

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 16.10.1998 passed by the 1st Additional Sessions Judge, Bilaspur in Sessions Trial No. 474/1997, whereby & whereunder, after holding the appellant guilty for commission of offence punishable under section 308 of Indian Penal Code to cause injuries by sword to complainant Sitaram, convicted him under Sections 308 of IPC and sentenced him to undergo rigorous imprisonment for 3 years and fine of Rs. 1000/-, in default of payment of fine, to further undergo rigorous imprisonment 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 an illegality.
3. Case of the prosecution, in brief, is that on 30.11.1996 at about 9-10 PM injured Sitaram (PW-1) while he was sleeping in his house, the appellant along with the other co-accused armed with lathi and sword like object came there and told him to come out of his house. When he did not come out of his house then the appellants dragged out the complainant Sitaram (PW-1) from his house and assaulted with lathi as a result of which he sustained injuries on his head due to which he fell down and the blood was oozing from his head. Hearing the altercation, complainant's wife and his sister namely Sakura (PW-3) came there for intervening between them. Thereafter the appellants and other co-accused ran away from the spot. Sitaram (PW-1) lodged First Information Report (Ex.-P/1) in Police Station Tarbahar, Bilaspur. He was sent to Hospital for treatment, where Doctor C.M. Tiwari (PW-7) examined him and gave his report (Ex.-P/15), in which he found (i) a lacerated wound size 10cm x 1 cm x bone deep right fronto parietal region, swelling and tenderness and clotted blood was present. (ii) Blackness was found in the right eye of the injured because of clotting blood therein. Injured Sitaram (PW-1) was advised for Surgical Specialist and X-Ray of the head injury. Doctor R. Jeetpure took X-ray of the head of injured Sitara (PW-1) and gave his report (Ex.-P/3), in which he found fracture on frontal bone.

4. In further investigation, Spot-Map (Ex.P-4) was prepared. Plain soil and blood stained soil were seized from the place of occurrence vide Ex.P-5. On the next day i.e. on 01.12.1996 the appellant was arrested. Seized articles were sent to Forensic Science Laboratory, Sagar for chemical examination vide Ex.P-14.
5. After completion of the investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Bilaspur, who, in turn, committed the case to the Court of Session, Bilaspur, from where it was received on transfer by Additional Sessions Judge, Bilaspur, who conducted the trial and sentenced the appellant as mentioned above.
6. Mr. Afroj Khan, learned counsel appearing for the appellant argued that there is no any witness. The only independent witness is Mannuram (PW-4) who has not at all supported the case of the prosecution. The whole story of the prosecution is suspicious. Injured Sitaram (PW-1) in his statement has stated that he was assaulted by sword whereas no sword has been recovered by Police. The prosecution did not adduce any cogent and reliable evidence. He further submits that learned Additional Sessions Judge acquitted the other accused persons, namely, Suraj Yadav and Santosh Yadav of the charges framed against them. Therefore, the conviction recorded by the learned trial Judge is not sustainable and the appellant deserves to be acquitted.
7. On the other hand, Shri Sanjeev Pandey, Govt. Advocate for the State supporting the impugned judgment submitted that the prosecution witness namely Dinesh (PW-2) and Sukura Bai (PW-3) have stated about the assault on Sitaram(PW-1) by sword by the

Appellant. The statement of the prosecution witnesses can not be refuted. Hence, under these circumstances, the injury caused by the accused is grievous in nature, therefore, the conviction of the appellant by the trial Court is justified.

8. I have heard learned counsel appearing for the parties at length and have perused the record of Sessions Trial No.474/1997.
9. The questions to be taken into consideration in this Criminal Appeal
(i) Whether the Appellant has caused injury on the head of the complainant (PW-1) by the accused? (ii) Whether the said injuries were caused by sword? and (iii) Whether the judgment of conviction against the Appellant by the trial Court is justified?
10. To establish the charges against the accused/appellant, the prosecution examined Sitaram (PW-1), Dinesh (PW-2), Sukura Bai (PW-3), Mannuram (PW-4) independent witness, Dr. R. Jeetpure (PW-5), Inspector G. S. Bais (PW-6), Dr. C.M. Tiwari, (PW-7), Shekh Hamid (PW-8), Sub Inspector SalimTigg (PW-9) and Dr. D.R. Patle (PW-10).
11. Sitaram (PW-1) deposed in his deposition that on the date of incident when our group reached near Hanuman Temple at Bus stand, Chhedi and Suraj started beating with lathi to Janak and Rajaram. Mohit stopped them from assaulting and because of dispute we returned back home with our musical instrument. On the same night at about 10 o'clock when I alongwith my son and sister was at home at that time Suraj, Santosh and Arjun came to my home and Suraj asked me to come out of the house, I did not come of the house then Arjun came inside house and assaulted with sword on me. The appellant Arjun pulling out me from the house,

