

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 1177 of 2016

- Sudama Munda, S/o Ramlal Munda, Aged About 50 Years R/o Bhadrapara, Police Station Lailunga, District Raigarh, Chhattisgarh.

---- Appellant

Versus

- State Of Chhattisgarh Through Station House Office, Police Station Lailunga, District Raigarh, Chhattisgarh.

---- Respondent

For Appellant	:	Shri Anil Pillai, and Shri Anupam Pandey Advocates.
For State/Respondent	:	Shri Ravish Verma, G.A.

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

03/12/2021

1. This appeal has been preferred against the impugned judgment dated 29.07.2016 passed in S.T. No.130/2015 by the 2nd Additional Sessions Judge, Raigarh, (C.G.) wherein appellant has been convicted and sentenced as under :

<u>Conviction</u>	<u>Sentence</u>
U/s 304 Part-2 of the I.P.C.	R.I. for 10 years and fine of Rs.2,000/- with default stipulations.

2. In the present case, name of the deceased is Premo Bai. Appellant herein, is the husband of the deceased Premo Bai. Kudkuna (PW7) is the daughter of appellant and deceased. Facts of the case, in brief, are that on 02.07.2015 at around 6:30 PM, deceased Premo Bai was sleeping her two years old child. At that time, appellant came and asked for food, upon which, the deceased told the appellant to take food himself, on which, the appellant being annoyed, hit on the abdomen of the deceased by foot two-three times due to which she sustained injuries in her abdomen. She was hospitalized in Community Health Centre, Lailunga. During course of treatment, on 05.07.2015, the deceased died. Thereafter, merg was registered and enquest proceeding was conducted. Post-mortem of the deceased was conducted by Dr. Manoj Patel (PW1). His report is Ex.P4. Statements of the witnesses were recorded under Section 161 of Cr.P.C. After completion of the investigation, a charge-sheet was filed. Trial Court framed the charge under Section 302 of the I.P.C. To prove the guilt of the accused/appellant, prosecution has examined as many as 9 witnesses. No defence witness has been examined. Statement of appellant under Section 313 of the Cr.P.C. was recorded, wherein accused/appellant has pleaded innocence and false implication in the matter.
3. On completion of the trial, the trial Court has convicted and sentenced the appellant as mentioned in first paragraph of this judgment. Hence, this appeal.
4. Learned Counsel appearing on behalf of the appellant submits that trial Court has wrongly convicted the appellant without there being

sufficient and clinching evidence against him. Judgment of the trial Court is contrary to the facts and circumstances of the case, therefore, the case in hand is liable to be set aside. If the entire case of the prosecution is taken as it is, the alleged act committed by the appellant fall within the purview of Section 323 of the I.P.C. only, because there is only one injury sustained by the deceased in her stomach which was caused by the appellant by his foot. There is no material present on record which shows that appellant was aware or had knowledge that by hitting the deceased in the stomach could led to the death of the deceased in normal course.

5. Per contra, Shri Ravish Verma, learned Counsel appearing for the State supports the impugned judgment and submits that sentence awarded by the trial Court is just and proper and requires no interference.
6. I have heard learned Counsel appearing for the parties, perused the statement of witnesses and other annexed documents available on record minutely.
7. There is no dispute on the point that deceased was the wife of the appellant. Kudkuna (PW7) is the daughter of the appellant and the deceased and she is the sole eye-witness of the case. In her examination-in-chief, she has deposed that on the date of incident, a quarrel took place between her parents i.e. between appellant and deceased and appellant hit the deceased on her stomach by foot. In her cross-examination, she has admitted the fact that after hearing the chaos, she came to the spot. At that time, her mother (deceased) was lying down. She further admitted the fact that his father (appellant) hit

her mother in the state of toxication due to which leg of cot hit on her stomach and she sustained injury. Firstly, the deceased was medically examined by Dr. Manoj Patel (PW1) on 04.07.2015. His report is Ex.P1. According to his report, there was injury found in the front of abdomen of the deceased which was caused by hard and blunt object. During examination, it was found that condition of victim was serious and her blood pressure and pulse were not detected. According to this witness, death of the deceased occurred on 05.07.2015. Thereafter, he informed the police about the death of the deceased vide Ex.P3. During course of investigation, he conducted the post-mortem of the deceased. According to the post-mortem report of the deceased, large intestine was found pale and was tore approximately 2 cm in length. As per the opinion of the Doctor, death of the deceased was due to septicemic shock. During his cross-examination, in paragraph 6 of this witness, he had admitted that the injury found in the stomach of the deceased could have occurred by falling and getting hit on the leg of the cot but according to this witness, the said injury could be occurred when getting hit 2-3 times on the leg of the cot. There is nothing on record which shows that appellant pushed the deceased and she got hurt 2-3 times on the leg of the cot. Therefore, from the statement of Kudkuna (PW7), it is well-established that deceased got injured by got hit on her stomach by foot by the appellant. From the statement of Kudkuna (PW7), medical report of the deceased i.e. Ex.P1 and post-mortem report i.e. Ex.P4, it appears that deceased sustained only single injury on her stomach due to which her large instestine was tore 2 cm in length and the death occurred due to septicemic shock. Since, appellant has caused single injury in the abdomen of the deceased

and as per the statement of Kudkuna (PW7), at that time, appellant was in the state of toxication, the appellant was not aware or had knowledge that by hitting the deceased in the stomach, could led to the death of the deceased in normal course. In my considered opinion, the act of the appellant does not fall within the purview of Section 304 Part 2 of the Indian Penal Code, but would fall within the purview of Section 323 of the I.P.C only. Accordingly, conviction of the appellant is altered from Section 304 Part 2 of the I.P.C. to Section 323 of the I.P.C.

8. The maximum sentence prescribed for the offence punishable under Section 323 of the I.P.C. is one year. It is reported that the appellant is in jail since 08/07/2015. He be released forthwith, if not required in any other case.
9. Consequently, the appeal is allowed in part to the extent indicated above.
10. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge