

GAHC010242652023



2024:GAU-AS:8220

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CrI.A./393/2023

MD. SAREJ UDDIN @ CHAREJ UDDIN
S/O LATE ABDUR RAHMAN,
VILL.- HALONGBARI, P.O.- KOTHALMURIGHAT, MOUZA- BIJNI, P.S.-
PATACHARKUCHI, DIST.- BARPETA (EARLIER) NOW BAJALI, ASSAM, PIN-
781318.

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY PUBLIC PROSECUTOR.

2:MD. GAFUR ALI
S/O LATE HAJRAT ALI

VILL.- HALONGBARI
P.O.- KOTHALMURIGHAT
MOUZA- BIJNI
P.S.- PATACHARKUCHI
DIST.- BARPETA (EARLIER) NOW BAJALI
ASSAM
PIN- 781318

For the Appellant : Mr. G. Uddin

.....Advocate.

For the Respondents : Mr. P.S. Lahkar, Addl. P.P.,
Mr. H.A. Ahmed.

.....Advocates.

Date of Hearing : 13.08.2024

Date of Judgment : 20.08.2024

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

Judgment & Order (CAV)

Heard Mr. G. Uddin, learned counsel for the appellant and Mr. P.S. Lahkar, learned Additional Public Prosecutor for the State respondent No. 1. Also heard Mr. H. A Ahmed, learned counsel for the respondent No. 2 (informant).

2. In this appeal, under Section 374(2) of the Code of Criminal Procedure (Cr.P.C.) the appellant, namely, Md. Sarej Uddin @ Charej Uddin has challenged the correctness or otherwise of the judgment and order dated 29.09.2023, passed by the learned Sessions Judge, Bajali, Pathsala in Sessions Case No. 18/2020, arising out of Patacharkuchi P.S. Case No. 513/2020.

3. It is to be noted here that vide impugned judgment and order dated 29.09.2023, the learned Sessions Judge, Bajali, Pathsala ('the trial Court', for short) has convicted the appellant under Section 307, IPC and sentenced him to undergo rigorous imprisonment for a period of five years and also to pay a fine of Rs. 5,000/-, in default, to suffer rigorous imprisonment for three months.

4. The background facts leading to filing of the present appeal are adumbrated herein below:

“Smt. Maleka Begum, the daughter of the informant, namely,

Md. Gafur Ali of Halongbari village got married with Md. Sarej Uddin about twenty-two years back observing Islamic rites and after the marriage, Sarej Uddin used to subject Maleka Begum to both physical mental cruelty, but, in order to save her marriage, she continued to tolerate the same. But, Sarej Uddin, with the help of Tara Miya, Mohor Ali and Nur Mohammad intensified the torture upon the victim Maleka Begum and in the month of July, 2015, they attempted to kill Maleka Begum by means of a sharp object and the aforesaid case was resolved after negotiation and after some days, again on being instigated by Mozibar Rahman and Moyen Ali, Sarej Uddin started subjecting her to both physical and mental torture. Thereafter, on 30.10.2020 at about 6 p.m., in a planned manner with the help of Tara Miya, Mohor Ali, Nur Mohammad, Mozibar Rahman and Moyen Ali, Sarej Uddin assaulted Maleka Begum over her head, neck, back and hand by means of an Axe and injured her seriously. Thereafter, her family members got her admitted at Salbari Government Hospital and thereafter at Barpeta Medical College and Hospital. Stating, inter alia, amongst others, Md. Gafur Ali/respondent No. 2 lodged one FIR with the In-Charge, Dhumarpathar Police Outpost on 01.11.2020. The In-Charge, Dhumarpathar Police Outpost then recorded a G.D. Entry, being G.D. Entry No. 4 dated 01.11.2020 and forwarded the FIR to the Officer In-Charge, Patacharkuchi P.S. for registering a case. The Officer In-Charge, Patacharkuchi P.S., on receipt of the FIR, registered a case, being Patacharkuchi P.S. Case No. 513/2020, under Sections 498A/326/307, IPC and

endorsed ASI Jalal Uddin to investigate the case. The Investigating Officer ('I.O.', for short) then visited the place of occurrence, examined the witnesses, prepared a sketch map of the place of the occurrence, got the victim examined by doctor, collected the report, arrested the accused and forwarded him to the Court and then on completion of investigation, the I.O. laid charge-sheet, being charge-sheet No. 293/2020 dated 30.11.2020 against the accused/appellant Md. Sarej Uddin to stand trial in the Court under Sections 498A/324/307, IPC before the Court of learned Sub-Divisional Judicial Magistrate (M), Bajali, Pathsala. Thereafter, the learned Sub-Divisional Judicial Magistrate (M), Bajali, Pathsala secured the attendance of the appellant and complied with provisions of Section 207, Cr.P.C. and having found the case under Section 307, IPC, triable exclusively by the Court of Sessions, committed the case to the learned Sessions Judge, Bajali, Pathsala. On appearance of the accused/appellant before Court of learned Sessions Judge, Bajali, Pathsala, the learned Sessions Judge after hearing learned Advocates of both the parties, had framed charge against the accused/appellant under Sections 498A/324/307, IPC and read and explained over the same to the accused/appellant to which the accused/appellant pleaded not guilty and claimed to be tried. The prosecution side, thereafter, examined as many as seven witnesses including the Medical Officer and the I.O. and also exhibited seven documents and after closing the prosecution evidence, the learned Sessions Judge had examined the accused/appellant under Section 313,

Cr.P.C. and thereafter, hearing learned Advocates of both the parties, found the charge under Section 307, IPC established against the accused/appellant, beyond all reasonable doubt and convicted and sentenced him as aforesaid.”

5. Being highly aggrieved, the appellant preferred this appeal on the following grounds:

- (i) That, the learned trial Court committed grave errors in law, as well as in facts, in convicting the appellant and sentencing him to rigorous imprisonment for five years and to pay a fine of Rs. 5,000/-, with default stipulation.
- (ii) That, the learned trial Court failed to make any sincere efforts to scrutinize the entire materials on record and arrived at a perverse finding and conclusion.
- (iii) That, the learned trial Court had failed to go through the entire statements of the witnesses under Section 161, Cr.P.C. and had the same been perused, then the finding would have been different.
- (iv) That, the learned trial Court had failed to consider the fact that the evidence of the victim was not corroborated by the medical evidence and also by her statement, recorded under Section 164, Cr.P.C. as well as evidence of other prosecution witnesses.
- (v) That, the Medical Officer, whom the prosecution side has examined as P.W.6, had stated that the nature of injuries was

simple and the type of weapon could not be determined as the injuries were already stitched, meaning thereby that no clear determination of the type of injuries sustained by the victim as well as the weapon used and as such, no offence under Section 307, IPC can be said to be made out.

- (vi) That, the learned trial Court had failed to consider that the dispute between the victim and the accused/appellant is matrimonial dispute and there was no intention on the part of the accused/appellant to commit murder of his wife and as such, conviction of the appellant under Section 307, IPC is not sustainable.
- (vii) That, the learned trial Court had also failed to consider that the injuries sustained by the victim were simple in nature and as such, Section 307, IPC is not attracted herein this case.
- (viii) That, there is no independent witness to the occurrence and besides, there are many contradictions in the evidence of the witness for which no reliance can be placed upon them.
- (ix) That, the learned trial Court had failed to scrutinize the entire materials placed on record dispassionately and meticulously and arrived at an erroneous finding and therefore, it is contended to set aside the impugned judgment and order and to allow the appeal.

6. Mr. G. Uddin, learned counsel for the appellant submits that the accused/appellant is the husband of the victim and prior to the occurrence,

there was an altercation between them, and that the injuries sustained by the victim are simple in nature and the weapon of offence also could not be ascertained, and that there were many contradictions in the version of the prosecution witnesses, and the learned trial Court also failed to consider the provision of Section 4 of the Probation of Offenders Act, 1958 ('the Act of 1958', for short) and failed to extend the benefit prescribed therein to the present accused/appellant, and that there was provocation on the part of the victim, for which the appellant had assaulted her and as such, no offence under Section 307, IPC can be said to be made out and therefore, Mr. Uddin has contended to allow this appeal. Mr. Uddin also submits that the learned trial court has not extended the benefit of Section 4 of the Probation of Offenders Act and the grounds assigned for the same is not at all satisfactory, and therefore, Mr. Uddin contended that the benefit of the said provision may be extended to the accused. Alternatively, Mr. Uddin submits that in the event of upholding the conviction of the appellant, the sentence may be modified to a lesser extent as in some cases, this Court has sentenced the accused of an offence under Section 307 IPC, for one year, sometimes for two years. Mr. Uddin has referred following case laws in support of his submission:-

