

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL APPEAL NO. 1151 OF 2014

Birtu Ram, S/o Petra Ram Nagesiya, age 47 years, R/o village Taragi (Bijapara), Thana, Batauli, District Surguja, CG Present address Village Mahora (Parlipara) Thana, Lundra, District Surguja (CG)

... Appellant

Versus

State of Chhattisgarh through Police Station Lundra, District Surguja (CG).

... Respondent

For Appellant	:	Shri Alok Dewangan, Advocate, from Legal Aid Department.
For Respondent/State	:	Shri Ashish Shukla and Shri OP Sahu, Govt. Advocates.

Hon'ble Shri Justice P. Sam Koshy

JUDGMENT ON BOARD

22.12.2016.

1. The appeal is listed for orders on PUD dated 08.12.2016 received from District & Sessions Judge, Surguja, intimating that the sole appellant Birtu Ram could not furnish the bail bond and is languishing in jail since 10.04.2012 and his jail sentence is getting completed on 06.11.2017. Therefore, taking into consideration the peculiar facts and circumstances of the case, with the consent of the parties, the appeal is heard finally.
2. The appellant stands convicted for the offence under Section 307 IPC and has been sentenced to undergo RI for seven years with fine of Rs.1000/- with default stipulations vide judgment dated 14.10.2014

passed by the 3rd Additional Sessions Judge, Ambikapur, in Sessions Trial No.268/2012.

3. The brief facts of the case relevant for adjudication of the case is that, on 08.04.2012 at around 4:30 am in the morning, the appellant is said to have assaulted his wife Dilpati, PW-9, with bow and arrow due to which the arrow stuck in her body near her waist . An FIR in this regard was lodged on 08.04.2012 at Police Station, Ambikapur, wherein crime No.36/2012 was registered against the appellant for the offence under Section 307 IPC.
4. The prosecution, in all, has examined as many as 10 witnesses. There was no witness examined on behalf of the defence.
5. The trial court finally found the appellant to be guilty of having committed an offence under Section 307 IPC and sentenced him for the period as enumerated in the second paragraph of this judgment leading to filing of this appeal.
6. Learned counsel appearing for the appellant assailing the judgment submits that it is a case where the incident occurred not because of any fight occurred between the appellant and his wife. It is only an accidental injury which has been caused at the hand of the appellant. The appellant is very poor and rustic tribal villager staying in very remote area of Surguja District. The appellant is not a hardened criminal. In addition, he has no any criminal antecedent. Keeping all these facts and circumstances of the case, it is submitted by the appellant that as of now he does not intend to argue the case on merits, however, prayed that the impugned judgment may be modified to the

extent that sentence part be reduced to the period already undergone by the appellant.

7. According to appellant, it is a case where the mother of the injured person i.e. Halkaniya, PW-6, in her evidence has accepted the fact that relationship between the appellant and injured Dilpati, PW-9, appellant's wife, was very cordial and that there was no fight which had resulted into an attack made by the appellant. He further submits that taking into consideration the fact that the appellant is living a life of penury as is established from the fact that in spite of getting bail by this court, he could not furnish the bail bond and is still languishing in jail may also be considered as a factor for the purpose of reducing the sentence to the period already undergone.
8. Counsel for the appellant further referred to document i.e. PUD dated 08.12.2016 sent by the District & Sessions Judge, Surguja, intimating the fact that the sentence of the appellant is getting completed on 06.11.2017 as such only 10 and ½ months is left for the appellant to complete the entire sentence which may also be kept in mind in reducing the period of sentence for the period already undergone. Counsel for the appellant relied upon the judgment of Supreme Court in case of Pashora Singh and Another Vs. State of Punjab, reported in AIR 1993 SC 1256.
9. Learned counsel appearing for the State however opposing the appeal submitted that it is a case where in fact the case of the prosecution stands duly proved and established by the prosecution by leading convincing evidence before the court below. It is a case where the

appellant is said to have assaulted his wife with the bow and arrow and that it is only the appellant and his wife (victim) who were present at the place of incident and that other family members staying along with the injured person had rushed to the spot and saw the appellant after committing the offence ran away from the room and thus, in the given factual matrix of case the impugned judgment does not warrant any interference.

10. Having considered the rival contentions put forth on either side and on perusal of record what clearly reflects is the statement of the mother of the injured i.e. Halkaniya, PW-6, who has in her deposition stated that the appellant never used to fight with his wife (injured) and there appears to be very cordial relationship between the two. In addition, the averment of said PW-6, Halkaniya, also gets fortified for the reason that the appellant in the instant case was staying at his wife's house and was not staying at his own house which shows that there was cordial relationship between the appellant and his injured wife. Further, what cannot be brushed aside is the fact that the injuries caused by the appellant on the injured Dilpati, PW-9, his wife, was that with bow and arrow. It is anybody's guess that what kind of tribal use bow and arrow in today's world.
11. The appellant in the instant case admittedly is a tribal belonging from very remote area of the State of Chhattisgarh. Considering the remote area from where the appellant comes; taking into consideration the remaining period of sentence left to be completed i.e. only 10 and ½ months as is evident from the PUD dated 08.12.2016 and also

considering the financial condition of appellant which is evident from the fact that despite being granted bail by this court, he could not furnish bail bond and is still languishing in jail, this court is of the opinion that no strong case is made out for interference with the conviction of the appellant for the offence under Section 307 IPC is concerned. However, considering the reasons assigned in the preceding paragraphs, this court is of the opinion that it is a fit case where the sentence deserves to be and is accordingly reduced to the period already undergone by the appellant.

12. The appeal thus is dismissed upholding the conviction of the appellant under Section 307 of IPC, however the sentence part stands modified to the period already undergone. It is directed that the appellant may be released from jail forthwith, if not required in any other case.

Sd/-
(P. Sam Koshy)
Judge