thereafter, the appellants with the help of lathi began to me. Whereupon my sister and other witnesses took me to Police Station Tarbahar where I lodged the FIR (Ex.P.-1) and it was stated that Arjun was armed with sword like weapon. Whereas the witness in police statement has stated that Arjun was armed with Lathi and because of darkness he could not see Lathi exactly.

12. Dinesh (PW-2) who is the son of injured PW-1 and Sukura Bai (PW-3) who is the sister of injured PW-1 Sitaram. They have stated that Arjun assaulted Sitaram (PW-1) with the sword on his head.
13. Dr. C.M. Tiwari (PW-7) who examined the injured Sitaram (PW-1) found the following injuries - (i) lacerated wound size 10cm x 1 cm bone deep on the right fronto parietal region in which clotted blood was present (ii) Blackness was found in the right eye of the injured because of clotted blood therein. He further deposed that injured Sitaram (PW-1) was conscious and vomiting. He further stated that X-ray was taken out and he was hospitalized.
14. Dr. R. Jeetpure (PW-5) in his court deposition stated that on 03.12.1996 he conducted X-ray of the injured Sitara (PW-1) and his report is Ex.P. 3 in which he found fracture in the frontal bone and certified his report vide Ex.P.-4.
15. Dr. D.R. Patle (PW-10) has stated in his deposition that on 03.12.1996 when the injured Sitaram (PW-1) was admitted in the hospital he examined and found lacerated wound on the parietal region in the right leg and he was suggested for X-ray. Accordingly, X-ray was taken out wherein fracture was found on the right frontal bone. In these circumstance, the injuries sustained by the appellant was grievous in nature which might have caused death.

16. Thus, as per Ex.P.-1 the incident was occurred on 30.11.1996, on which report was lodged on 01.12.1996 at 20:00 hours in Police Station – Tarbahar. On the same date PW.-10 Dr. D.R. Patel and PW.-7 Dr. C.M. Tiwari conducted the medical examination of the injured. X-ray was taken out by Dr. R. Jeetpure on 3.12.1996 whose report is Ex.P.-3. The statement of injured Sitaram (PW-1) under Section 161 CrPC was recorded by the police on 01.12.1996. In this way, even in the FIR lodged immediately on the next day and even in the statement made to the police, there is no mention of giving of assault by sword. But from the above evidence, it is undisputedly proved that the Appellant had caused injuries to Sitaram (PW-1) as a fracture was found in his frontal bone, meaning thereby that the injured was caused grave injuries. The deposition of the injured Sitaram (PW-1) was recorded after a period of two years. There is a state of confusion with regard to the weapon of assault or it may be possible that the injured Sitaram (PW-1) has tried to exaggerate the seriousness of the offence. The entire evidence of the prosecution witnesses cannot be disbelieved.
17. For the purpose of Section 308 IPC what is required is the intention or the knowledge and not the consequence of the actual act done for the purpose of carrying out the intention. This Section clearly contemplates an act which is done with the intention to commit offence of culpable homicide not amounting to murder. The intention or knowledge of accused must be as such as necessary to constitute culpable homicide. In the absence of intention or knowledge which is the necessary ingredient of Section 308 IPC

there can be no offence under Section 308 IPC attempt to commit culpable homicide.

18. In the result, the appeal is partly allowed. The judgment of conviction against the appellant under Section 308 IPC by the learned Sessions Judge is maintained. So far as sentence part is concerned, since the appellant has already undergone jail sentence for a period of about 3 months and the offence was committed on 30.11.1996 and further that the case remained pending for more than 19 years, the Appellant is sentenced to the period already undergone by him. However, the fine amount imposed by the learned Trial Court is upheld. In the event of failure to pay the fine amount, the Appellant shall undergo rigorous imprisonment for a period of 15 days.

19. The Appellant is on bail. His bail bonds are not discharged at this stage and shall remain operative for a period of six months in view of the provisions contained under section 437-A of the CrPC.

Sd/-

(Anil Kumar Shukla)
Judge