

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 10-1-2019****Pronounced on 15-1-2019****CRIMINAL APPEAL 249/2008**

(Arising out of judgment of conviction and order of sentence dated 21-2-2008 passed by 2nd Addl. Sessions Judge, Ambikapur Distt. Surguja in Sessions trial No. 381/2007)

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Raspati Bai W/o. Amarsai aged 45 years, R/o. Village Pakhrapara Jheradih, P.S. Batauli, Distt. Surguja (CG)

---Appellant**-VERSUS-**

State of Chhattisgarh, through Police Station, PS. Batauli Distt. Surguja (CG)

---Respondent

For appellant : Ms. Varsha Sharma, Adv.

For respondent/State : Ms. Sangeeta Mishra, Govt. Adv.

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

- In this criminal appeal the challenge is levied to the judgment of conviction and order of sentence dated 21-2-2008 passed by 2nd Addl. Sessions Judge, Ambikapur Distt. Surguja in Sessions trial No. 381/2007 whereby and whereunder he convicted and sentenced the appellant as under :-

Offence u/S.	RI for	Fine Rs.	RI in default of payment of fine
304-II, IPC	5 Years	1,000/-	2 month
314, IPC	5 Years	1,000/-	2 month

Both jail sentences are directed to run concurrently.

2. This is admitted by the appellant that deceased Kaushilbai was wife of P.W. 1 Ramesh. He had come along with deceased in her house at village Seradih. Deceased died in her house. Police has made the panchnama vide Annexure P-1.
3. In brief the prosecution story is that on 1-5-2007 deceased was pregnant by 3 months. On the last day, she was suffering from stomach pain. Her husband took her for treatment to appellant. She wrongly massaged her abdomen as a result, her foetus died and deceased also died. On 2-5-2007, her father in law P.W. 3 Dheenaram had given information to police station Batauli where merg intimation was lodged. After completion of investigation, a charge sheet was filed against the appellant. The trial Court framed the charges against the appellant under Sections 304-II, 314 of the Indian Penal Code (in brevity 'IPC'). After completion of trial, trial Court convicted and sentenced the appellant as aforesaid.
4. Counsel for the appellant argued that Trial Court has not appreciated the evidence in proper perspective. Thus, the conviction and sentences of the appellant are bad in eyes of law. Hence, appellant may be acquitted of the aforesaid charges.
5. Counsel for the State argued that the conviction and sentences of the appellant are based on clinching evidence. The conviction and sentences of the appellant do not call for any interference by this Court.
6. As per the alleged post mortem report Ex. P-7, P.W. 6 Dr. Vijay Singh and P.W. 7 Dr. Manorama Minj had conducted the autopsy and found that the uterus of deceased was enlarged, foetus was

present inside the uterus. They opined that cause of death is most likely to be vasovagal shock due to compression (massage) of the abdomen.

7. There is no such evidence on record on the strength of which it can be said that Ex. P-7 is not believable, thus this Court believes on Ex. P-7.
8. As per the RFSL report Ex. C-1 no poison was found on viscera of deceased marked as article A and B, preservative marked as article C.
9. There is no such evidence on record on the strength of which it can be said that Ex. C-1 is not believable, thus this Court believes on Ex. C-1.
10. P.W. 1 Ramesh says in para 3 and 4 of his statement given on oath that deceased was suffering from stomach pain, appellant had taken deceased inside the house, thereafter she died.
11. P.W. 3 Dheenaram says in para 1 of his statement given on oath that deceased was suffering from stomach pain.
12. In alleged merg intimation Ex. P-3 it has been mentioned that deceased was suffering from stomach pain.
13. There is no such evidence on record on the strength of which it can be said that Ex. P-3 is not believable in that reference.
14. There is no such evidence on record on the strength of which it can be said that aforesaid statements of P.W. 1 Ramesh, P.W. 3 Dheenaram are not natural, not normal and nor simple.
15. Looking to the aforesaid facts and circumstances and concerned

admitted facts, this Court finds that prosecution has succeeded to prove the charges punishable under Sections 304-II and 314, IPC, against the appellant.

16. Thus, this court finds that trial Court has not committed any illegality in convicting and sentencing the appellant as aforesaid. Hence, the appeal deserves to be dismissed. The appeal is accordingly dismissed. The conviction and sentences of the appellant under Section 304-II and 314, IPC are hereby affirmed.
17. As per the report received from the office of Superintendent, Central Jail, Ambikapur dated 2-12-2018, the appellant has been released on 14-7-2010 after getting the benefit of remission extended to him. Thus, no further order is required.

Sd/-
(Sharad Kumar Gupta)
Judge