

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 700 of 2009

Radha Bai W/o Anujram Ahirwar, Aged about- 41 years, R/o
Shyam Nagar, Lingiyadih, PS Sarkanda, Bilaspur

---- Appellant

Versus

State of Chhattisgarh, through- Police Station, Pandritaraim
District- Kabirdham(C.G.)

---- Respondent

For appellant : Ms. Preeti Jha, Advocate appears as
Amicus Curiae.

For State : Mr. Aman Kesharwani, P.L.

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment on Board

24/01/2020

1. This appeal is preferred against the judgment dated 16th of September, 2009 passed by learned Sessions Judge, Kabirdham (Kawardha) in Sessions Trial No. 55/2008, wherein the said Court convicted the appellant for commission of offence under Section 304 Part-II of Indian Penal Code, 1860 and sentence her to undergo R.I. for 7 years and fine of Rs. 3000/- with default stipulations.
2. In the present case, name of the deceased is Lalita Bai. She was marriage to nephew of the appellant namely Lalit Barve in the year of 2005 and deceased lived with her husband, Horilal and Dashoda Bai (grand father and grand mother of Lalit). On 15th of April, 2008 the husband of the appellant as also other members of the family went to the fields for harvesting of sugar cane crop. The appellant, her father Horilal and mother Dashoda Bai were in the house besides the deceased who

was engaged in cooking meals. At about 11.00 am suddenly the deceased Lalita Bai fell down in the court yard of the house. She was taken inside by Horilal, Dasoda Bai and the appellant. As the deceased had become unconscious, the appellant put her head on her lap and gave tender strokes on her cheeks so that she may regain consciousness. Other members of the family who had gone to the fields also returned back, instead of regaining consciousness, the deceased Lalita Bai died. False report was given at Pandatarai police station that there was demand of dowry by the in laws and husband and the parents of the deceased, being incapable to fulfill the demand, the deceased was subjected to cruelty that is why the appellant and other persons were charge-sheeted and after completion of trial the trial Court convicted the appellant as mentioned above.

3. Learned counsel on behalf of appellant submits that the trial Court erred in holding that appellant is responsible for death of the deceased. From the evidence of Bhagawat (PW-1) it is clear that appellant is trying to restore back consciousness of the deceased, which is quite natural in this circumstance of the case. The trial Court given wrong conclusion that appellant slapped multiple times on cheeks of the deceased likely to cause death but no sign of injury on the cheek of the deceased was found. The trial Court ignored the contradiction in the testimony of the Bhagwat (PW-1) and Chandu Ram

(PW-2) therefore, finding of the trial Court is liable to be set-aside.

4. On the other hand, learned State counsel submits that finding of the trial Court is based on proper marshaling of the evidence and same is not liable to be interfered with while invoking jurisdiction of appeal.
5. Bhagwat (PW-1) and Chandu Ram (PW-2) deposed before the trial Court that appellant assaulted the deceased by hand. Dr. S. N. Yadav (PW-5) who conducted autopsy of the deceased recorded finding that cause of death is asphyxia though, this witness opined that it is a case of strangulation, which is supported by version of Dr. R.K. Chandravanshi (PW-14). The trial Court recorded finding that strangulation on the part of the appellant is not established. Dr. S. N. Yadav (PW-5) admitted that at the time of the attack of Epilepsia there is possibility of asphyxia. Therefore, the medical expert is also not confirmed regarding strangulation. The trial Court rejected the evidence regarding dowry death but opined that assault or slapping may be the reason of death because the deceased was under attack of asphyxia.
6. The first question for consideration of this Court is whether the act of the appellant falls within mischief of Section 304 Part-II of IPC, 1860. The total evidence adduced against the appellant is that she slapped the deceased multiple times. Slapping by hand itself is not sufficient to draw inference that appellant had knowledge that her slapping may cause death

of the deceased. Therefore, evidence should be taken to its face value and it is a case of slapping by the appellant, which falls within mischief of Section 323 of IPC, 1860.

7. Accordingly, conviction of the appellant under Section 304 Part-II is set-aside and she is convicted for offence under Section 323 of IPC, 1860.
8. The appellant has suffered jail term from the period of 19th August, 2008 to 12th of November, 2009 till order of her release by this Court. Appellant has already suffered jail term of more than 1 year. Maximum sentence that can be awarded under Section 323 of IPC is 1 year. Appellant is sentenced to undergo RI for 1 year. Appellant has already suffered more than one year. The appellant has suffered full jail term and released from jail, therefore, no further order for her arrest etc. is required. However, fine amount imposed by the trial Court is reduced to Rs. 1,000/- which is maximum fine for offence under Section 323 of IPC.
9. With this modification, the appeal is allowed.

Sd/-
(Ram Prasanna Sharma)
Judge