

[36] PW-4, Nandan Das, husband of the elder daughter of the deceased and he has stated that about one year ago at night he got a phone call from somebody who informed him that his mother-in-law lying on the bed in sick condition. Thereafter, they shifted her to the hospital by auto rickshaw. His mother-in-law was sick before the said date. In his cross-examination he has stated that at that time his father in law was not present in the house. On being informed by phone he came to hospital from Amarpur hospital she was referred to Udaipur hospital and his wife and his father-in-law accompanied her while shifting her to Udaipur hospital.

[37] In view of above, discussion it has been revealed that PW-1, the father of the convict-appellant at the first instance has stated that at the time of occurrence, he was present in the house but in his cross examination, he denied the statement and uttered that at the time of occurrence his son was in the house and subsequently, when he was informed about the incident he came to the hospital. This essence of the deposition could be found from all the depositions of PWs. PW-1 was declared hostile as he resiled from his previous statement recorded under Section-161 of Cr. P.C.

[38] Hence, from the fact situation and circumstances of the case, it is clear that being the father of the accused he has suppressed the truth to save his son from the charge of murder of his wife. Otherwise also there is nothing on record to show that the I.O. of the case had any enmity or grudge against him so as to make a false statement in his name.

[39] Since all other witnesses have turned hostile being the family members and the motive behind the said crime by the accused against the deceased is not established and the antecedent shows that the husband used to assault her because of the illicit relationship and he has not explained as to how she died when he went along with her. Due to the contradictions and omission in the statements of the PWs, it is not crystal clear what has exactly happened.

[40] This Court is of the view that if the deceased had come with a complaint of assault then the hospital authorities would have reported police or would have reported history of assault or would have recorded her statement, but nothing has been done which clearly testifies for the fact that it is not a case of assault. The statement recorded under Section-161 of Cr. P.C. of PW-2 no incident of injury on the day of incident has been disclosed. Only an incident of 15 days back has been deposed. In the postmortem report nowhere says that the cause of death is assault.

[41] This Court reasonably presumes that since the crime has taken place amongst the family members at the first instance felt it as an illegal act, later on, having concerned for the family members, they might have compromised amongst themselves and had turned hostile and have not supported the case of the prosecution. This Court is making the said observation in view of the contradictions and omissions made by the witnesses.

[42] In the present case, there is no evidence to show that the appellant has intention to kill the deceased. In fact, it was a family dispute i.e. fighting between the husband and wife which is very much common in nature. Culpable homicide by causing death of person other than person whose death was intended...*if a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person, whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.*

[43] The expression intention and knowledge postulate the existence of positive mental attitude. It was further held that when and if there is intent and knowledge, then the same would be a case under first part of section 304 and if it is only case of knowledge and not intention to cause death by bodily injury, then the same would be a case of second part of section 304. As such, according to us, the learned Court below could have been decide the matter under Section 304(Part-II) of IPC instead of part-I.

[44] There was free fight between the husband and the wife which had caused death to a person. The reason of quarrel as stated by the PWs is not corroborated to each other of the family member of the deceased. Circumstances disclosed that the object was to fight only and not to cause death or grievous injury to the person. The accused assaulted and caused the death of the victim and relying on the prosecution witness the learned Court below convicted him under section 304 Part-I.

[45] Before awarding conviction against accused, the Courts should be mindful of fact that there should be no room to suspect evidence of key prosecution witnesses based on whose evidence conviction is being

awarded. As a general rule, while appreciating evidence in a criminal case, Court should bear in mind, that it is not quantity, but quality of evidence that is material. It is the duty of Court to consider the trustworthiness of witness and evidence adduced on record and to assess the same in a prudent manner, whether the same inspires confidence, so as to accept and act upon, before convicting accused.

[46] In our considered opinion, the prosecution has miserably failed to prove that the cause of death of the wife of the appellant was the outcome of any pre-mediation, which has led this Court to come to the conclusion that the way the murder is caused, does not come within the purview of the definition of Section-304 (Part-I) of IPC rather it comes within the ambit of the definition of Section-304 Part-II of IPC.

[47] The way the prosecution has projected the case and being found serious contradictions and inconsistencies in the statements in course of trial. It is settled proposition of law that the charge framed against the accused person has to be established and proved beyond any shadow of doubt. Suspicions, however, grave in nature, should not amount to prove. The discrepancies which are found in this case as analyzed above, appeared to be abnormal in nature which is not expected from a normal person. After cautious scrutiny of the evidence and considering the entire chain of circumstances, we find it difficult to arrive at a finding to draw the hypothesis of guilt against the accused-appellant.

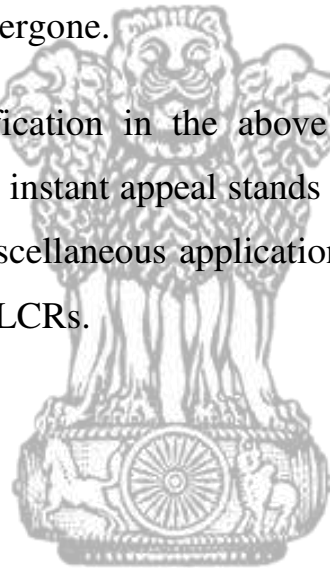
[48] But, however, in view of the above discussion and the clear evidence of the hostile witness in the confronted part of the 161 Cr. P.C. statement about the mental or physical torture on the deceased by the appellant on account of his illicit relationship and the clear evidence showing that on the fateful night the appellant dragged his wife from the room and subsequently she being found by the father in law and daughter

in the gate in injured condition and the appellant being found leaving the place asking them to take her to the room and going towards south from the north on motor bike and having rendered no help to the victim at the fateful moment, although there is serious contradiction and omission, this Court is of the opinion that the charges levelled against the appellant, the punishment as imposed by the learned Court below can be converted into Section-304 (Part-II) of IPC instead of Part-I.

[49] Accordingly, we are inclined to reduce the conviction and sentence to suffer RI for life as returned by the learned Sessions Judge, Gomati Judicial District, and consequently, we hold that substantial justice would be rendered if the appellant is sentenced to suffer RI for 5 years instead of life imprisonment. In the result, the instant appeal is partly allowed. The appellant shall suffer RI for 5 (five) years which shall include the period he already has undergone.

[50] With the modification in the above term in regard to the sentence of the appellant, the instant appeal stands partly allowed and thus, disposed of. As a sequel, miscellaneous applications pending, if any, shall stand closed. Send down the LCRs.

JUDGE



JUDGE

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