

## APPEAL OF PRISONER

No. .... 6514 ..... Name .... सुदीपा साहू .....  
Father's name .... मेहता ए. गंगा प्रसाद .... Age .... 24 वर्ष .....  
Residence .... विद्या - दुरी (म.प्र.) .....  
Sentenced to .... 5 वर्ष .... On .... 24-9-97 .....  
Under section .... 302, I.P.C. .... by ....

S.T. No. - 491/96

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the case for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not be heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

- 1 Date of Application for copy of Judgement .....
- 2 Date on which copy received .....
- 3 Date on which Appeal sent .....
- 4 Whether the prisoner wishes to be represented or not - Yes / No

No. .... 6514 ..... Name .... सुदीपा साहू, S/o. मेहता ए. गंगा प्रसाद  
Confined in .... जेल, रायपुर (म.प्र.) .....  
No. .... 339/1/वि.प्र./97 ..... Dated .... 18/10/1997 .....

Forwarded to the CHIEF JUDICIAL MAGISTRATE ....  
together with a copy of judgement or order passed in the case for favour of trans-  
mission to the proper Appellate Court.

सिलेबल - S.T. No - 491/96 का  
सत्य प्रतिलिपि

Superintendent  
Superintendent,  
Central Jail, Raipur (M.P.)

Date of receipt in ... office ...  
Date of receipt record to accompany the ...  
Memo of Appeal to the Appellate court ...

No. .... Dated .... 1997  
Forwarded to the High Court of Madhya Pradesh  
Jabalpur  
Date of receipt in Appellate Court ...

Receipt Clerk  
High Court, Jabalpur

( P. T. O. )

02/05/13

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CR.A. No.2381 of 1997

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**D.B.: HON'BLE MR. SUNIL KUMAR SINHA &  
HON'BLE MR. R.N. CHANDRAKAR, JJ.**

**Criminal Appeal No. 2381 of 1997**

**APPELLANT**

Sudama Sahu S/o Mehattar alias  
Gayaprasad Sahu,

*Versus*

**RESPONDENT**

State of M.P. (Now Chhattisgarh)

**(Criminal Appeal under Section 374 (2) of The Code of Criminal  
Procedure, 1973)**

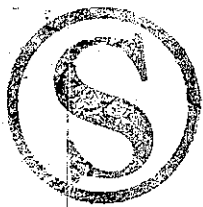
**Appearance:**

Mr. R.K. Jain, counsel for the Appellant.  
Mr. Anant Bajpai, Panel Lawyer for the State.

**JUDGMENT**  
**(30.04.2013)**

Following judgment of the Court was dictated on Board by  
**Sunil Kumar Sinha. J.**

1. This appeal is directed against the judgment dated 24.09.1997 passed in Sessions Trial No. 491/1996 by the VIth Additional Sessions Judge, Durg. By the impugned judgment, the Appellant has been convicted under Section 302 IPC and sentenced to undergo R.I. for life.
2. The facts, briefly stated, are as under:-



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2.1 Deceased Reni Bai was stepmother of the Appellant. Gopal (PW/6) is stepbrother and Heminbai (PW/8) is stepsister of the Appellant. The case of the prosecution is that on 01.10.1996 at about 8:00 AM, Gopal (PW/6) was playing near Shitla mandir. The Appellant went there and scolded him saying that he should go to collect cow-dung, in-fact the Appellant assaulted Gopal. After scolding, the Appellant brought him to the *kotha* of the house for collecting cow-dung. When the Appellant was assaulting Gopal (PW/6), the deceased (real mother of Gopal) obstructed and shouted upon the Appellant. The allegations are that thereafter the Appellant took out *danda* and gave *danda* blow to the deceased, who sustained one lacerated wound of 5 x 3 cm into bone deep on her left parietal region. There was corresponding fracture of frontal and temporal bone and there was also compound fracture on left portion of parieto and frontal bone. Dr. S.R. Banjare (PW/2) opined that the above injuries were ante-mortem caused by hard and blunt object and were sufficient to cause death in ordinary course of nature. Postmortem report is Ex.P/6.

2.2 Along with Gopal (PW/6), Heminbai (PW/8) was also an eye-witness to the incident. The learned Sessions Judge relied on the testimonies of these witnesses and convicted and sentenced the Appellant as above. Hence this appeal.

3. Mr. R.K. Jain, learned counsel appearing on behalf of the Appellant, has not disputed homicidal death of the deceased. He has also not disputed the involvement of the Appellant in crime in question. He has

argued that in a sudden quarrel between the Appellant and the deceased, the Appellant became enraged and gave a *lathi* blow to the deceased, which hit her skull and proved fatal. Therefore, an offence under Section 302 IPC would not be made out and the Appellant would be liable for punishment under some lesser Section preferably Part I or Part II of Section 304 IPC.

