

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 111 of 2001

- Rajau @ Khoksi, S/o Saharam, aged 45 years resident of village Damuru, P.S. & Tahsil Balodabazar, District – Raipur (C.G.)

--- Appellant

Versus

- State of Chhattisgarh, through P.S. Baloda Bazar

--- Respondent

For Appellant	:	Shri Goutam Khetrapal, Advocate
For Respondent / State	:	Shri Mahesh Mishra, Panel Lawyer

Hon'ble Shri Justice Inder Singh Uboweja

CAV JUDGMENT

Passed on : 10/07/2015

- 1) Challenge in this appeal is to the judgment of conviction & order of sentence dated 17.01.2001 passed by the 1st Additional Sessions Judge, Baloda Bazar in Sessions Trial No.217 of 2000, whereby and whereunder, the trial Court, after holding the appellant guilty for insulting the modesty of a woman and for attempting to commit murder, convicted him under Sections 509 and 307 of the IPC and sentenced him to undergo R.I. for one month and to undergo R.I. for four years & fine of Rs.1,000/-, in default, additional R.I. for three months.
- 2) Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted & sentenced the appellant as aforementioned and thereby committed illegality.
- 3) As per case of prosecution, on 25.04.2000 at about 10.00 a.m., near the field of Damru, accused offered Rs. 20/- to complainant Jambai for physical relation with him, which she refused, then the

accused assaulted by axe on her face, on which complainant was frightened and started running due to which she was unable to control her feet and fell in the pond and narrated the incident to one Gendram and some other villagers, who were standing there. After sometime, her husband came with Krishna Kumar and Budhram Sahu. She also narrated the incident to them, thereafter, she lodged FIR (Ex.P-14) at police station, Baloda Bazar.

- 4) During the course of investigation, complainant Jambai was sent for medical examination to Government Hospital, Baloda Bazar, where she was examined and treated by Dr. Ramsewak Joshi (PW-9). Investigating Officer seized plain soil, bloodstained soil and one bloodstained stick from the spot vide Ex.P-15 and also seized one hod (झड़वा) from the spot vide Ex.P-16. Bloodstained blouse of the complainant was seized at her instance vide Ex.P-17. Spot map was prepared vide Ex.P-18. One pair of *chappal* was seized from the spot vide Ex.P-1. Accused was taken into custody, he made disclosure statement of axe vide Ex.P-2, same was recovered at the instance of the appellant vide Ex.P-3. Seized articles were sent for chemical examination to FSL, Raipur, report of which had been received vide Ex.P-20.
- 5) Statements of the witnesses were recorded under Section 161 of the Cr.P.C., thereafter, offence punishable under Sections 307, 354 & 325 of the IPC was registered and accused was arrested. Finally charge-sheet was filed and Court has converted the charges under Sections 307 and 509 of the IPC against the accused.

- 6) In order to prove the guilt of the accused/appellant, the prosecution examined as many as ten witnesses. Statement of the accused/appellant was recorded under Section 313 of the Code, in which he denied the circumstances appearing against him and pleaded innocence and false implication in the crime in question.
- 7) After providing an opportunity of hearing to the parties, the trial Court convicted & sentenced the appellant as aforementioned.
- 8) I have heard learned counsel for the parties, perused the judgment impugned and record of the trial Court.
- 9) Learned counsel for the appellant submits that he is not disputing the incident and injuries found over the body of complainant Jambai. He further submits that having regard to the facts and circumstances of the case, especially, the background that the accused and the complainant had no animus intense and the occurrence which had taken place at the sudden impulsive and the injuries were found on the face of complainant, face may be vital region but face is not a vital organ and injuries were not so serious which were not of dangerous innature and those injuries were not sufficient causing death. In the ordinary course of nature, according to him, case may be considered for under Section 326 & 509 of the IPC and also submits that conviction may be considered and reduced the sentence to the period already undergone. He relied in the following case laws **Nand Singh vs. State of Punjab** (2007 CriLJ 716), **Neelam Bahal & Anr. vs. State of Uttarakhand** [2010 (2) SCC 229], **Shanti Devi vs. State of Madhya Pradesh** [II (2001) DMC 417], **Sarju Prasad vs. State of Bihar** (AIR 1965 SC 843) and submits that

looking to the nature of injuries in all the above citations Hon'ble respective Courts have altered the conviction and reduced the sentences.

- 10) On the other hand, learned Panel Lawyer for the State opposed these arguments and supported the judgment passed by the First Additional Sessions Judge, Baloda Bazar.
- 11) In order to appreciate the arguments advanced on behalf of the parties, I have to examine the evidence adduced on behalf of the parties.
- 12) I have carefully examined the evidence of prosecution witnesses and medical reports.
- 13) Dr. Ram Sewak Joshi (PW-9) has stated that he has examined complainant Jambai on 25.04.2000 and found four injuries mentioned as below :
 - (i) Incised wound of 4 x 1 cm over left side of cheek;
 - (ii) Incised wound of 3 x 1 x 1 cm over cheek;
 - (iii) Lacerated wound of $\frac{1}{2}$ x $\frac{1}{4}$ x $\frac{1}{4}$ cm over cheek; and
 - (iv) Incised wound of 4 x 1 x $\frac{1}{2}$ cm over right cheek.
- 14) Doctor has opined that injuries were caused by sharp and hard weapon. He has proved his reports vide Exs. P-6 & P-7, which shows that injuries were simple in nature. X-ray was also done vide Ex.P-12, which shows fracture of middle of mandible and dislocation of jaw. As per injury reports, it is clear that grievous hurt has been caused by the accused with the help of axe. Dr. Ram Sewak Joshi (PW-9) has opined without looking to the X-ray report (Ex.P-12) that

if the complainant was not examined timely, then she may die in due course of nature, which opinion is not acceptable because injuries were not so serious in nature which may take the life of complainant.

- 15) Considering the facts and circumstances of the case, nature of injuries and medical report, I am of the opinion that the case would fall within the ambit of Sections 326 and 509 of the IPC.
- 16) For the foregoing reasons, the appeal is partly allowed. In the light of fact that the incident happened in the year 2000 and accused/appellant has already undergone a period of more than nine months when he was a man of middle age of about 45 years and now he must be an old aged person, while maintaining the conviction and sentence under Section 509 of the IPC, conviction of the appellant under Section 307 of the IPC is altered into Section 326 of the IPC and he is sentenced to the period already undergone by him.
- 17) Appellant is on bail. His bail bonds shall continue for a further period of 6 months as per requirement of Section 437-A of the Cr.P.C.

(I.S.Uboweja)
JUDGE