- (i) Manoj Das vs. State of Assam reported in 2018 (1) GLT 66;**
- (ii) Lakhvir Singh and others vs. The State of Punjab & Anr. reported in (2021) 2 SCC 763;**
- (iii) Ishar Das vs. The State of Punjab reported in (1973) 2 SCC 65;**
- (iv) Sivamoni and Anr vs. State represented by Inspector of Police, Vellor reported in (2023) SC 1180;**

7. Per contra, Mr. P.S. Lahkar, learned Additional Public Prosecutor has supported the impugned judgment and order, dated 29.09.2023, so passed by the learned trial Court. Mr. Lahkar submits that the evidence of the victim woman is supported by the medical evidence and also by two eyewitnesses and that the injuries sustained by the victim were caused by an Axe which was seized here in this case by police during investigation and the seizure list was exhibited as Ext.2 and the Axe as Material Ext. A, and the antecedent of the appellant is also not clean as another case was lodged against him by his wife, which was compromised between them later on, and that the learned trial Court had rightly refused to extend the benefit of Section 4 of the Probation of Offenders Act, 1958, and therefore, Mr. Lahkar has contended to uphold the impugned judgment and order passed by the learned trial Court. Further, Mr. Lahkar has referred the following decision in support of his submission:-

**(i) State of Madhya Pradesh vs. Kanha @ Omprakash
reported in (2019) 3 SCC 605;**

8. On the other hand, Mr. H.A. Ahmed, learned counsel for the victim/respondent No. 2 has also supported the impugned judgment and order passed by the learned trial Court and adopted the submissions, so advanced by Mr. Lahkar, learned Additional Public Prosecutor.

9. Having heard the submission of learned Advocates of both the parties, I have carefully gone through the memo of appeal and the grounds mentioned therein and also gone through the record of the learned trial Court and the impugned judgment and order, dated 29.09.2023, so passed by the learned trial Court.

10. The record of the learned trial Court reveals that the learned trial court had framed charges against the accused/appellant under Sections 498A/324/307, IPC. And at the end of the trial, convicted the appellant under Section 307, IPC and acquitted him of the charge under Section 498A, IPC. But, the learned trial Court had not recorded any finding in respect of the charge under Section 324, IPC in the impugned judgment and order, for whatever reason not available on the record.

11. That, perusal of the record of the learned trial Court reveals that the prosecution side, in order to bring home the charges against the accused/appellant had examined following witnesses:-

- (i) Mustt. Maleka Begum (the victim) as P.W.1,
- (ii) Gafur Ali as P.W.2,
- (iii) Mirjan Ali as P.W.3,
- (iv) Sahadat Ali as P.W.4,
- (v) Shabjan Khatun as P.W.5,
- (vi) The Medical Officer, Dr. Soleman Khan as P.W.6,
- (vii) The I.O. Jalal Uddin Ahmed as P.W.7.

11.1. Further, the record of the learned trial court reveals that the prosecution side has exhibited following documents:-

- (i) The Ejahar as Ext.1,
- (ii) The seizure list as Ext.2,
- (iii) The statement of witness Mirjan Ali as Ext.3,
- (iv) The statement of witness Shabjan Khatun as Ext.P-4,
- (v) The medico legal report of the victim as Ext.P-5,

- (vi) The sketch map as Ext.P-6, and
- (vii) The charge-sheet as Ext.P-7.
- (viii) The 'Axe' as Material Exhibit-A.

12. I have carefully gone through the evidence of the prosecution witnesses and the exhibits Ext.1 to Ext.P-7. The FIR, (Ext.1), reveals that the occurrence took place on 30.10.2020, at about 6 p.m. in the evening in the house of the accused/appellant, situated at Halongbari village. P.W.1 is the victim Maleka Begum. She is the wife of the accused/appellant. Her evidence reveals that the occurrence took place about four months back. However, she had not whispered any word about the date and time of occurrence. P.W.2, Md. Gafur Ali, on the otherhand, deposed that the occurrence took place on 30.10.2020. P.W.3 Mirjan Ali is the son of the victim as well as accused/appellant. His evidence reveals that the occurrence took place on 30.10.2020; at about 6 p.m. in his house. P.W.4, Sahadat Ali also testified that the occurrence took place on 30.10.2020, at about 6.30-7 p.m., in the house of the accused/appellant. P.W.5 Shabjan Khatun, is the daughter of the victim as well as accused/appellant. Her evidence also reveals that the occurrence took place about two years back at about 6:30-7 p.m. in her house. P.W.7 is the I.O. of this case and his evidence reveals that he had received the FIR on 01.11.2020, upon which he registered Dhumarpathar O.P. G.D. Entry No. 4, dated 01.11.2020 and forwarded the same to the Officer In-Charge, Patacharkuchi P.S. for registration of a case. Thus, it appears that the occurrence took place on 30.10.2020, at about 6-6:30/7 p.m. in the house of the accused/appellant situated at Halongbari village. It is to be noted here that the accused/appellant has not disputed the date, time and place of occurrence.

