

**NAFR****HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Appeal No. 554 of 2001**

Ganesh Manjhi S/o Sudarshan Manjhi, R/o Devbaloda, Police Station GRP
Bhilai, District Durg, CG

---- Appellant**Versus**

State of Chhattisgarh

---- Respondent

For Appellant	:	Shri Aditya Khare, Advocate
For Respondent/State	:	Shri Ashok Swarnkar, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy**Judgment On Board****10.11.2016**

The present appeal has been filed assailing the judgment of conviction and sentence dated 01.05.2001 passed by the 7th Additional Sessions Judge, Raipur in Sessions Trial No. 264 of 2000. The appellant in the instant case has been found guilty of having committed the offence under Sections 458 and 307 of IPC and sentenced to undergo RI for three years u/s 458 and RI for five years with fine of Rs.1,000/- with default stipulation u/s 307 IPC.

2. The brief facts of the case necessary for adjudication of the present appeal are that as per the prosecution on 08.04.2000 the appellant is said to have intruded into the house of Lambodar Singh PW-1 and was standing near the cot where his grand daughter namely Jamuna Singh PW-10 was sleeping. It was found that the appellant was wearing only Baniyan and under wear. When PW-1 woke up on hearing some noise, he saw the appellant standing near the cot of PW-10. When he rushed to catch hold the appellant, it is said that the appellant attacked PW-1 with a knife as a result of which PW-1 received four injuries, out of which three were scratch like incised wound on the forehead, left arm and chest. The fourth was deep incised wound on the lower

abdomen which was grievous in nature. Thereafter, the accused fled away from the scene. FIR was lodged on 08.04.2000 based upon which the investigation was conducted and a case was registered against the appellant. The statement of the injured was recorded wherein he said that he could identify the accused as he was of the same village.

3. During the course of trial the appellant was charged under Sections 458, 307 and 506B of IPC. The Court below, finally after conclusion of the trial, reached to the conclusion that the appellant stands guilty of having committed the offence under Sections 458 and 307 of IPC and accordingly, sentenced him for the said offence as stated in paragraph-1 of this judgment.

4. Counsel for the appellant assailing the impugned judgment submits that it is a case where the appellant has been falsely implicated. According to the counsel for the appellant, the rivalry and enmity which the complainant had against the appellant was on account of a fact that on an earlier occasion of Holi festival the appellant had applied colours on the body of PW-10 the granddaughter of the injured. He submits that it is a case where there are serious contradictions in the statement of these two prime witnesses when compared to the statement made by PW-10. According to the counsel for the appellant, the case of the prosecution also appears to be doubtful on account of the fact that the weapon used in the instant case i.e. the knife with which the injured PW-1 was assaulted has also not been recovered and seized and in the absence of recovery of the weapon, the offence for which the appellant has been charged i.e. 458 and 307 IPC cannot be said to have been established by the prosecution. He further submits that none of the injuries sustained by the injured was grievous in nature which could have resulted to be fatal. Counsel appearing for the appellant lastly submits that the appellant in the instant case has already served jail sentence for a period of more than one year and that the date of incident in the present case is more than 16 years old and therefore liberal view may be taken and the sentence part may be reduced to the period

already undergone.

5. State counsel, however, opposing the appeal submits that the evidence which has been adduced before the trial Court by itself evidently shows that the prosecution has been able to establish its case beyond all reasonable doubt. He submits that the statement of the injured witness PW-1 itself is sufficient for establishing the case of the prosecution. According to the State counsel, PW-1 the injured witness in very categorical term has named the appellant who had assaulted him and also given the description of the incident in the same manner as was given at the time of lodging of the complaint. Since there is no discrepancy or contradiction in the statement of the injured witness PW-1 from the stage of investigation till his statement was recorded before the Court below, the case of the prosecution stands proved beyond reasonable doubt from the statement of PW-1 alone. He further submits that the statement of PW-1 further stands corroborated with the eye witness to the incident i.e. PW-10 who had first seen the accused standing near her cot at odd hours while she was sleeping. He submits that the fourth injury which was caused on the lower abdomen was so serious and grievous in nature as is evident from the fact that the intestine of the injured had come out of the body. Thus, for all these reasons state counsel prayed for rejection of the appeal.

6. Having considered the rival contentions put forth by the counsel appearing on either side and on perusal of the record what is apparent is the two witnesses PW-1 Lambodar Singh and PW-10 Jamuna Bai, the grand daughter of PW-1 out of which PW-1 is the injured witness and PW-10 is an eye witness to the incident. The statement of PW-1 has been fully endorsed and corroborated by the evidence of PW-10. Both these witnesses have very emphatically given evidence against the appellant categorically stating in respect of the identification by the dress that he was wearing and the fact that he belonged to the same village which are sufficient material for proving the identity of a man particularly in the rural background. The defence has not been

able to extract much from the cross examination that has been done of the two witnesses PW-1 and PW-10 so as to create a doubt in the mind of the Court to disbelieve their version neither has the defence been able to by way of their cross examination point out any major contradiction or omission which may lead the prosecution's story to be doubtful.

7. In the light of the deposition of the injured eye witness PW-1 and which has been further corroborated by PW-10, the non recovery and seizure of weapon used is not of much relevance nor would the appellant get the advantage of the same. So far as the medical evidence is concerned, undisputedly the injury inflicted at the lower abdomen was a grievous injury as can be assessed from the statement of PW-5 Dr. C. K. Das.

8. For the aforesaid reasons, this Court has no hesitation in reaching to the conclusion that the prosecution has in fact been able to prove its case beyond all reasonable doubts against the accused. Accordingly, the conviction of the appellant for commission of the offence under Section 307 as also the offence under Section 458 IPC stands proved and the same is accordingly maintained.

9. However, taking into consideration the duration of the appeal and the date of incident which is almost 16 years old, this Court feels it proper that the sentence of the appellant so far as the offence under Section 307 IPC is concerned, may be reduced. Accordingly, the sentence imposed upon the appellant under Section 307 IPC is reduced to 3 years in stead of 5 years as has been imposed by the Court below.

10. With the aforesaid modification in the sentence for the offence under Section 307 of IPC, the present appeal stands dismissed. The appellant is on bail. His bail bonds stand cancelled and he be sent to jail forthwith to serve the remaining part of the sentence imposed on him.

Sd/-
P.Sam Koshy
Judge