

IN THE HIGH COURT OF CHHATTISGARH JUDICATURE AT BILASPUR

Cr.A.No. 08 / 2004.

APPELLANT
ACCUSED

(My jail)

: Suklal s/o. Lt. Lamoo Gond
aged- 40years, Resident of
village- Kadma Sajapara,
P.S.- Kukdur, District-
Kabir-dham (C.G.)

V E R S U S

: State of Chhattisgarh
Through- Police Station- Kukdur,
District- Kabir-dham (C.G.)

RESPONDENT
PROSECUTION

MEMORANDUM OF APPEAL UNDER SECTION 374(2) OF THE CODE
OF INDIAN PENAL

39/09

Shri

02/01/09

S. Aggarwal

Advocate

02/01/09



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HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench: Hon'ble Shri Radhe Shyam Sharma, J.

Criminal Appeal No. 8/2004

Appellant

Suklal S/o Late Lamoo Gond, aged about 40 years, resident of village Kadma Sajapara, Police Station Kukdur, District Kabirdham (C.G.)

versus

Respondent

State of Chhattisgarh

Present:

Shri Sanjay Agrawal, counsel for the appellant.

Shri Sandeep Yadav, Deputy Government Advocate with Shri Neeraj Kumar Mehta, Panel Lawyer for the State/respondent.

Criminal Appeal under Section 374(2) of the Code of Criminal Procedure

ORAL JUDGMENT

(Delivered on 30th March, 2012)

This appeal is directed against judgment dated 16-12-2003 passed by Additional Sessions Judge (FTC), Kawardha in Sessions Trial No. 125/2003. By the impugned judgment, accused/appellant Suklal has been convicted under Section 304 Part II of the Indian Penal Code and sentenced to undergo rigorous imprisonment for 3 years.

2. Case of the prosecution, in brief, is as under:

The appellant was residing with his wife Chaitibai (PW-3), sons Budhari, Anjori and Ajuram (PW-9) and daughters Rajmati and Rajkumari in Sajapara of Village Kadma. Deceased Puniyabai, mother of the appellant was also residing with him in the same house. On 6-7-2003, the appellant went out to somewhere. He came back in the evening and assaulted his wife Chaitibai (PW-3) with a *Lathi*. Chaitibai (PW-3) fled along with her 5 years' old daughter Rajkumari. Thereafter, the appellant picked up an



Adgad (a kind of *Danda*) and assaulted the deceased. The appellant gave *Adgad* blows on the back and chest of the deceased. On the next morning, Chaitibai (PW-3) found that the deceased was dead.

Chaitibai (PW-3) lodged FIR (Ex. P-5). Regular FIR (Ex. P-13) and Merg Intimation (Ex. P-14) were also recorded in Police Station Kukdur. Investigating Officer reached the place of occurrence and gave notice (Ex. P-10 A) to *Panchas* and prepared Inquest (Ex. P-11) on the dead body of the deceased. The dead body of the deceased was sent to Primary Health Centre, Pandariya for post mortem examination vide Ex.P-6A. Dr. V. P. Jaiswal (PW-4) conducted post mortem examination on the dead body of the deceased and gave his report (Ex. P-6), in which he found that spleen of the deceased was ruptured. He opined that cause of death of the deceased was shock and internal hemorrhage due to splenic rupture and the death was homicidal in nature.

In further investigation, memorandum statement (Ex. P-2) of the appellant was recorded under Section 27 of the Evidence Act and at his instance, a *Lathi* was seized vide Ex. P-3. Spot-Map was prepared by Sub-Inspector A. R. Thakur (PW-11).

After completion of investigation, charge sheet was filed against the appellant in the Court of Chief Judicial Magistrate, Kawardha, who, in turn, committed the case to the Court of Session, Rajnandgaon, from where it was received on transfer by the Additional Sessions Judge (FTC), Kawardha, who conducted the trial and convicted and sentenced the appellant as mentioned above.

