

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.586 of 2013**

- Kapoor Dubey @ Saurabh S/o Narayan Prasad Dubey Aged About 21 Years R/o Tendukheda , Ram Mandir Bazaar, P.S. Tendukheda , Distt. Damoh (M.P) At Present R/o Kabir Nagar , Near Cremation Ground, P.S. Amanaka , Raipur, Civil & Rev. Distt. Raipur C.G.

---- Appellant**Versus**

- State Of Chhattisgarh Through -- P.S. Pandri, Raipur, Distt. Raipur C.G.

---- Respondent

For Appellant	: Shri Deepak Kumar Singh, counsel for the appellant.
For respondent	: Shri Satish Gupta, Govt. Advocate.

Judgment On Board**28.11.2016**

Challenge in this appeal is to the judgment of conviction and order of sentence dated 25.3.2013 passed by Third Additional Sessions Judge, Raipur in Sessions Trial No.179/2011 whereby and whereunder the trial Judge after holding the appellant guilty for attempt to take life of complainant Sunita Jain (PW-1) convicted him under Section 307 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for 10 years and also to pay fine of Rs.500/-, in default of payment of fine, to further undergo RI for three months with a direction to set off the period of detention from 01.6.2011 till date of judgment i.e. 25.3.2013 under Section 428 of the Code of Criminal Procedure, 1973 (for short 'the Code'). He was also acquitted of the charges under Section 456 and 354 of the IPC by the trial Court.

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, thereby committed illegality.

3. As per the case of the prosecution, on 20.5.2011 at about 8.30 pm complainant (PW-1) was cooking food. The accused/appellant entered into the premises and asked for water. Thereafter he caught the complainant with intention to outrage her modesty. When the complainant resisted, he assaulted her with griddle over head face and other parts of the body. The matter was reported to Pandri Police. The Police registered FIR (Ex-P/5) against the accused appellant under Section 456 and 307 of the IPC and sent the complainant/victim for MLC and also for treatment. Dr. BV Nagraj (PW-5) noticed 8 injuries over face, chest and other parts of the body of the complainant and opined that the said injuries may be caused by hand and blunt object. He gave his report (Ex-P/5). During investigation, the Police has recorded the statement of the witnesses under Section 161 of the Code. Spot map (Ex-P/10) was prepared, blood stained clothes were seized from the accused appellant and the victim from the spot. The articles with blood stains were seized and collected.

4. After completion of investigation, charge sheet has been filed before the Chief Judicial Magistrate, Raipur who in turn committed the case Criminal Case No.2195/2011 to the Court of Sessions vide order dated 04.8.2011. The Learned Sessions Judge received the case on transfer and conducted the trial. The learned trial Court framed the charges under Sections 456, 307 and 354 of the IPC .

5. In order to prove the guilt of the appellant, the prosecution has examined as many as 11 witnesses. (PW-5 marked twice for VR Sahu ASI and Dr. BV Nagraj), Statement of the accused was recorded under Section 313 of the Code wherein he denied the circumstances appearing against him, pleaded innocence and false implication in crime in question.

6. After affording opportunity of hearing to the parties, the trial Judge convicted and sentenced the appellant as aforementioned and also acquitted him under Section 456 and 354 of the IPC.

7. I have heard learned counsel for the parties, perused the record of the trial Court.

8. Learned counsel for the appellant submits that he is not contesting the instant appeal for conviction of the appellant under Section 307 of the IPC. He is confining his arguments for the quantum part only. The appellant, aged about 21 years at the time of the incident, is a first offender, the doctor has noticed 8 injuries but has not said anything as to which injury was fatal for life or grievous in nature. There is no other opinion of the medical expert in this regard and merely on the basis of the those injuries gravity of said injuries is not proved. The appellant is in jail since 5 years 5 months 21 days till date. Before the incident, he was earning his livelihood by driving auto on rent, he is not the resident of Raipur. Before the date of incident he migrated from Damoh Madhya Pradesh for his livelihood. He may be given an opportunity and the matter may be considered sympathetically, he will not commit any offence in future he may be sentenced for the period already undergone by him.

9. Per contra, counsel for the State opposed the arguments advanced on behalf of the appellant and would submit that the appellant who was a stranger to the victim suddenly entered into the house of the victim and with the help of griddle he assaulted and inflicted 8 injuries to the victim. Looking to the entire facts and circumstances, the trial Court adequately sentenced the appellant, hence, the appeal may be dismissed on all the counts.

10. In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the prosecution during trial.

11. Upon perusal of the medical evidence, Dr. BV Nagraj (PW-5) only mentioned regarding presence of 8 injuries and opined that the injuries may be caused by hard and blunt object. Besides this the doctor has not said anything regarding the type of the injury, whether it was grievous or fatal for life in case the victim was not treated immediately. As per the evidence of complainant (PW-1), the accused appellant entered into the kitchen where the complainant was cooking, assaulted her with the griddle on various parts of her body. She fell down unconscious and she regained her consciousness after 10 days. There is no opinion of the medical expert or any proof to demonstrate that the victim was an indoor patient, though the injuries were on face, chest, upper lip, chin and other parts of the body and the injuries were of different sizes. All the injuries were lacerated in nature and there is no reason to disbelieve the oral and medical evidence that it was the accused/appellant who assaulted the victim (PW-1) and caused 8 injuries.

On behalf of the appellant, the appeal is not being contested regarding conviction part. Even otherwise, I do not see any reason to deviate from the findings of the trial Court regarding conviction of the appellant under Section 307 of the IPC. With this, conviction of the appellant for the offence under Section 307 of the IPC requires no interference. So far as the quantum of substantive jail sentences are concerned, the victim was assaulted with 8 injuries, lacerated in nature, but nature of the injuries or the fact whether the injuries were fatal to the life or not is not explained by the doctor during MLC, the accused is the first offender, served the sentence for 5 years 5 months and 28 days till date, though no material to prove the cause of incident was surfaced and on the entire material the court below acquitted the accused/appellant for the charges under Sections 456 and 354 of the IPC. Looking to the period of detention, his age and other facts, sentence part awarded to the accused/ appellant requires interference. Ends of justice would be served if the accused/appellant be served for the period already undergone by him.

12. Consequently, the appeal is allowed in part. Conviction of the appellant under Section 307 IPC is hereby affirmed. And also the fine sentence awarded to the appellant including serving of sentence in default of payment of fine by the trial Court is hereby affirmed. So far as the substantive jail sentence awarded under Section 307 IPC is concerned, instead of RI for 10 years, the accused/appellant is sentenced to undergo the period already undergone by him. The accused/appellant is reported to be in jail. He be released forthwith

if not required in any other case. If the fine sentence is not deposited, the concerned authorities are directed to serve with the default sentence to the appellant and release only thereafter.

13. Appeal allowed in part.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE