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HIGH COURT OF MADHYA PRADESH, JABALPUR

Criminal Appeal No.1433/2007

APPELLANT : Shashi

-Versus-

RESPONDENT : State of M.P.

Smt. Durgesh Gupta, Advocate for the appellant.

Shri Prakash Gupta, Panel Lawyer for the respondent/State.

**PRESENT : Hon'ble Shri Justice S.K. Gangele.
Hon'ble Shri Justice Anurag Shrivastava.**

Whether approved for reporting: Yes/No.

J U D G M E N T
(25.04.2017)

Per Anurag Shrivastava, J.

The instant appeal has been filed by the accused/appellant Shashi against the judgment of conviction and order of sentence dated 28.04.2007 passed by Additional Sessions Judge, Lakhanadon, District Seoni in Sessions Case No.100/2000 by which the accused/appellant has been convicted for the offence punishable under Section 302 of IPC and sentence to undergo imprisonment for life and fine of Rs.1000/- with default stipulation.

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2. In brief, the case of prosecution is that the appellant/accused was resident of village Patan. Prior to 4-5 months of incident the accused brought Sohaga Bai and her four years old daughter Monu with him and kept them in his house. Sohaga Bai was living as wife of the accused in his house. On the date of incident 14.12.1998 at about 5:00 P.M. in the evening accused gave Monu to eat a fruit Guava. Monu refused to eat the fruit. Accused forced her to eat it and when again she refused accused became infuriated and started abusing and beating the little girl by fist and stick. Accused brutally kicked the girl and also crushed her body under his feet. Sohaga Bai tried to intervene and save her daughter and came out of the house and started shouting for help. Hearing his cry the witnesses Laxman, Rijham, Kashiram, Bholu Prasad, Sanjay Kumar, Mangal Prasad reached on the spot and found the little girl serious injured and almost unconscious. They asked the accused about the incident, the accused told them that he had beaten the girl because she was not obeying him. After sometime the girl succumbed to injuries. The accused was tied by a rope by the witnesses in the house and Laxman (PW-1) went to Police Station Lakhnadon and lodged the First Information Report (Ex.P/1). The Police registered the offence and also recorded the merge intimation (Ex.P/2) and conducted inquest. A panchanama of dead body of the deceased was prepared and body was sent for postmortem. A wooden stick was seized by which the accused had assaulted the

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deceased. Spot map (P/10) was prepared. In the postmortem it was found that deceased had sustained multiple injuries, her liver was ruptured and she was died of profuse bleeding due to injury of liver. During investigation the police has recorded statement of witnesses and thereafter submitted the charge sheet.

- 3.** On commencement of trial, charges were framed by the trial Court against the accused/appellant for offences under Section 302 IPC. He abjured guilt, thereafter statement of 12 prosecution witnesses were recorded. Accused did not give any evidence in the defence. After completion of trial the trial Court vide impugned judgment found accused/appellant guilty for commission of offence punishable under Section 302 of IPC for murder of girl Monu and sentenced as mentioned hereinabove.
- 4.** Learned counsel for the appellant vehemently argued that the judgment under challenge is erroneous and is passed without appreciating the evidence on record. Further it is argued that the prosecution has failed to prove its case beyond reasonable doubt and in fact the incident which is alleged to have occurred is not proved by cogent evidence by the prosecution, therefore, the conviction of the accused/appellant is contrary to law and deserves to be quashed and set-aside. It is further argued that the deceased was died due to fall from the tree and accused has been implicated falsely due to enmity. There are material contradictions and discrepancies occurred in

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prosecution evidence. Even if the case of prosecution is taken as true then it is not duly proved that the accused had inflicted the injuries to the deceased with intention to kill her. Therefore, the trial Court has wrongly convicted the accused under Section 302 of IPC. At the most accused can be convicted for the offence under Section 323 of IPC.

5. We have considered the rival submission made by both the parties.
6. After perusing the entire record of the case, it is not disputed that at the time of incident the accused/appellant was living with Sohaga Bai (PW-12) and her four years old daughter Monu in his house. Sohaga Bai (PW-12) deposed that on the date of incident she was in the house appellant/accused had brought three Guavas (fruit). She had given half piece of Guava to her daughter Monu. When Monu was eating the fruit accused came there and told her why she was eating Guava, took the fruit from her and gave a slap to girl on her face. When girl started crying the accused got angry and started beating the girl brutally by fist and stick. Accused kicked the girl by his leg also. Sohaga Bai tried to intervene and save the girl and when she could not stop the accused she came out of house and started shouting for help. Hearing her cry the neighbours and other witnesses came on the spot and after knowing the incident they had tied the accused by a rope from the pillar. In cross-examination Sohaga Bai has not made any contradictory statement.