13. The evidence of P.W.1 (victim) reveals that she got married with the accused/appellant about fifteen years back and they were blessed with three children, namely, Mirjan Ali (P.W.3), Sabjan Khatun (P.W.5) and Meherun Ali. Her evidence also reveals that after the marriage, the accused/appellant subjected her to both physical and mental torture as she was illiterate and before this case also, she had earlier lodged another case, about 2/3 years back, against the accused/appellant, for subjecting her to physical torture. But, the same was compromised between them. Her evidence also reveals that about four months back, an altercation took place between her and her husband for some household matters and then, the accused/appellant had attacked her with an Axe and assaulted over her head, shoulder, forehead and backside of her head and as a result, she fell down on the ground and became senseless and she had bleeding from the injuries. She had regained her sense on the next day of the incident at Barpeta Medical College and Hospital and she got stitches on her neck, head and forehead.

14. The medical evidence also corroborated her evidence in respect of the injuries sustained by her. The prosecution side had examined the Medical Officer, Dr. Soleman Khan of Fakaruddin Ali Ahmed Medical College and Hospital (FAAMCH), Barpeta as P.W.6. His evidence reveals that on 30.10.2020, at about 10:59 p.m., Dr. Dhrubajyoti Das had attended the victim Maleka Begum and thereafter, on police requisition, he had prepared the medical report on the basis of the medical register. His evidence also reveals that following injuries were found on the person of the victim:-

“Alleged history of physical assault at around 7.00 p.m. on 30.10.2020.

There was loss of consciousness. There was no ENT bleeding and vomiting.

On local examination :-

There was pre-stitched wound on frontal region 4 cm and on occipital region 3 cm.

There was another pre-stitched wound on right scapular region of size 8 cm.

There was swelling and tenderness on right forearm.

As per report, the nature of injury was simple.

Type of weapon could not be determined as the injury was stitched.”

14.1. He had confirmed Ext.P-5, the medico legal report prepared by him. A careful perusal of the report, Ext.P-5, and the evidence of P.W.6, reveals that the same also lends unstinting support to the evidence of the victim (P.W.1) in respect of the injuries sustained by her.

15. The accused/appellant had cross-examined the P.W.1 and the Doctor (P.W.6). It is elicited in cross-examination of P.W.1 that she had not remembered the number of earlier case lodged by her. She had denied the suggestions that no altercation took place between her and her husband and that the accused/appellant did not attack her with an Axe and that she had deposed falsely against the accused/appellant. Thus, probative value of the evidence of P.W.1 and P.W.6 remained unshakened in cross-examination as nothing tangible could be elicited.

16. These suggestions so put to her, to the considered opinion of this court,

had failed to weaken any part of her evidence. It is to be noted here that she is the victim of assault and being an injured witness, her evidence is in much higher pedestal. It is to be noted here that while dealing with the evidence of injured witness Hon'ble Supreme Court in the case of **Balu Sudam Khalde v. State of Maharashtra 2023 SCC OnLine SC 355**, has summed up the principles, which are to be kept in mind when appreciating the evidence of an injured eye-witness as under:-

“26. When the evidence of an injured eye-witness is to be appreciated, the under-noted legal principles enunciated by the Courts are required to be kept in mind:

- (a) The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.
- (b) Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.
- (c) The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.
- (d) The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.
- (e) If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the

evidence of injured, but not the whole evidence.

(f) The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded.”

