

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 693 of 2012

- Jaishree Alias Jaya W/o Shri Gokul Chura Aged About 21 Years R/o Deobloda Vinobanagar Charoda , Distt. Durg C.G.

---- Appellant

In Jail

Versus

- State Of C.G. Through - P.S. GRP Bhilai, Distt. Durg C.G.

---- Respondent

For appellant : Smt. Renu Kochar, Advocate.
For Respondent/State : Shri Ravindra Agrawal, PL.

Judgment On Board By Shri Justice Pritinker Diwaker,

29/01/2016

This appeal arises out of the judgment of conviction and order of sentence dated 30.7.2012 passed by the 5th Additional Sessions Judge, Durg in S.T.No.72/2012 convicting the accused/appellant under Section 307 & 326 of IPC and sentencing him to undergo RI for 5 years, fine of Rs.500/- and RI for 4 years, fine of Rs.500/- with default stipulations respectively.

02. Brief facts of the case are that on 28.11.2011 FIR (Ex.P/12) was lodged by Smt. Ukiyabai (PW-4), mother-in-law of the accused/appellant, stating therein that the accused/appellant used to quarrel with her and on that day, after quarreling with her husband Gokul Chhura (PW-5) she caused knife injury to him. When she tried to intervene, she too was first abused and then assaulted by the accused/appellant. Based on this FIR, offence under Sections 294 and

324 of IPC was registered against the accused/appellant. Complainant Smt. Ukiyabai was medically examined vide Ex.P/1 whereas Gokul Chhura, husband of the accused/appellant, was medically examined vide Ex.P/2 by PW-1 Dr. A.Vishwas. After completion of investigation charge sheet was filed against the appellant under Sections 294, 324, 326 & 307 of IPC. Learned trial Court framed charges under Sections 294, 307 and 326 of IPC against her.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 11 witnesses. Statement of the accused was also recorded under Section 313 of Cr.P.C. in which she denied the circumstances appearing against her in the prosecution case, pleaded innocence and false implication. In her defence, she examined one Chaturbhuj as DW-1.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellant as mentioned in para-1 of this judgment.

05. Learned counsel for the appellant submits that she is not pressing this appeal on merits and would confine her arguments only to the sentence part. She submits that the appellant is a lady, maximum jail sentence awarded to her is of five years and out of that, she has already completed 3 years and 9 months and therefore, she may be released by reducing her sentence to the period already undergone by her.

06. On the other hand, State counsel submits that the punishment

imposed upon the appellant is proportionate to the act committed by her and therefore, there is no justification in reducing the same.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-4 Smt. Ukiyabai has stated that the accused/appellant is her daughter-in-law. On 28.11.2011 when her son was getting ready to go for his workplace, she heard the cries of her son and when she came out from her house, which is adjacent to the house of her son, she saw the accused/appellant holding knife in her hand and her son lying on the floor with injuries on his chest and ribs and that blood was oozing. She has stated that when she asked the accused/appellant as to why her son is lying on the floor, the accused/appellant also made an attempt to assault on her stomach, however, she somehow saved herself by her left hand, as a result of which she sustained injuries on her left hand. She has stated that when she called for help, the neighbours came there but after seeing knife in the hand of the accused/appellant, none of them came to her rescue. Thereafter, her elder son Santosh Chhura also reached there, he snatched the knife from the accused/appellant and then with the help of other persons took Gokul Chhura to railway hospital. In cross-examination, she remained very firm and reiterated as to the manner in which the incident had taken place.

09. PW-5 Gokul Chhura, husband of the accused/appellant, has stated that on the date of incident the accused/appellant started abusing and quarreling with him and also threw chilly powder in his eyes. He has

stated that the accused/appellant assaulted him with knife on his left ribs and when he raised cries, his mother Ukiyabai came there, on which the accused/appellant also assaulted her. However, after sustaining injuries he had fallen unconscious and was treated at railway hospital.