3. Shri Sanjay Agrawal, learned counsel for the appellant argued that the quarrel took place when the appellant came to house in drunken state.



According to the prosecution, the appellant assaulted the deceased with *Adgad*. The deceased died on account of rupture of spleen. Offence of the appellant was not made out under Section 304 Part II IPC. He further argued that the sentence awarded to the appellant has already been undergone by him. He relied on the **judgment dated 7-1-2011 delivered by a Division Bench of this Court in Criminal Appeal No.1246/1994 (Rafel vs. State of Chhattisgarh)** and the judgment in **Ramchandra vs. State, 2006 Cri.L.J. 2966**.

4. On the contrary, Shri Sandeep Yadav, learned Deputy Government Advocate for the State/respondent, opposing the above arguments, supported the impugned judgment passed by the learned Additional Sessions Judge.

5. I have heard rival contentions of the parties and have also perused the record of Sessions Trial No.125/2003. Learned Additional Sessions Judge convicted the appellant under Section 304 Part II IPC and sentenced him to undergo R.I. for 3 years.

6. Chaitibai (PW-3) deposed that deceased Puniyabai was her mother-in-law. The appellant is her husband. The appellant had gone out in the morning and returned in the evening and as soon as he returned, he began to assault her with a *Lathi*. She ran away towards a *Nala*. In the night, she came back and went inside the *Maveshi Kotha*. On the next day, she saw that her mother-in-law had died.

7. Ajuram (PW-9) deposed that the appellant is his father and deceased Puniyabai was his grand-mother. The appellant had gone out in the morning and returned in the evening. As soon as the appellant returned, he began to assault the deceased with a *Geda (Adgad)*. The appellant had

given 5 *Geda* blows to the deceased. In cross-examination, he deposed that when the appellant was assaulting his grand-mother (the deceased), his mother (Chaitibai - PW-3) had tried to extricate the deceased.

8. Ajuram (PW-9) is son of the appellant and he specifically deposed that the appellant assaulted the deceased with *Adgad* and the deceased died.

9. Dr. V.P.Jaiswal (PW-4) deposed that he conducted post mortem on the dead body of the deceased and gave his report (Ex.P-6), in which he found 1 contusion, 15cmsx4cms over left side of lower chest (lateral portion). Ecchymosis was present, spleen was ruptured. He further deposed that the cause of death was shock and internal hemorrhage due to splenic rupture.

10. Looking to the evidence of Ajuram (PW-9) and Chaitibai (PW-3), it appears that the appellant, as soon as he returned home, began to assault Chaitibai (PW-3) with a *Lathi* and thereafter began to assault the deceased with *Adgad*. Due to *Adgad* blows, spleen of the deceased ruptured.

11. Learned Additional Sessions Judge rightly arrived at the conclusion that the act of the appellant falls within the purview of Section 304 Part II IPC. Therefore, the finding of conviction arrived at by the learned Additional Sessions Judge does not suffer from any infirmity.

12. So far as sentence under Section 304 Part II IPC is concerned, learned Additional Sessions Judge awarded the appellant sentence of R.I. for 3 years. A report was called from Central Jail, Durg. Vide Memo No.5195 dated 23-3-2012, received therefrom, it is reported that the appellant was in custody in Central Jail, Durg from 8-7-2003 to 15-12-2003

as an under-trial prisoner and thereafter from 16-12-2003 to 31-3-2005 as a convicted prisoner. The appellant served the jail sentence for about 1 year 8 months 24 days. According to the rules of the State Government, he got remittance for 9 months 9 days. Therefore, the appellant served most of the jail sentence awarded to him. Therefore, I am of the view that the ends of justice would be met if the jail sentence awarded to the appellant is restricted to the period already undergone by him.

13. Therefore, the appeal is partly allowed. The conviction of the appellant under Section 304 Part II IPC is affirmed and the sentence awarded to him is reduced to the period already undergone by him.

Sd/-
R.S. Sharma
Judge