17. Thus, having appreciated and analyzed the evidence of the victim, P.W.1, keeping in mind afore said principles, I find no ground to disbelieve her. Her presence at the place of occurrence, at the relevant time cannot be doubted. No material contradiction in her evidence is brought on record and proved through the I.O. It is established that she had suffered as many as four wounds. One wound on frontal region, measuring 4 cm and another wound on occipital region, measuring 3 cm and another pre-stitched wound on right scapular region of measuring 8 cm. Besides, she also sustained swelling and tenderness on her right forearm. All these injuries, according to P.W.6, are simple in nature, but the nature of weapon could not be ascertained as the injuries were pre-stitched. And according to the victim, the same were caused by none other than by her husband, the accused/appellant with an 'Axe'.

18. The evidence of P.W.1 finds corroboration from two eye witnesses i.e. P.W.3, Shri Mirjan Ali, P.W.5, Mustt. Sabjan Khatun. These two witnesses are the son and daughter respectively of the accused/appellant as well as of the victim. The evidence of P.W.3 reveals that on 30.10.2020, at about 6 pm, he was sitting in the verandah with his mother (victim) and his younger brother Meher Ali. On that day, a quarrel took place between his father and mother in connection with some household matters. Then, his father had taken out an Axe and attacked his mother on her head, neck and hands. And as a result of such attack his

mother sustained injuries. He then interfered his father in assaulting his mother. But, his father tried to attack him also. However, he could not do so and thereafter, he attempted to attack his sister Sabjan Khatun, but, he could not succeed as he caught hold of the 'Axe'. Thereafter, his father fled away. Then, he took his mother to Salbari PHC. There was bleeding from the cut injuries over her head and neck. His evidence also reveals that his mother was admitted at Barpeta Medical College and Hospital and she was released on the next day evening. His evidence also reveals that then police came and seized the Axe preparing seizure list and took his signature as witness over the same. He confirmed the Axe Material Ext.A, in the Court. His evidence also reveals that police got his statement- Ext.3 recorded by a Magistrate at the time of investigation.

19. The evidence of P.W.5, Mustt. Sabjan Khatun, reveals that about 2 years back, at about 6:30/7 p.m., while she was in her house, an altercation between her father and mother was going on. Then, hearing a sound, she came out and she found her father coming out of the house and administering a blow on the head, forehead, neck and hand of her mother with an Axe. Her evidence also reveals that her father also tried to administer blow to her by the Axe, and then her brother Mirjan Ali saved her mother. Thereafter, her father fled away. She had seen oozing out of blood from the hand of her mother and thereafter, her mother was taken to Salbari PHC in a Tempo. Her evidence also reveals that in the year 2015 also, her father assaulted her mother by means of a sharp object. She has confirmed her statement under Section 164, Cr.P.C., Ext.P-4 in the court.

20. Thus, it appears that the evidence of P.W.3 and P.W.5 also corroborated the

version of the victim (P.W.1) in material particulars. The accused/appellant had cross-examined both the witnesses at length. But, probative value of their evidence could not be shaken in their cross-examination except eliciting that there was a quarrel between their father and mother and their father rebuked her mother with abusive words and her mother also replied back. But, this fact, to the considered opinion of this court could not weaken the evidence of the P.W.3 and 5.

21. P.W.2, Md. Gafur Ali is the father of the victim. His evidence reveals that on 30.10.2020, while he was in Howly, his elder son rang him up and informed him that the victim was brought to Barpeta Medical and she was attacked by the accused/appellant with an Axe and injured severely. Next day, he met the victim in his house and he saw injuries over her head, hand, shoulder and forehead. His evidence also reveals that when asked, the victim told him that the accused/appellant assaulter her with an Axe on various parts of her body and thereafter, he lodged the FIR (Ext.1) with the police out post. The FIR, (Ext.1), is also consistent with his version. His evidence also reveals that police seized the Axe, by preparing a seizure list, Ext.2 and he identified Material Ext. A, the seized Axe in the Court. It is elicited in his cross-examination that he did not know from where the police seized the Axe (Material Ext. A) and he did not know the contents of the Ext.2. The evidence of P.W.2 also remained unshaken in the cross-examination. Though he had not seen the incident, yet, he heard it from the victim, P.W.1, who happened to be his own daughter. Besides, he had seen injuries on the person of his daughter. Thus, this witness also lends corroboration to the version of the victim.