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- 7.** The statement of Sohaga Bai is duly corroborated by witness Laxman (PW-1), Rijham (PW-2), Kashiram (PW-3), Bhola Prasad (PW-4), Sanjay Kumar (PW-5) and Mangal Prasad (PW-9). Laxman (PW-1) in his statement deposed that he was living in neighborhood of the accused. On the date of incident he heard the cry of Sohaga Bai. He went to house of accused. He found the little girl Monu lying on the ground. She was unconscious. Sohaga Bai told him that accused had beaten the girl and killed her. Laxman further deposed that accused was also present there. When he was asked about the incident he told the witness that he had rightly assaulted the girl. At this time, so many persons from the neighborhood and from village had arrived on the spot. The girl has been died. Laxman went to Police Station and lodged FIR (Ex.P/1) and merge intimation (Ex.P/2). The statement of Laxman (PW-1) is duly corroborated by FIR (Ex.P/1).
- 8.** Other witnesses Rijham (PW-2), Kashiram (PW-3), Bhola Prasad (PW-4), Sanjay Kumar (PW-5), Mangal Prasad (PW-9) had also deposed in the same manner as witness Laxman (PW-1) and stated that on hearing the cry of Sohaga Bai they reached into the house of accused and found the girl injured and unconscious lying on the ground. Sohaga Bai told them that accused had assaulted the girl and killed her. Accused had also admitted this and told the witnesses present there that, he had beaten the girl. There

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is no material omission, contradiction or discrepancy found in the statements of above witnesses. They are all independent witnesses and there is no evidence that due to any enmity they are trying to falsely implicate the accused in the offence.

- 9.** Therefore, the trial Court on right appreciation of the evidence arrived at the finding that at the time of incident the appellant/accused had assaulted the little girl.
- 10.** Dr. R.M. Ojha (PW-8) had conducted the postmortem of the dead body of the deceased. In his statement he deposed that on 15.12.1998 in Government Hospital, Lakhanadon he had performed the postmortem of the deceased girl Monu and found following injuries:-
 - i. Contusion 10cm x 4cm on the right side of the back.
 - ii. Contusion 7cm x 1cm on the right buttock (iliac crest).
 - iii. Contusion 5cm x 1cm over middle of left scapula.
 - iv. Contusion 6 ½ cm x 1cm - 1" below third injury.

On internal examination it was found that the liver was ruptured by 6 x 3 cms. There was hemorrhage from liver due to its rupture (laceration). It is opined by the doctor that the injuries are caused by hard and blunt object and the death was result of laceration of liver and hemorrhage. The statement of doctor is corroborated by postmortem report (Ex.P/12).

- 11.** Thus, the statement of prosecution witnesses are also found support from medical evidence, which shows that

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the deceased was died due to beating. From evidence adduced by prosecution, it is found that Suhagabai (PW-12) is eyewitness of the incident who categorically deposed that the appellant/accused had assaulted and beaten her daughter. She told this fact to all the witnesses who came there just after the incident. The statements of witnesses PW-1, PW-2, PW-3, PW-4, PW-5 and PW-9 also show that the accused had admitted before them that he had beaten the girl. Thus, this is extra judicial confession made by the accused to above witnesses just after the incident. It is not possible for a mother to falsely implicate the accused leaving the real offender who had killed her daughter. Thus, the trial Court has rightly held that the deceased girl was died due to injuries inflicted by the appellant/accused.

- 12.** Now the question arises whether the appellant/accused had committed murder of the girl? From the evidence available on record, it is established that at the time of incident, accused asked the little girl to eat the fruit. When girl refused then accused became angry and started beating the girl. The incident occurred on a spur of moment and in the heat of passions without any premeditation. There are only four contusions found on the person of body of deceased and an internal injury of laceration/rupture of leaver. It is possible that the single blow of fist or kick by leg with force might have caused the internal injury of leaver. Accused had no intention to kill the girl, but beating a little girl mercilessly in vital part of her

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body shows that although the accused did not intend to cause death but it can be inferred that accused has intention of causing bodily injuries likely to cause death. Therefore, from the evidence adduced by the prosecution, the alleged act of accused falls under category of culpable homicide, not amounting to murder, which is punishable under Section 304 Part I of IPC. The trial Court has committed error in convicting the appellant/accused under Section 302 of IPC.

- 13.** Thus, the appeal is partly allowed. The conviction and sentence awarded by trial Court under Section 302 of IPC is set aside and the appellant is found guilty and convicted for commission of offence punishable under Section 304 Part I of IPC and sentenced to undergo RI for ten years with fine of Rs.1,000/-, in default of payment of fine of RI for three months.
- 14.** The appellant is in custody since 22.12.2006. The period of custody of the appellant shall be set off under Section 428 of Cr.P.C.

(S.K. Gangele)
Judge

(Anurag Shrivastava)
Judge

Vin**