

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 1239 of 1997

- Lakhanlal, aged 18 years, S/o. Jeevrakhan, R/o Sheetla-Para, Ram Nagar, P.S. Ganj, District – Raipur (C.G.)

---- Appellant

Versus

- State of Madhya Pradesh, Through : S.H.O., P.S. Ganj, District – Raipur (M.P.) (Now C.G.)

---- Respondent

For Appellant	:	Mr. Y.C. Sharma, Advocate
For Respondent	:	Mr. Suryakant Mishra, Panel Lawyer

Hon'ble Shri Justice Inder Singh Uboweja

CAV JUDGMENT

Delivered on : 08-09-2015

- 1) The appellant has preferred this appeal assailing the judgment of conviction and order of sentence dated 13.06.1997 passed by the VIIth Additional Sessions Judge, Raipur in Sessions Trial No.391 of 1996, whereby and whereunder the trial Court after holding the appellant guilty for attempt to murder of Dharam, convicted him under Section 307 of the IPC and sentenced him to undergo R.I. for 7 years and to pay fine of Rs.1,000/-, in default of payment of fine to undergo additional S.I. for 6 months.
- 2) Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted and sentenced the appellant as aforementioned and thereby committed illegality.

- 3) As per case of prosecution, on 23.06.1996 at about 9.45 p.m., Narayan Giri (PW-8) was present in the house, at that time, Leela Bai (PW-9), mother of injured Dharam, came and told him that appellant Lakhan had inflicted blows by Barber Razor (Ustara) on Dharam's throat. He went to Dharam's house and found him in a pool of blood. He immediately rushed for medical aid and reported the incident at Police Station, Ganj, District – Raipur. Firstly, police had written the Rojnamcha Sanha, thereafter, lodged FIR vide Ex.P-9.
- 4) Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short, 'the Code'). After completion of investigation, charge sheet was filed before the Court of Additional Chief Judicial Magistrate, Raipur, who in turn committed the case to the Court of Sessions Judge, from where learned VIIth Additional Sessions Judge received the case on transfer for trial.
- 5) In course of trial, the prosecution to bring home the charges, examined as many as sixteen witnesses to support its case. The accused person in his statement recorded under Section 313 of Cr.P.C., denied his involvement in the occurrence and pleaded innocence and false implication in crime in question. The defence in order to establish its plea examined one witness namely Puranlal (DW-1).

- 6) After providing opportunity of hearing to the parties, learned VIIth Additional Sessions Judge, Raipur, on appreciation of evidence brought on record came to hold that the prosecution had been able to establish the charges against the accused and on that basis convicted and imposed sentence as has been stated herein-before. Being aggrieved by the aforesaid judgment of conviction and order of sentence, the accused/appellant has preferred the instant appeal.
- 7) I have heard learned counsel for both the parties and perused the judgment impugned and record of trial Court.
- 8) Learned counsel appearing for the appellant has not disputed the incident, injuries and weapon used by the appellant. His submission is that the injuries sustained by Dharam are simple in nature which were not fatal for life. Learned Additional Sessions Judge has committed grave error and illegality by holding conviction under Section 307 of the IPC. He further submits that even if the entire evidence is considered on its face value, then the case would fall within the ambit of Section 324 of the IPC. Therefore, judgment of Additional Sessions Judge for convicting and sentencing the appellant under Section 307 of the IPC be altered to Section 324 of the IPC.
- 9) *Per contra*, learned State counsel opposing the appeal submits that ample evidence is available on record to prove the guilt of the appellant for commission of offence for attempt to

murder of Dharam by the appellant. Therefore, no interference is required by this Court.

- 10) In order to appreciate the arguments advanced on behalf of the parties, I have to examine the evidence adduced on behalf of the parties.
- 11) In the present case, MLC was done by Dr. Dharendra Sao (PW-1) who has stated that he has not mentioned in his examination report (Ex.P-1) about the nature of injuries because blood was oozing from the injuries. Operation of Dharam was done by Dr. Kalpana Ramkete (PW-14). She has stated that all the injuries were in superficial condition and were not so serious. She has proved her report vide Ex.P-13C. In her cross-examination, she has clearly stated that injuries were not in such a condition but, if timely treatment would not have been given to Dharam, then he may die. Injuries were not sufficient to cause death in the ordinary course of nature.
- 12) Considering all the facts and circumstances of the case, in particular, the evidence of medical report in which it has been mentioned that the injuries sustained by the victim were simple in nature and were not fatal for life, I am compelled to hold that the learned trial Judge has erroneously convicted the accused - appellant for the alleged offence under Section 307 of the IPC and has fallen into error, without re-appreciating the material on record.

- 13) Resultantly, the appeal is partly allowed. Conviction of the appellant under Section 307 of the IPC is altered to Section 324 of the IPC and the jail sentence awarded to the appellant is reduced to the period already undergone by him.
- 14) It is stated that the appellant is on bail, his bail bond shall continue for a further period of 6 months in view of Section 437A of the Code.

Sd/-
(I.S.Uboweja)
JUDGE