22. P.W.4, Md. Sahadat Ali is a neighbor of the accused/appellant as well as of

the victim. He had not seen the occurrence. His evidence reveals that on 30.10.2020, at about 6:30/7 p.m., while he was proceeding towards riverbank, through the road, he heard hulla in the house of accused/appellant Sarej Uddin. Then, he saw Sarej Uddin running and he was being followed by his son Mirjan Ali. Then, he caught hold of Mirjan Ali and then Mirjan Ali told him that his father assaulted his mother and after sometime, he also saw the mother of Mirjan Ali, with blood oozing out from her head and neck and also noticed blood stain all over her body. Then, the mother of Mirjan Ali was taken to the Hospital. His, evidence remained un-impeached in cross-examination.

23. Thus, this witness also, though not an eyewitness, lends corroboration to the version of P.W.1, 3, 5 and 2 in respect of the injuries sustained by the victim. He had seen oozing out of blood from injuries all over her body.

24. P.W.7 is I.O. Md. Jalal Uddin Ahmed, who had conducted investigation of the case and submitted charge-sheet Ext.P7. His evidence reveals that during investigation, he had visited the place of occurrence, examined the witnesses and prepared sketch map (Ext.P6) and also he seized the Material Ext.A, vide seizure list Ext.2. His evidence also reveals that while he went to the place of occurrence, accused Sarej Uddin fled away and he could not be found out and he surrendered on 04.11.2020 before the SDPO, Bajali. He then got the statement of the witnesses recorded under Section 164, Cr.P.C. in the court and collected the medical report of the victim and submitted charge-sheet before the learned trial Court. It is elicited in his cross-examination that he seized the Axe, Material Ext.A on 02.11.2020, vide Ext.2, after four days of occurrence, but, he did not send the Axe for forensic examination.

25. Thus, the evidence of the victim, the medical evidence and the medical

report Ext.P5 and evidence of P.W.3 and P.W.5 goes a long way to establish beyond all reasonable doubt that the victim (P.W.1) suffered three simple injuries on her person caused by an Axe (Material Ext.A) a sharp cutting object and the same were caused by none other than the accused/appellant.

26. Now, what left to be seen is whether the evidence discussed above are sufficient to establish the ingredients of the charge under Section 307 IPC or not. Section 307 IPC reads as under:

“307. Attempt to murder.—Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; *and if hurt is caused to any person by such act,* the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

Attempts by life convicts.—When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death.

Illustrations

(a) A shoots at Z with intention to kill him, under such circumstances that, if death ensued, A would be guilty of murder. A is liable to punishment under this section.

(b) A, with the intention of causing the death of a child of tender years, exposes it

in a desert place. A has committed the offence defined by this section, though the death of the child does not ensue.

(c) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section, and, if by such firing he wounds Z, he is liable to the punishment provided by the latter part of the first paragraph of this section.

(d) A, intending to murder Z, by poison, purchases poison and mixes the same with food which remains in A's keeping; A has not yet committed the offence in this section. A places the food on Z's table or delivers it to Z's servants to place it on Z's table. A has committed the offence defined in this section.”

27. The first part of Section 307 refers to “an act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder”. The second part of Section 307, which carries a heavier punishment, refers to “hurt” caused in pursuance of such an “act”.

28. While interpreting Section 307 IPC, in **State of Maharashtra vs. Balram Bama Patil**, reported in (1983) 2 SCC 28, Hon’ble Supreme Court has held that it is not necessary that a bodily injury, sufficient under normal circumstances to cause death, should have been inflicted in the following words:

“9. ... To justify a conviction under this section it is not essential that bodily injury capable of causing death should have been inflicted. Although

the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in this section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.”

29. Thereafter, in the case of *State of M.P. v. Saleem* reported in (2005)

5 SCC 554 Hon'ble Supreme Court has held that:-

“13. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. The section makes a distinction between the act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, an accused

charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt.”

30. In the case of *Jage Ram v. State of Haryana*, reported in (2015) 11 SCC 366, Hon’ble Supreme Court has held that to establish the commission of an offence under Section 307 IPC, it is not essential that a fatal injury, capable of causing death, should have been inflicted:

“12. For the purpose of conviction under Section 307 IPC, the prosecution has to establish (i) the intention to commit murder; and (ii) the act done by the accused. The burden is on the prosecution that the accused had attempted to commit the murder of the prosecution witness. Whether the accused person intended to commit murder of another person would depend upon the facts and circumstances of each case. To justify a conviction under Section 307 IPC, it is not essential that fatal injury capable of causing death should have been caused. Although the nature of injury actually caused may be of assistance in coming to a finding as to the intention of the accused, such intention may also be adduced from other circumstances. The intention of the accused is to be gathered from the circumstances like the nature of the weapon used, words used by the accused at the time of the incident, motive of the accused, parts of the body where the injury was caused and the nature of injury and severity of the blows given, etc.”

31. The legal proposition, which can be crystallized from the above discussion, is that:-

- (i) Proof of grievous or life-threatening hurt is not a sine qua non for the offence under Section 307, IPC.
- (ii) The intention of the accused can be ascertained from the actual injury, if any, as well as from surrounding circumstances.
- (iii) The nature of the weapon used and the severity of the blows inflicted, among other things, can be considered to infer intent.

32. Now, advertent to the facts here in this case, I find that the injuries sustained by the victim, P.W.1, are not grievous in nature. But, the same are on the vital part of the body i.e. the head. The weapon used is an Axe. Given the nature of weapon used and the injuries sustained by the victim and the place of injury, i.e. on her head, which is one of the vital parts of the body, and also in the given facts and circumstances on the record, especially the loss of consciousness by the victim, as revealed by the medical report, Ext.P5 and the medical evidence, it can logically be concluded that the accused/appellant had both knowledge and intention to cause such injuries to the victim, which, if caused death of the victim, he would have been guilty of murder. Thus, the basic requirements of charge under Section 307, IPC appears to be satisfied here in this case. That being so, there is no substantial and compelling reason to interfere with the finding of the learned trial Court, who had rightly arrived at the finding of guilt of the accused/appellant.

33. It also appears that the accused has the antecedent of assaulting the victim in the year 2015. This fact is apparent from the evidence of the victim

and her son P.W.3 and her daughter, P.W.5 and her father P.W.2. Given the nature of accusation and the place of injury, which is a vital part of the body, this court is of the view that the learned trial Court had rightly declined to extend the benefit of the Probation of Offenders Act, 1958 to the accused/appellant. I have considered the submission of Mr. Uddin, the learned counsel for the accused/appellant in this regard and also gone through the case laws referred by him and I find that the ratio laid down in the case of **Lakhvir Singh (supra)** and in **Ishar Das (supra)** would be of no assistance to him. In the case of **Lakhvir Singh (supra)** Hon'ble Supreme Court has considered the redeeming feature of the case i.e. the injured had effected a compromise with the accused and forgiven them and that the accused were under the age of 19 and 21 on the date of offence and that there was no adverse report against them about their conduct in jail and they have served out half of the sentence awarded. And **Ishar Das (supra)** was a case under Section 7 read with section 16(1)(a)(i) of the Prevention of Food Adulteration Act, where minimum sentence is six months imprisonment and fine of Rs.1000/- only .

34. The offence herein this case is punishable with imprisonment of either description for a term, which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as mentioned above. Indisputably, herein this case hurt was caused to the victim. That being so the benefit of Section 4 of the Probation of the Offenders Act cannot be extended to the accused/appellant. In holding so this court gain sustenance from a decision of Hon'ble Supreme Court in **Jugal Kishore Prasad vs. State of Bihar** reported in (1972) 2 SCC 633.

35. I have also considered the other submission of Mr. Uddin, learned counsel for the accused/appellant in respect of reducing the quantum of sentence, who submits that the matter is between the husband and wife and injuries are not so serious in nature and also there was provocation on the part of the victim and as such, the accused/appellant deserve some sort of leniency. However, Mr. P.S. Lahkar, learned Additional Public Prosecutor has vehemently opposed the same and submits that the learned trial Court has rightly sentenced the accused/appellant to suffer imprisonment for 5 years and also to pay a fine of Rs. 5,000/-.

36. Having adjudged the submission of learned Advocates of both sides, in light of the given facts and circumstances on record, I find sufficient force in the submission of Mr. Lahkar, learned Additional Public Prosecutor. Drawing up a balance sheet of aggravating as well as mitigating factors, this court is of the view that the sentence, so handed down by the learned trial Court appears to be just and reasonable and commensurate with the nature and gravity of the offence and the same warrants no interference of this Court, and accordingly, this appeal stands dismissed.

37. In terms of above, this criminal appeal stands disposed of. Send down the record of the learned trial court with a copy of this judgment and order.

JUDGE

Comparing Assistant