

**(1958) 10 MP CK 0009**  
**Madhya Pradesh High Court**  
**Case No:** Criminal A. No. 38 of 1958

Bolo (Accused)

APPELLANT

Vs

State

RESPONDENT

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**Date of Decision:** Oct. 17, 1958

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 301, 304, 323, 325, 448

**Citation:** (1959) MPLJ 21

**Hon'ble Judges:** B.K. Chaturvedi, J

**Bench:** Single Bench

**Advocate:** P. Lobo, for the Appellant; M.P. Shrivastava, for State, for the Respondent

**Final Decision:** Allowed

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**Judgement**

B.K. Chaturvedi, J.

The Additional Sessions Judge, Ambikapur, has convicted Appellant Bolo of an offence u/s 304, Part II, I.P.C. and has sentenced him to two years' rigorous imprisonment. He has also convicted the Appellant for offences under Sections 323 and 448, I.P.C. and sentenced him, for these offences, to imprisonment till the rising of the Court. He has preferred this appeal to this Court.

So far as the facts of the case are concerned, Shri P. Lobo, learned Counsel for the Appellant, does not challenge them.

It was on the night of 1st June 1957, at meal time, that the Appellant, who was angry with Runga, husband of Mst. Saguni (P. W. 2), for having kept one of his cousins as his second wife, came to the house and seeing Mst. Saguni chased her with a stick. She ran to the house of her father-in-law and the Appellant with a small stick in his hand followed her. At that time, Mst. Saguni had a small child, Balaram, in her lap. The Appellant gave a blow with the small stick which fell on the head of the infant, Balaram, aged six months, and the other blow caused hurt to Mst. Saguni.

Thereafter, it appears that Balaram, who was injured in the head, died on the next day i.e., on 2nd June 1957 (night).

The body of the deceased infant was sent to Dr. G.P. Shukla (P. W. 11) at the hospital of Ambikapur. The doctor found a comminuted fracture of the right occipitoparietal bone, exposing the membranes, and the medical opinion given was that death was due to shock and haemorrhage as a result of the fracture of the skull bone.

The Appellant denied his responsibility for causing the injury, but he produced no evidence in his defence and his defence has rightly been rejected by the learned Additional Sessions Judge.

On the facts mentioned above, the question before me raised by Shri P. Lobo, learned Counsel for the Appellant is: Whether it is a case u/s 304, Part II, Indian Penal Code? The learned Counsel places reliance on a Division Bench ruling of the Bombay High Court reported in *Chatur Nath v. Emperor* AIR 1920 Bom. 224 where the facts were similar. A woman, in that case, was holding a child in her arms and she intervened unexpectedly in a scuffle between the accused and her husband on a dark night. The accused aimed a blow at the husband with his stick, but it accidentally struck the child and caused his death. It was held, in that case, that inasmuch as the accused did not know that he was hitting a baby and the nature of the blow, taken with reference to the person against whom it was aimed, cannot be taken to indicate the necessary intention or knowledge as to causing grievous hurt, the conviction u/s 325 could not be justified. It was, therefore, observed that the proper conviction, under the circumstances, would be u/s 323, I.P.C. and the maximum sentence under that section was imposed. I think the facts of that case are similar and the principle enunciated therein fully applies to the present case.

In all such cases, the doctrine of "transfer of malice" or "transmigration of motive" is held to be applicable. The doctrine is this, that where a blow aimed at one person alights upon another the offence committed by the assailant is the same as it would have been if the blow had struck the intended victim. On the basis of this doctrine Section 301, Indian Penal Code has been enacted, and the cases cited in "the Law of Crimes" by Ratanlal and Dhirajlal Thakore (Eighteenth Edition), at page 747, can be useful in that connection. But the doctrine can be made applicable to other cases also. The English case, *The Queen v. Latimer* (1886) 17 QBD 359 is important in this respect. The prisoner, in that case, had a belt in his hand and with it he aimed a blow at one Chapple and struck him slightly, the belt, however, bounded off and struck the prosecutrix, who was standing talking to Chapple, in the face, cutting her face open and wounding her severely. The jury found that the blow was unlawful and malicious and that it did in fact wound the woman; but that the striking of her was purely accidental, and not such a consequence of the blow as the prisoner ought to have expected. The prisoner was convicted. It was held unanimously that the conviction was right. Lord Coleridge C.J., observed that it is common knowledge that a man who has an unlawful and malicious intent against another, and, in attempting

to carry it out, injures a third person, is guilty of what the law deems malice against the person injured; because the offender is doing an unlawful act, and has that which the judges call general malice; and that is enough.

In the instant case, the intention of the Appellant was only to cause simple injury to Mst. Saguni, and, therefore, he can be convicted only for an offence u/s 323, Indian Penal Code.

I, therefore, allow this appeal to this extent that so far as the offence of causing death of the infant, Balaram, is concerned, I alter the conviction of the Appellant from one u/s 304 (Part II) to that u/s 323, Indian Penal Code and reduce the sentence to one year's rigorous imprisonment. The Appellant is on bail. I direct him to surrender to his bail and undergo the sentence.