

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Appeal No. 1100 of 2013**

Jitendra Gayakwad, aged about 40 years, S/o Purushottam Gayakwad, R/o Kisora Magarlod, District Dhamtari, At present R/o Professor Colony, Police Station Purani Basti, Civil & Revenue District Raipur (CG)

---- Appellant

**Versus**

The State of Chhattisgarh Through The Police Station DD Nagar, Raipur (CG)

---- Respondent

---

|                      |                                   |
|----------------------|-----------------------------------|
| For Appellant        | : Shri Sumesh Bajaj, Advocate     |
| For State/Respondent | : Shri Sumit Jhavar, Panel Lawyer |

---

**HON'BLE SHRI JUSTICE CHANDRA BHUSHAN BAJPAI****JUDGMENT****21/9/2015**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 28.10.2013 passed by the 4th Additional Sessions Judge, Raipur (CG) in ST No.91/2013, whereby and whereunder the learned trial Judge after holding the appellant guilty for attempting to take the life of complainant, PW4- Smt. Surekha Gayakwad, convicted him under Section 307 of the Indian Penal Code (for short the 'IPC') and sentenced to

undergo R.I. for 7 years and to pay fine of Rs.500/-, in default of payment of fine to undergo S.I. for 3 months.

2. The conviction is impugned on the ground that without there being any iota of evidence, the Court below has convicted and sentenced the appellant as aforementioned and thereby committed illegality.

3. As per case of the prosecution, on 7.3.2013, at about 2.00 pm, complainant, PW4- Smt. Surekha Gayakwad was alone in the house, the Appellant (brother of husband of the complainant) came to the house of the complainant. The complainant offered him breakfast. The Appellant take breakfast and went out towards the Chowk for some moment. But he returned back after some time, at that time the complainant was performing Pooja. The Appellant assaulted the complainant repeatedly by a *Lodha* (stone) of *Sil Batta* (grinding stone) on her head. She shouted for help and attempted to call her husband over mobile phone. The Appellant threw the mobile phone and assaulted the complainant. After hearing cries, the neighbours came there and intervened and saved the complainant. Thereafter, she was taken to Ramkrishna Care Hospital, Raipur where her husband Rajendra Kumar, PW7, lodged the First Information Report. The same was recorded as unnumbered FIR Ex. P/11. During treatment on 8.3.2013, the Doctor gave stitches to the wounds and she was

discharged on 11.3.2013. During investigation, from the spot clothes wearing at the time of incident, blood stained cloth and other material was seized vide seizure memo Ex.P/7. The appellant was taken into custody. He gave disclosure statement Ex. P/9. On the basis of disclosure statement, the weapon of offence, i.e. Lodha (stone) of Sil Batta was seized from the garden in front of the house of the complainant vide Ex. P/10. Blood stained clothes were seized from the appellant vide Ex. P/8. Spot map was prepared as Ex. P/12. Numbered FIR was recorded as Ex. P/13 vide Crime No. 49/2013. The appellant was arrested vide arrest memo Ex. P/14. Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure (for short the 'Cr.P.C.'). After completion of the investigation, charge-sheet was filed before the Judicial Magistrate First Class, Raipur who in turn, committed the case to the Court of Sessions Raipur from where the learned Additional Sessions Judge received the case on transfer for trial. During trial the appellant was charged for the offence under Section 307 IPC. The appellant denied the charges and prayed for trial.

4. In order to prove the guilt of the appellant, prosecution examined as many as 9 witnesses. Statement of the appellant was recorded under Section 313 Cr.P.C. in which he denied the circumstances appearing against him, pleaded innocence and false implication in the crime in question. After affording

opportunity of hearing to the parties, the learned Additional Sessions Judge convicted and sentenced the appellant as above.

5. Learned Counsel for the appellant submits that he is confining his arguments on twofolds, first the conviction under Section 307 IPC is not proved beyond all reasonable doubts and second the sentence awarded is not proportionate. He submits that though Dr. Madhariya has treated the patient but he has not been examined by the prosecution. Dr. Romesh Sharma, PW5 is the Anesthetist. He only gave initial treatment to the complainant. He further submits that on 8.3.2013, wounds were stitched but there is no x-ray report or CT scan report adduced by the prosecution; there is no fracture on the skull and no injury has been caused to the brain or any other vital part of the complainant. As per history, at the time of admission in the Hospital, the word has been written twice as 'fall from stairs' and thereafter, same was strike out with the words 'assaulted with hard and blunt object', which shows that there is change/improvement in writing the incident. It creates a reasonable doubt, because it was the first reporting of the incident before any of the authority. As per discharge ticket, the complainant was discharged on 11.3.2013, thereby at the most she was hospitalized for only 4 days. It is apparent from the Bed Head Ticket Ex. P/6 that after 9th March 2013, no treatment has

been taken by the complainant and she was treated only for 3 days.

