

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr. M. P. No. 19 of 2016**

The State of Chhattisgarh through District Magistrate,
Rajnandgaon (CG)

---- Petitioner

Versus

Brijlal Singh @ Brijpal Singh S/o Santosh Singh, aged 36
years, R/o village Adaval, Police Station Bodhghat, District
Bastar (CG)

---- Respondent

For State/Petitioner : Smt. Smita Ghai, Panel Lawyer

Hon'ble The Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order On Board**Per P. Sam Koshy, Judge****15/03/2016**

1. The State through the present petition intends to challenge the judgment dated 6th October, 2015 passed by the Sessions Judge, Rajnandgaon in Sessions Trial No. 50 of 2014 acquitting the respondent from the charges under Sections 452 and 307 of IPC.

2. Brief facts of the prosecution case are that on 13.02.2014 PW-3 Smt. Dulu Mandal lodged an FIR at Police Station Somni against the respondent alleging that at around 2 p.m. when she was watching TV in her house, the respondent entered into her house and was trying to take her daughter away who was sleeping. She tried to intervene and at the same time also called her husband PW-4 Kumaresh Mandal. When PW-4 came and intervened, the respondent is said to have made a deadly attack to PW-4 causing injuries on his head and near right ear with a knife. In between, upon hearing her alarm PW-7 Rajendra and PW-8 Gollu @ Mahesh also rushed to the scene. Subsequently, the matter

was investigated by PW-9 and a case under Sections 452 and 307 IPC was registered against the respondent.

3. Finally, vide the impugned judgment dated 06.10.2015, the Sessions Court held that the prosecution has not been able to establish the offence against the respondents under Sections 452 & 307 of IPC. It was further held that there was no deadly assault made upon PW-4 in as much as the medical evidence which has come on record shows that the injury caused to PW-4 was very simple in nature. Thus, the respondent was acquitted from the two charges levelled against him.

4. It is this acquittal order which the State intends to challenge through the instant Cr.M.P.

5. Counsel appearing for the State submitted that the Court below has failed to appreciate the fact that the injury was caused to PW-4 with a knife. She tried to emphasize the fact that the place where the injury was caused is a vital part of the body. It was argued that the prosecution has in fact been able to lead sufficient evidence to establish its case beyond reasonable doubt but the Court below has not properly appreciated the evidence which has come on record and has passed the impugned order of acquittal. It was further argued that the Court below ought to have appreciated the fact that even if for any reason the Court reached to the conclusion that the case under Section 307 IPC has not been established by the prosecution, it was definitely a case where the attack made by the respondent has been proved and established and therefore the respondent ought to have been punished under some other lesser section in the IPC. For this reason also the impugned judgment is bad in law.

6. Having considered the contentions of the State counsel what is reflected from the evidence and the findings of the trial Court is that none of the prosecution witnesses except for PW-4 has supported the case of the prosecution as reported in the FIR. The medical evidence of PW-1, Dr. Ananya

Shrivastava clearly reflects that the injury caused to PW-4 was simple in nature. According to the doctor, when she had examined the injured on the same day, blood was not oozing from the wound which itself indicates that there was no vital injury caused to PW-4. Further, the X-ray report Exhibit P-10 also reflects that there was no fracture found at the place of injury.

7. Defence witness Lokesh Rao who was a driver has stated that on the date of incident he along with the respondent was coming from Raipur to Rajnandgaon driving a truck and stopped it in front of the farm house where PW-4 and his wife PW-3 were residing with an intention to cook food. Thereafter, while the respondent was talking to PW-3, PW-4 objected the same and in the course, there was an altercation at which PW-4 himself brought a knife from the house and tried to attack the respondent.

8. From the evidence which has come on record there appears to be a probability of PW-4 finding the respondent talking to PW-4's wife which led to an altercation and a fight between them which is also supported by the defence witness DW-1. A suggestion in this nature was also made to PW-4 who though has denied such an allegation. PW-5, Khitij Mandal is not an eyewitness but only a hearsay witness and therefore his evidence cannot be given too much weightage.

9. As regards the allegation levelled by PW-3 complainant that the respondent had entered into her house with an intention of stealing her three years old daughter, the same appears to be a concocted story as there was not enough material by which the said allegation could be substantiated. Further this issue was also considered by the Trial Court holding that had the respondent entered the house of the complainant with an intention to steal the child, he would have first assaulted PW-3 on her resistance who was alone at that time and having not done so, the story seems to be highly improbable.

10. If for argument sake it is accepted that the offence under Section 307 IPC

is not made out and an offence of a simple injury is made out against the respondent and the impugned judgment is modified to the extent of holding the respondent to be guilty of an offence causing simple injury, even then the record shows that the respondent has already remained in jail for a period of about 2 ½ months and as such he has already undergone sufficient jail sentence for the same. For this reason also, the impugned judgment does not warrant any interference.

11. Thus, taking into consideration the overall facts and circumstances of the case and also the medical evidence which has come on record it clearly establishes that the injury caused to PW-4 was neither serious nor grave, rather it was of very simple in nature from where even blood was not oozing. Thus, in the given facts and circumstances of the case we are of the opinion that no case is made out calling for any interference with the impugned judgment under challenge.

12. We therefore find no merit in this application for leave to appeal and it is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE