

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1279 of 2017**

Sundar Singh S/o Kunwar Singh, Aged About 40 Years R/o Batauli, Nawapara, Police Station Batauli, District Surguja Chhattisgarh., Chhattisgarh.

---- Appellant**Versus**

State Of Chhattisgarh Through Station House Officer, Police Station Batauli, District Surguja Chhattisgarh., Chhattisgarh.

---- Respondent

For Appellant	:	Shri Ravindra Sharma, Advocate.
For Respondent/ State	:	Shri A.N. Bhakta, Dy. A.G.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgment on Board****18/01/2019**

Heard.

(1) Challenge in this appeal is to the judgment of conviction and order of sentence dated 19.6.2017 passed by Learned Second Additional Sessions Judge, Ambikapur, District Surguja, Chhattisgarh in Sessions Trial No. 444 of 2015 whereby and whereunder the learned Second Additional Sessions Judge after holding the appellant guilty for the offences under Section 304 part II of the Indian Penal Code, has sentenced him to undergo rigorous imprisonment for 5 years and to pay fine of Rs.100, in default of payment of fine, to further undergo additional RI for 1 month.

(2) Conviction is impugned on the ground that without there being any iota of evidence, the trial Court has convicted and sentenced the appellant as aforementioned and thereby committed illegality.

(3) As per case of the prosecution, in brief, that deceased – Ku. Lalita aged about 2 years, daughter of complainant – Sukhan Ram (PW-3) was suffering from illness on 23.10.2005. The appellant approached the complainant claiming himself to be qualified doctor and then injected the deceased with three injections of Chloroquine. Subsequent to that, the deceased expired on the same day. Merg intimation Ex. P/4 was recorded by Sukhan Ram (PW-3). On that basis, the inquest procedure was completed and on the basis of the findings of the morgue enquiry, FIR Ex. P/11 was lodged against the appellant registering offences under Section 304 part II of the Indian Penal Code. The postmortem of the deceased was conducted vide Ex. P/1 in which finding was given that the cause of death of the deceased was due to shock. The viscera preserved was sent for FSL examination. The FSL report Ex. P/17 discloses that the deceased was injected with Chloroquine. Rest of the investigation was conducted and completed by the Investigation Officer.

(4) Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code'). The investigation was carried out and on completion of the same, the charge-sheet was filed before the concerned Court. The appellant was charged for the offences under Section 304 part II of the IPC. He denied the charges and prayed for trial.

(5) In order to prove the guilt of the appellant, the prosecution examined 17 witnesses. Statement of the appellant was recorded under Section 313 of the Cr.P.C. in which he denied all the incriminating

evidence against him, pleaded innocence and false implication in the crime in question. Three witnesses were examined in defence.

(6) After affording opportunity of hearing to both the parties, learned trial Judge convicted and sentenced the appellant as aforementioned.

(7) I have heard learned counsel for the parties, perused the judgment impugned and records of the Court below.

(8) Learned counsel appearing on behalf of the appellant submits that the conviction against the appellant is erroneous and without any support of evidence of the prosecution beyond reasonable doubt. The cause of death of the deceased though found as shock in the postmortem report Ex. P/9, the same has not been co-related with injecting of Chloroquine to the deceased. The opinion of the doctor conducting postmortem - Dr. Smt. Manorama Minj (PW-1) is not conclusive, hence, the appellant has been convicted only on the basis of the suspicion. It is also submitted that the witnesses of search and seizure have not supported the prosecution case. Therefore, the case against the appellant is totally without any substance, no case of conviction is made out against the appellant and it is prayed that the appellant be acquitted in the case. In the alternative, it is prayed that if this Court is not inclined to allow the appeal and acquit the appellant, looking to the long detention of the appellant in jail, his sentence of imprisonment be reduced to the period of custody already undergone by him.