10. PW-1 Dr. A. Vishwas medically examined injured Smt. Ukiyabai vide Ex.P/1 and noticed cut injury of size 1.5 cm over forearm of left hand caused by sharp edged weapon and it was grievous in nature. He had also medically examined injured Gokul Chhura vide Ex.P/2 and noticed a deep cut injury (incised) of size 1.5 cm over left side of chest in the middle of armpit and another incised wound of size 0.5 cm over left wrist. Both the injuries were caused by sharp edged weapon and injury No. 1 was grievous in nature.

11. PW-6 Geeta Chhura is sister-in-law (Nanand) of the accused/appellant. She reached the place of occurrence after it had taken place and saw her mother and brother in injured condition. PW-8 T. Shankar is a witness to seizure memo Ex.P/13 and Ex.P/14. PW-9 Chintamani is a witness to seizure memo Ex.P/15 whereas PW-10 Niranjana Singh is a witness to Ex.P/14 and arrest memo Ex.P/16. PW-11 Y. Pandey is the investigating officer. They have duly supported the prosecution case.

12. DW-1 Chaturbhuj has stated that Ukiyabai and Gokul Chhura suffered injuries accidentally.

13. It is a settled legal position that mere acceptance or admission of guilt should not be a ground for reduction of sentence. The Courts are

not expected to accept the concession given by the counsel in a routine manner. It is the duty of the Court to see that the cause of justice is subserved with serenity in accordance with the established principles of law. In the matter of ***Jeetu @ Jitendera and others Vs. State of CG, (2013) 11 SCC 489***, while dealing with the aforesaid point, the Supreme Court held thus:

“When a convicted persons prefers an appeal, he has the legitimate expectation to be dealt with by the courts in accordance with law. That apart, he has intrinsic faith in the criminal justice dispensation system and it is the sacred duty of the adjudicatory system to remain alive to the said faith. He has embedded trust in his counsel that he shall put forth his case to the best of his ability assailing the conviction and to do full justice to the case. That apart, a counsel is expected to assist the courts in reaching a correct conclusion. Therefore, it is the obligation of the court to decide the appeal on merits and not accept the concession and proceed to deal with the sentence, for the said mode and method defeats the fundamental purpose of the justice delivery system. Where the High Courts, after recording the non-challenge to the conviction, have proceeded to dwell upon the proportionality of the quantum of sentence, the same being impermissible in law should not be taken resort to. It should be borne in mind that a convict who has been imposed substantive sentence is deprived of his liberty, the stem of life that should not ordinarily be stenosed, and hence, it is the duty of the Court to see that the cause of justice is subserved with serenity in accordance with the established principles of law.”

14. Keeping in view the aforesaid principles of law, despite there being non-challenge to the conviction of the appellant on behalf of her counsel, this Court proceeds to examine the legality of the conviction imposed on the appellant on the basis of evidence available on record.

15. Close scrutiny of the evidence makes it clear that on 28.11.2011 it is the accused/appellant who after quarreling with her husband Gokul Chhura (PW-5), caused him injuries with knife and after hearing his cries, when his mother Smt. Ukiyabai (PW-4) came to his rescue, she too was assaulted by the accused/appellant as a result of which she sustained grievous injuries on her left hand. Both the injured witnesses

have duly supported the prosecution case. Their evidence also finds due corroboration from their medical reports. Thus, there is no reason for this Court to doubt the veracity of testimony of these witnesses. As such, conviction of the accused/appellant under Sections 307 & 326 of IPC is held to be based on proper appreciation of the evidence and is hereby maintained. Moreover, counsel for the appellant has also not contested the case on merits.

16. The only question which arises for consideration of this Court is as to what would be appropriate sentence to be imposed upon the appellant?

17. Considering the fact that the accused/appellant is a lady, she has already remained in jail for about 3 years and 9 months, in my opinion, the ends of justice would be served if she is sentenced to RI for four years instead of five years as awarded by the trial Court under Section 307 of IPC.

18. In the result, the appeal is allowed in part. While maintaining conviction of the appellant under Sections 307 and 326 of IPC and sentence awarded to her under Section 326 of IPC, the sentence imposed under Section 307 of IPC is reduced to four years. However, the fine sentence imposed under both these sections shall remain as it is. The accused/appellant would be entitled for remission in accordance with law.

Sd/

(Pritinker Diwaker)

Judge