4. On the other hand, Mr. Anant Bajpai, learned Panel Lawyer appearing on behalf of the State, has opposed these arguments and supported the judgment passed by the Sessions Court.

5. We have heard counsel for the parties.

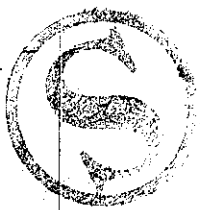
6. We have gone through the evidence of two eye-witnesses namely Gopal (PW/6) and Heminbai (PW/8). These two eye-witnesses are son and daughter of the deceased. Both were child witnesses as Gopal was aged about 13 years and Heminbai was aged about 8 years on the date of recording of their evidence on 08.09.1997. They have deposed that when Gopal (PW/6) was being assaulted by the Appellant forcing him to collect cow-dung, their mother intervened and quarrel took place in which the Appellant brought a *danda* and assaulted their mother, who sustained above injuries on her skull. Dr. S.R. Banjare (PW/2) has also found above injuries on the skull of the deceased. He has opined that the death of the deceased was homicidal. Therefore, the involvement of the Appellant as also the death of the deceased being homicidal, both were rightly held to be proved by the Sessions Court.



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7. Now, we shall consider the main argument advanced by Mr. Jain.

8. Section 304 IPC provides punishment for culpable homicide not amounting to murder. It draws a distinction between the penalty to be inflicted in cases, where, an intention to kill being present, the act would have amounted to murder, but for its having fallen within one of the Exceptions in Section 300, and cases in which the crime is culpable homicide not amounting to murder, that means, where there is knowledge that death will be a likely result, but the intention to cause death, or bodily injury likely to cause death, is absent. The first part of Section 304 applies where there is intention, whereas the second part applies where there is knowledge but the important thing is that before holding the accused guilty under any part of Section 304, it has to be observed that a death must have been caused by him under any of the circumstances mentioned in the five Exceptions to Section 300, which include death caused while deprived of power of self-control under grave and sudden provocation, while exercising in good faith the right of private defence of person or property, and in a sudden fight in the heat of passion without premeditation. Knowledge of consequences which may result in doing an act is quite different than the intention which denotes that a particular consequence should ensure. For attracting the former part of Section 304, an element of intention is a factor whereas for attracting the later part, an element of knowledge is a factor. The intention is the purposeful doing of a thing to achieve a particular result, whereas, the knowledge is an



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awareness which attributes to be well informed that a particular result may happen by doing a thing.

9. In the instant case, the Appellant, deceased Reni Bai and other two children of the deceased i.e. Gopal (PW/6) and Heminbai (PW/8) all were residing together in a house. On the fateful day at about 8:00 AM, Gopal (PW/6) was playing near the house. The Appellant went there to call him for collecting cow-dung. There he scolded him and then brought him to the *kotha* (place where the cattles are kept) of their house. When he was assaulting Gopal (PW/6) in their *kotha*, it is at that time Reni Bai (deceased) went there and obstructed him saying that such assault was not needed. It is after all this, the Appellant brought a *lathi* and gave *lathi* blow to Reni Bai, who was none other than his stepmother, which hit on her skull and proved fatal. This shows that there was no preparation or premeditation on the part of the Appellant to commit murder of his stepmother (deceased). A quarrel had preceded before main incident. Initially, the Appellant was unarmed and when the quarrel took place on the above petty matter, he went and brought a *lathi* and gave single *lathi* blow to the deceased. This shows that there was no intention of the Appellant to commit murder of the deceased, and in a sudden quarrel on account of intervention by Reni Bai (deceased), the Appellant became enraged and gave a *lathi* blow to her, which proved fatal. However, the knowledge of the Appellant can well be attributed to him that his such act

was likely to cause death of the deceased or it was likely to cause bodily injury to the deceased which was likely to cause her death.

10. We are of the view that in the above facts and circumstances of the case, an offence under Section 302 IPC would not be made out and the Appellant would be liable for punishment under Section 304 Part-II IPC.

11. For the foregoing reasons, the appeal is partly allowed. The conviction and sentence awarded to the Appellant under Section 302 IPC are set aside. Instead thereof the Appellant is convicted under Section 304 Part-II IPC and sentenced to the period already undergone which comes about 7 years and 2 months in this matter. It is stated that the Appellant is on bail. His bail bond shall continue for a period of six months in view of Section 437-A Cr.P.C.

**Sd/-  
Sunil Kumar Sinha  
Judge**

**Sd/-  
R.N. Chandrakar  
Judge**