(9) Per contra, learned counsel for the respondent/ State opposed the prayer and submission. He further submitted that the prosecution has proved its case beyond reasonable doubt. According to the evidence present in this case there appears to be direct connection of injection of medicine to the deceased in her death which is not at all denied by the appellant, hence, no case is made out for acquittal or reduction of sentence of the appellant.

(10) In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the prosecution.

(11) Sukhan Ram (PW-3) has stated before the Court that on the date of incident his daughter Ku. Lalita was suffering from fever. The appellant came to his house, injected her some medicine and within 10 minutes his daughter expired. He has stated about recording of merger intimation Ex. P/4 and regarding his presence in the rest of the Investigative Procedures. In cross-examination, he has denied adverse suggestions given in defence and there is no such admission made by him so as to hold that his statement and examination-in-chief has been contradicted.

(12) Phool Kumari (PW-6) is the mother of the deceased who has made a similar statement and has supported the statement given by Sukhan Ram (PW-3) and also her statement in cross-examination has remained unrebutted.

(13) Sub-Inspector M.R. Bhagat (PW-15) is the person who recorded the morgue intimation Ex. P/4 and has conducted the inquest procedure. On his request, autopsy was done on the dead-body of the deceased. Dr. Smt. Manorama Minj (PW-1) stated that she examined the dead-body of deceased – Ku. Lalita on 23.10.2005 and on the basis of the findings, she has reported in her postmortem report Ex. P/1 that the cause of death appears to be shock and she advised chemical examination of viscera for confirmation of cause of death. Her statement has remained unchallenged in her cross-examination. This witness was reexamined by the prosecution on the basis of the FSL report Ex. P/17 received. She has stated that in Ex. P/17 it is confirmed that the deceased was injected with Chloroquine and she has given her opinion that normally Chloroquine is not injected to the children as it may be fatal for them. In cross-examination, she has admitted that the quantity of Chloroquine injected was not proper and also she made an admission that in case the child becomes seriously ill then injecting Chloroquine becomes essential. She also admitted that she cannot make a statement of her own that the death of the deceased had been because of Chloroquine injection. Rest of the witnesses who have been examined by the prosecution and the investigative procedure needs no consideration. The point for consideration in this appeal is limited to the submissions made by counsel for the appellant.

(14) After scrutinizing the evidence of the relevant witnesses present on record of the trial Court, I am of this opinion that though the doctor conducting autopsy cannot make a statement with certainty that

injecting Chloroquine may have been the result of cause of death but the circumstances show that the deceased was suffering from some slight fever and whether she required that medication or not has not been made clear by any of the witness or the witness examined in defence. There had been no statement of any of the witness that the deceased was suffering from Malaria as Chloroquine is the medicine for treatment of Malaria. However, there is no such claim made by the appellant that he is a qualified doctor and has recognition from Medical Council of India to treat the person suffering from any kind of illness. Therefore, it appears that the appellant who was not qualified as physician had on his own presented himself to treat the deceased for the illness from which she was suffering and the deceased died soon after she was injected by the appellant with the said injection which is named as Chloroquine.

(15) According to Modi's Jurisprudence, shock may be a result of administration of any kind of drug or medicine in the body which the body is not ready to accept. Looking to the result that has occurred in this case, it can be definitely said that this result had been the consequence of the medicine injected by the appellant. Hence, for these reasons, I am of this opinion that the appellant acted inadvertently by injecting the deceased with Chloroquine and the same has resulted in her death. Therefore, on the basis of these discussions and the findings in this appeal, I am of the opinion that no error was committed by the trial Court in convicting the appellant under Section 304 of the IPC.

(16) Considered on the alternative prayer made by counsel for the appellant for reduction of sentence of imprisonment imposed upon the appellant. After considering all the facts and circumstances of this case, I am of this view that it is a case for reduction of sentence. Therefore, the appeal is allowed in part. The sentence imposed upon the appellant by the trial Court is hereby set aside and now he is sentenced with period of sentence already undergone by him in jail.

(17) Accordingly, the appeal is disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
JUDGE