6. Learned Counsel submits that ingredients of Section 320 IPC for causing grievous hurt are missing and prosecution has failed to prove that the injury was grievous in nature. Also there is no material to prove that the injuries were fatal to life as the operation/stitching has been performed on the next day, thereby, it was not an emergency case. Statement of PW5, Dr. Romesh Sharma is without any support from Ex. P/6. In the entire medical report of 10 pages, there is no mention of stitches mentioned in Ex.P/6. Looking to the size of a normal head, 125-150 stitches are not possible unless the whole scalp received lacerated wounds. There is no reason to show that the injuries were fatal to life. It is corroborated, as there is no medication after 9th March, 2013. As per statement, the injuries might have been caused due to fall. The patient was treated with local anesthesia. The general condition of the patient was not poor. The patient was fully conscious and all vital organs were normal and there was no vomiting. It shows that the injuries were not fatal for life.

7. For other part of the arguments, Learned Counsel submits that there was no intention for attempt to life of the complainant- PW4- Smt. Surekha Gayakwad. The appellant had left the house after taking breakfast and returned after some time when the

complainant was performing Pooja. He assaulted the complainant with *Lodha* of *Sil Batta* (grinding stone which is generally kept in house for preparing chutney etc.). It shows that there was no preparation or pre-meditation and he was not armed with any weapon at the time of incident. There was contradiction between the statement of the witnesses who reached to the spot after call of the complainant. PW-6 Shashank Mishra has been mentioned as the person who had taken the appellant out from the house but he has not supported the above facts. His submission is that looking to the entire facts and circumstances, prosecution has failed to prove the ingredients of Section 307 IPC against the appellant and at the most the appellant would be liable for punishment under Section 324 IPC. He is the first offender with no criminal antecedents. There was no dispute between the parties, therefore, the appellant would be sentenced accordingly.

8. Per contra, Learned Counsel for the State has opposed the arguments advanced on behalf of the appellant and submitted that the act of the appellant shows that he has assaulted the complainant with an intention to kill her. He was looking for an opportunity and assaulted accordingly. *Sil Batta Lodha* is a grinding stone which falls under the category of dangerous weapon. He assaulted repeatedly on the head, which shows his intention to kill the complainant. As per statement of Dr. Romesh Sharma, PW5, 125-150 stitches were given for the injuries

received. He submitted that the trial Court has rightly convicted and sentenced the appellant under Section 307 IPC and the judgment requires no interference.

**9.** In order to appreciate the arguments, I have heard Learned Counsel for the parties, perused the judgment impugned and record of the Court below.

**10.** So far as presence and assault by the appellant is concerned, it is duly corroborated by PW2- Smt. Ramotin Bai, the complainant herself and other witnesses, coupled with the fact that unnumbered FIR was lodged without any delay within 30 minutes at the Hospital by the husband of the injured. It shows undisputed presence of the appellant and the assault by him.

**11.** Now the question for determination is that what would be the offence committed by the appellant and sentence for it?

**12.** On minute scrutiny, it appears that as per PW5, the injured was admitted to the hospital only for 4 days. The treatment was given up to 9th March, 2013. There was no fracture of skull proved or any x-ray report or CT scan report has been adduced. There is no injury to the brain or any other vital part of the body of the complainant. In the entire medical report of 10 pages, there is no mention of number of stitches mentioned in Ex.P/6. The complainant was admitted for 4 days only with no follow-up

treatment. Thus, the prosecution has failed to prove the ingredients of Section 320 IPC, which is grievous hurt. Dr. Madhariya who had stitched the wounds was also not examined. PW5, Dr. Romesh Sharma is the Anesthetist and he only gave primary treatment to the complainant. On entire appreciation of the medical evidence, it appears that the prosecution has failed to prove that it is a case of attempt to take life.

**13.** So far as the intention part is concerned, the appellant and the injured both are near relatives. The appellant was not armed with weapon before the incident. When he returned back on account of some earlier dispute and the facts stated by PW4, complainant in para 3, the appellant returned from the Chowk and assaulted her. But the injuries have not been described. On account of fall also, the injuries may be caused. The appellant assaulted the complainant with *Sil Batta Lodha* present in the house itself, without pre-meditation or preparation to attempt life, otherwise he would have assaulted more grievously and also assaulted on the other parts of the body. He is a person aged about 40, having in a condition to assault by force as much as he wish. Thus the element of taking attempt to life is not proved.

**14.** On due consideration of the facts, in the view of this Court, conviction under Section 307 IPC is not made out against the appellant. Appreciation of the entire facts shows that it requires

interference. The evidence proves that the appellant is liable for offence under Section 324 IPC. The appellant was in jail from 8.3.2013 to 10.4.2013 for 33 days and thereafter from the pronouncement of judgment dated 28.10.2013 till today. Thereby, the appellant has served the sentence for 1 year, 11 months and 16 days in custody. The period already undergone would be the sufficient sentence for the appellant and it would meet the ends of justice.

**15.** Consequently, the criminal appeal filed by the appellant is allowed in part. The conviction under Section 307 IPC is reduced to Section 324 IPC and sentence awarded by the trial Court is reduced for the period already undergone by the appellant till date. The fine sentence awarded by the trial Court requires no interference.

**16.** If the fine amount is already deposited, the appellant be set at liberty forthwith if not required in any other case. If the fine amount is not deposited, the appellant be served with default sentence till the realization of the fine amount.

**17.** The appeal is partly allowed.

**Sd/**

**(Chandra Bhushan Bajpai)**  
**JUDGE**

