

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 98 of 2007

Mahesh @ Chetan S/o. Daliram, aged about 28 years, R/o. Village Amlidih, P.S. Kashdol, District Raipur (C.G.)

---- **Appellant**

Versus

State of Chhattisgarh, through Police Station Kashdol, District Raipur (C.G.)

---- **Respondent**

For Appellant : Mr. Shivendu Pandya, Advocate.

For Respondent : Mr. Sameer Sharma, Dy. Govt. Advocate

Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment on Board

28. 09.2020

As per prosecution story, the complainant (PW-7) is the uncle and the appellant is the nephew. It is alleged that on the date of incident i.e. on 07.11.2005, the complainant went to his brother's house namely Balliram (PW-5) where his sister (Punibai) and Dinesh (PW-2) were talking to each other and the complainant also reached there. At that time appellant (Mahesh) picked up a *lathi* and tried to assault on the complainant but due to mistake the assault was caused on the temporal region of his aunt (Punibai), as a result of which she fell on the ground and died on the spot. On the basis of dehatinalasi (Ex.P-14) given by complainant (PW-7), FIR (Ex.P-1) and merged intimation (Ex.P-8)

were registered against the appellant. After completion of investigation, charge sheet was filed under Section 302 IPC against the appellant followed by framing of charge accordingly.

2. Learned Court below vide judgment impugned dated 24.01.2007 passed in Sessions trial No. 80/20062 acquitted the accused/appellant under Section 302 IPC but has held him guilty under Section 325, 323 IPC with imposition of sentence of one year RI and to pay fine of Rs. 300/- under Section 325 and to pay fine of Rs. 200/- under Section 323 IPC. Hence, this appeal.

3. Counsel for the appellant submits that the judgment of conviction and order of sentence passed by trial court is arbitrary, illegal and contrary to the evidence collected by the prosecution. He submits that bare reading of sections 325 and 323 IPC, it appears that if the hurt was not caused due to voluntarily assault then section 325 and 323 IPC does not apply. As a last resort counsel for the appellant submits that if this Court does not interfere with the conviction part of the judgment impugned at least the sentence imposed on him may be reduced to the period already undergone.

4. On the other hand, state counsel supporting the impugned judgment has submitted that the judgment of the trial Court is strictly in accordance with law and well founded and there is no illegality or infirmity in it warranting any interference by this Court.

5. Heard counsel for the parties and perused the material available on record including the judgment impugned.

6. Though most of the witnesses in this case have been declared hostile and not supported the case of the prosecution, however, the evidence of Shivdayal (PW-7) reveals that the deceased had suffered head injury as a result of assault opened by the accused/appellant though the blow was not aimed at her. Seizure of *lathi* as is evident from (Ex.P-10) also corroborates the medical evidence which says that the fracture of intra-cranial of the deceased was caused by hard and blunt object. Thus, the involvement of the accused/appellant under Section 325 and 323 IPC for causing injury to the deceased who subsequently met an unfortunate death, is fully manifest from the evidence on record, and therefore, the conviction as recorded by the court below is hereby maintained.

7. However, looking to the incident being of the year 2005, and that since then the accused/appellant has already faced a long drawn prosecution and even the appellant remained inside about two months, interest of justice, in the opinion of this Court, would be served if their sentences are reduced to the period already undergone. Order accordingly.

8. Appeal is thus allowed in part to the extent indicate above. As the appellant is already on bail, his bail bond stand discharged.

Sd/-
(Vimla Singh Kapoor)
JUDGE

Santosh