

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 835 of 2014**

Vasudev @ Birju S/o Bhumika Prasad Satnami Aged About 23 Years
 R/o Gorakhpur, Ps Lalpur, Rev. Distt. - Mungeli, Civil Distt. Bilaspur
 C.G. , Chhattisgarh **--- Appellant**

Versus

State of Chhattisgarh through Police of P.S. Lalpur, Rev. Distt.
 Mungeli, Civil Distt. Bilaspur Chhattisgarh **--- Respondent**

For the Appellant	: Mr. Chandra Bhushan Kesharwani, Adv.
For the State	: Mrs. Astha Shukla, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri**Order on Board****06.08.2018**

1. This appeal is against the Judgment/order dated 21.08.2014 passed by the Court of Addl. Sessions Judge, Mungeli, Distt. Bastar in Sessions Trial No. 36/2013 whereby the appellant was convicted u/s 307 of IPC and sentenced to undergo R.I. for 10 years. He was further directed to pay a fine of Rs1000/-, in default of payment of fine, to undergo additional R.I., for one month.
2. The case of the prosecution in short is that complainant Omprakash was residing with mother Sushila and sister Pushpa the victim at Padavpara Mungeli and at village Gorakhpur one house of Raghu Raj was there opposite to house of complainant where the appellant used to visit frequently. On 28.6.2011, the victim along-with appellant and his brother namely Om Prakash went to village Gorakhpur and stayed in the house of appellant. On

01.07.2011 when the school of victim was re-opened the victim asked the appellant to send her to Mungeli and at that time the appellant being enraged assaulted the victim by way of a club. On the subsequent date again the victim Pushpa asked the appellant to leave them to Mungeli on which, the appellant got enraged lost his temper and in the state of anger assaulted the victim on her head by battle axe whereby she fell down on the floor. Thereafter, the incident was intervened by brother of accused Mahendra and his wife Janki and the injured Pushpa was brought to Mungeli for treatment. A report was made by Mahendra in the Police Station vide Ex.P-8 on the basis of which the FIR was filed. During investigation, the treatment paper of the victim injured was received vide Ex.P-4 and the C.T. Scan report was collected and it is proved as Ex.P-10. After the statement of witness, the charge sheet was filed before the J.M.F.C., Lormi. Thereafter the case was committed to the Sessions Court at Mungeli.

3. During the course of trial, the appellant abjured his guilt and stated in his defence that he is innocent. On behalf of the prosecution, as many as 10 witnesses were examined and after evaluating the evidence, the trial Court convicted and sentenced the accused as aforesaid. Hence this appeal.
4. Learned counsel for the appellant would submit that the victim in this case has not supported the case of prosecution. It is stated that the nature of injury has also not been able to prove that it was fatal and further stated that at any rate, the offence u/s 307 of IPC will not be made out, as there was no premeditation of mind to commit the crime so as to attract

the provisions of section 307 of IPC. It is stated that in the circumstances, the appellant is liable to be acquitted.

5. Per contra, learned State Counsel supports the judgment of conviction and order of sentence passed by the trial Court and submit that the judgment/order is well merited which do not require any interference.
6. Perused the record and the statements of witnesses. Victim Pushpa has been examined as P.W.6. she has deposed before the Court that while she was playing with hide and seek, at that time she fell down and while playing she sustained injury on her head by slipping from a door. Thereafter, she was admitted to hospital and the police has also enquired from her about the incident. In the cross examination, she was confronted with the police statement which was recorded u/s 161 of cr.P.C., vide Ex.P-7 but she denied to have given such statement. The Investigating officer M.P. Tandon was examined as P.W.9. The entire statement do not show that he has deposed that he recorded the statement of the victim vide Ex.P-7. It is completely silent. The other witness I.O. Paras Ram Jagat P.W.7 has made omnibus statement that he has recorded the statement of the victim and other witnesses. This witness also was not confronted with such statement of P.W.6 which is marked as Ex.P-7 but has only proved the FIR Ex.P-8. The other witness is Mahendra Singh (P.W.1) who according to the prosecution was present at the time of incident as per the FIR. He stated that the victim has sustained injury while she slipped near the door and he was in the house at the relevant time and when he came out, he saw that she

sustained injury on her head. Thereafter she was taken to the hospital for treatment. The other witness P.W.3 Ashwini Kumar has made similar statement that he was informed of the fact that the victim has sustained the injury while she slipped near the door. Therefore, the prosecution as appears has not been able to prove the fact beyond reasonable doubt or suspicion that the injury which was sustained by victim was inflicted by the appellant himself.

7. In Ex.P-8 FIR though the fact is narrated that the injury was caused by the appellant to the victim and it is proved by the I.O. (P.W.7), but the author of the same namely Omprakash is not examined as by the time he died, but the fact remains that the remaining witnesses i.e., victim and the eye witness Mahendra Singh (P.W.1) have disowned the narration made in the FIR. Under the circumstances, the suspicion loomed large as to the commission of guilt by the appellant.
8. Further the facts which are on record are of the statement of the doctors. Dr. Suresh Ratre (P.W.2) who has first treated the victim gave report vide Ex.P-4 which shows that a lacerated wound over the parietal region was found. According to him, the victim had sustained head injury and in the cross examination, he has admitted the fact that the injury could have been sustained if some one slipped from the stairs. Thereafter, Dr.B.R. Singh (P.W.4) examined the victim and gave his report vide Ex.P-6. According to him, the injuries were simple in nature. He also corroborated the fact that the injury could have been sustained when some one falls down by slipping and the injury sustained by the victim is simple in nature. Dr.Archana Singh (P.W.10) who

conducted the C.T. Scan stated that she had not enquired about how she sustained the injury and she found certain fracture on right temple and left parietal bone. Therefore, after evaluating and scrutiny of the entire evidence on record, I am of the opinion that the prosecution has failed to prove the fact that the injury was inflicted by the appellant to the victim beyond reasonable doubt.

9. Under the circumstances, the appellant is entitled to benefit of doubt and accordingly the judgment of conviction and order of sentence dated 21.08.2014 is set aside. The appellant is acquitted of the charge by giving benefit of doubt. It is stated that the appellant is in jail since 26.08.2013. If that be the position, he be released forthwith if not required in any other offence.
10. In the result, the appeal is allowed.

**Sd/-
GOUTAM BHADURI
JUDGE**