

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 445 of 2008**

Vishnu S/o Banakar Chandravanshi Aged 35 years, resident
of Village Lakhanpur, P.S. Pipariya, District Kabirdham (CG)

---- Appellant**Versus**

State of Chhattisgarh Through -Police Station, Pipariya,
District Kabirdham (CG)

---- Respondent

For Appellant : Shri Manoj Mishra, Advocate

For the respondent/State: Shri Vinod Tekam, Panel Lawyer

HON'BLE SHRI JUSTICE RAM PRASANNA SHARMA**JUDGMENT ON BOARD****07/12/2018**

1. Shri Rajesh Tiwari, Shri Vimlesh Bajpai, Shri Vivek Sharma and Shri Vivek Shrivastava, Advocates have been engaged by the appellant, but despite repeated calls, none appeared on all dates of the week, therefore, Shri Manoj Mishra, Advocate present in the Court is appointed as amicus curiae to argue the matter on behalf of the appellant.

2. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against the judgment dated 20.2.2008, passed in S.T.No.44/2007 by the Sessions Judge, Kabirdham (Kawardha)(CG) for commission of the offence under Sections 304 Part II and 323 of the I.P.C. and sentenced to undergo R.I. for 7 years and R.I. for 3 months.

3. In the present case, name of the deceased is Umabai for which the appellant was charge-sheeted under Section 302 IPC. The injured is Prabhabai for which the appellant was charge-sheeted under Section 323 IPC. As per version of the prosecution, on 26.4.2007 at about 9.00 am, Umabai was taking bath at Public Hand pump and at that time, the accused/appellant assaulted her with means of club on head. Due to assault, Umabai fell down and succumbed to the injuries on spot. The incident was witnessed by her daughter namely- Prabhabai and when she tried to intervene, the appellant also assaulted her with the club, which struck on her right scapular region and she sustained injury in the form of contusion. The matter was reported and the appellant was charge sheeted. After completion of trial, the trial Court has convicted and sentenced the appellant as aforementioned.

4. I have heard learned counsel for the parties and perused the record.

5. Learned amicus curiae appearing on behalf of the appellant submits as under :

(i) There is no eye-witness account to the incident and there are material contradictions and omissions in the version of the prosecution witnesses, therefore, offence charged against the appellant is not established.

(ii) Charges are not proved even though the trial Court has convicted and sentenced the appellant.

6. On the other hand, learned counsel for the State supporting the judgment submits that the finding arrived at by the trial Court is based on cogent and reliable evidence and the same is not liable to be interfered with.

7. Prabhabai (PW1) deposed before the trial Court that the appellant assaulted her mother Umabai with club and when she intervened, he also assaulted her by throwing club which struck on her head. Version of this witness is supported by the version of Suruchi (PW2), Geetabai (PW3) and Sitabai (PW4). Version of these witnesses is again supported by the version of Dr. Sharadchandra Shrivastava (PW6) who conducted autopsy of the deceased Umabai on 26.4.2007 at District Hospital Kawardha and noticed following injuries :

- (i) Lacerated wound over scalp on upper part of 6 x 2cm x 2cm
- (ii) Fracture of right parietal bone
- (iii) A bone was fractured near wound of scalp of 3 x 5 cm
- (iv) Brain matter was coming out.

As per version of this witness, cause of death was shock due to haemorrhage and duration of death was 4 to 12 hrs. since examination.

8. All these witnesses have been subjected to searching cross-examination but nothing could be elicited in favour of the defence.

9. There is nothing on record to disbelieve the version of these witnesses. From the evidence it is established that death of Umabai is homicidal in nature and injury caused to Prabhabai is simple in nature.

10. Looking to the entire evidence, the trial Court opined that no intention on the part of the appellant is shown to kill Umabai, therefore, the case falls within mischief of Section 304 Part II IPC. Again, act of the appellant against Prabhabai falls within the mischief of Section 323 IPC.

11. After reassessing the evidence, this Court has no reason to record a contrary finding. Conviction of the appellant under Sections 304 Part II and 323 IPC is hereby affirmed.

12. Heard on the point of sentence :

13. The trial Court had awarded sentence for R.I. for 7 years and R.I. for 3 months, which cannot be termed as harsh, disproportionate or unreasonable. The sentence part is also not liable to be interfered with.

14. Accordingly, the appeal is liable to be and is hereby dismissed. From the record, it appears that the appellant has already suffered the full jail term, therefore, no order for his arrest etc. is required.

Sd/

(Ram Prasanna Sharma)
JUDGE

