

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 30-8-2018****Pronounced on 31-8-2018****CRIMINAL APPEAL No. 750/2001**

(Arising out of the judgment of conviction and order of sentence dated
26.07.2001 passed by Seventh Additional Sessions Judge, Raipur in
ST No. 283/2000)

Govind Chandra Behra S/o. Mahadev Behra aged about 27 years, R/o.
Kinerekla, P.S. Kesingha, Distt. Kalahandi (Orisa)

-Appellant**-VERSUS-**

State of Chhattisgarh through PS Tikrapara, Distt. Raipur, CG

-Respondent

For appellant : Smt. Savita Tiwari, Adv.

For State : Shri Vinod Tekam, Panel Lawyer.

Hon'ble Shri Sharad Kumar Gupta, Judge**C.A.V. JUDGMENT**

1. In this criminal appeal the challenge levied is to the judgment of conviction and order of sentence dated 26.07.2001 passed by Seventh Additional Sessions Judge, Raipur in ST No. 283/2000 whereby and whereunder he convicted the appellant for the offence punishable u/s 304 (part – 2) of the Indian Penal Code (in short “the IPC”) and sentenced him to undergo RI for 10 years and fine Rs. 1,000/- in default of payment of fine, additional RI for 3 months.
2. In brief the prosecution story is that appellant is the husband of the deceased Minakshi @ Meena. They were tenant of P.W. 7

Smt. Hema Ghate at Sudamanagar, Raipur. Absconded accused Dilip was familiar to them. On 07.05.2000 at about 13.45 hrs. a dispute arose between the deceased and the appellant due to change of house. Co-accused Dilip asked the appellant to beat the deceased. Appellant pressed her neck as a result of which she became unconscious. At that time P.W. 6 Sonum and P.W. 7 Smt. Hema Ghate were present there. Deceased was taken to Medical College Hospital, Raipur where she was declared dead. The Medical College Hospital, Raipur sent intimation to Police Chowki at Medical College Hospital, Raipur where merger intimation was lodged. P.M. was conducted on the dead body of the deceased. Thereafter, first information report was lodged in Police Station, Tikrapara. After completion of the investigation a charge sheet was filed u/s 302/34, IPC against the appellant and absconded co-accused Dilip. The Trial Court framed charge against the appellant u/s 302 IPC. The appellant abjured the charge and faced trial. To bring home the charge prosecution examined as many as 13 witnesses. The appellant did not examine any witness in his defence.

3. After conclusion of the trial, the trial Court instead of Section 302, IPC, convicted and sentenced appellant as aforesaid.
4. Counsel for the appellant argued that the trial Court has not appreciated the evidence in proper perspective. The conviction and the sentence of the appellant is bad in eyes of law. Thus, the appellant may be acquitted of the aforesaid charge.
5. Counsel for the State argued that the conviction and the

sentence of the appellant is based on clinching evidence. The conviction and sentence of the appellant do not call for any interference by this Court.

6. As per the P.M. report Ex. P-8 Dr. Sanjay Kumar Dadu had conducted the autopsy on the dead body of deceased. He had found one abrasion on neck of 1.3 cm x 0.5 cm, another abrasion on neck of 1.5 cm x 1 cm, thyroid cartilage was fractured. He opined that death was due to asphyxia as a result of strangulation. It was homicidal in nature.
7. There is no such evidence on record on strength of which it can be said that Ex. P-8 is not believable. Thus this Court believes on Ex. P-8.
8. After appreciation of the evidence discussed herebefore this Court finds that the death of the deceased was culpable homicide.
9. P.W. 6 Sonu Benwa says in para 3 of his statement given on oath that on account of vacating the rented house, quarrel took place between the appellant and the deceased. The appellant had caught hold of neck of the deceased. Deceased became unconscious.
10. P.W. 7 Smt. Hema Ghate says in para 3 of her statement given on oath that a dispute arose between the appellant and the deceased on account of vacating the house. The appellant had caught hold of the neck of the deceased as a result she became unconscious.

11. There is no such evidence on record on strength of which it can be said that aforesaid statements of P.W. 6 Sonu Benwa, P.W. 7 Smt. Hema Ghate are not simple, not natural, no normal. Thus, this Court believes on the aforesaid statements of P.W. 6 Sonu Benwa, P.W. 7 Smt. Hema Ghate.
12. Looking to the above mentioned facts and circumstance of the case, this Court finds that prosecution has succeeded to prove beyond reasonable doubt the charge punishable u/s 304 (part-2), IPC against the appellant. The sentence awarded by the Trial Court is just and sufficient, and not excessive. Consequently the aforesaid judgment of the conviction and order of the sentence are hereby affirmed.
13. Consequently, the appeal being devoid of merit, deserves to be and is hereby dismissed.
14. As per the report of the Central Jail, Raipur, the appellant has been released on 15.08.2009 extending him benefit of the remission, thus, no further order is required.

Sd/-
(Sharad Kumar Gupta)
Judge