

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 383 of 2014

- Balaram Sahu, S/o Sakhu Sahu, aged about 48 years, R/o Village Ramhepurkala, Police Station Kawardha, District Kabirdham (Kawardha) Chhattisgarh

---- Appellant

Versus

- State of Chhattisgarh, Through : The Aarakshi Kendra Kawardha, District Kabirdham (Kawardha) Chhattisgarh

---- Respondent

For Appellant :	Shri S.C. Verma, Advocate
For State :	Shri Sameer Behar, Panel Lawyer

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

15/11/2016

1. This appeal has been preferred against the judgment of conviction and sentence passed by the Additional Sessions Judge (F.T.C.) Kawardha, in Sessions Trial No. 49/2013 on 31/03/2014, by which the appellant-accused was convicted under Section 307 and 324 of Indian Penal Code and was punished with sentence of rigorous imprisonment of 5 years along with fine of Rs. 1000/- and with rigorous imprisonment of 2 years along with fine of Rs.1000/- respectively.

2. The facts of the case are these, that appellant-accused and Ramti Bai (PW-3) happened to be related to each other. Son of appellant is married to daughter of Ramti Bai (PW-3). Kalyani (PW-8) had alleged that her father-in-law appellant-accused had

assaulted her modesty, due to which she along with her husband started living separately from her father-in-law and mother-in-law for which reasons appellant-accused was annoyed with her. On the date of incident i.e. 09/07/2013 mother Ramti Bai (PW-3) had been on visit to her daughter, in village Ramhepurkala and was ready of to go back and standing near the road. At the same time appellant-accused came to the spot armed with an axe (Tangiya) and abusing Ramti Bai (PW-3), he assaulted her by Tangiya injuring her on neck. At the same time he also assaulted Kalyani (PW-8) and injured her. Both the injured were admitted for treatment in District Hospital, Kawardha. Information (Ex.P/16) was sent to Police Chowki vide (Ex.P/16). On arrival of Police officer, one un-numbered FIR (Ex.P/20) was recorded, on the basis of information given by Kalyani (PW-8) and on its base a numbered FIR (Ex.P/15) was recorded in Police Station, Kawardha. Injured Ramti Bai (PW-3) and Kalyani (PW-8) were medically examined. At the instance of appellant vide (Ex.P/5) one axe was recovered from his possession vide Ex.P/6. Blood stained clothes of appellant-accused were seized vide (Ex.P/7) and blood stained clothes of Kalyani (PW-8) were seized by seizure memo (Ex.P/8). Seizure of blood stained soil and plain soil was made vide (Ex.P/10). Seized articles were sent for examination and report was obtained from doctor vide (Ex.P/19). Blood stained clothes of Ramti Bai (PW-3) were also seized vide seizure memo (Ex.P/21). Seized articles have been sent for Forensic Science Laboratory

examination and its report vide (Ex.P/27) was obtained. Statement of witnesses were recorded under Section 161 of Cr.P.C. on completion of investigation charge-sheet was submitted.

3. After the process of committal the case was received on transfer in the Court of Additional Sessions Judge (F.T.C.) Kawardha. Appellant was charged under Sections 294, 506 Part II, 324 and 307 of IPC. Appellant denied the charges. The trial was conducted and on completion of trial, impugned judgment has been passed in which appellant was acquitted of charges under Section 294 and 506 Part-II of IPC, but conviction was recorded under the remaining provisions and sentenced as mentioned above.

4. The grounds of appeal are these, that impugned judgment is bad, illegal, incorrect and inappropriate, perverse to the facts and material available on record. Prosecution had utterly failed to prove the case against the appellant-accused beyond reasonable doubt, for these reasons, the impugned judgment is against well settled principles of law.

5. At the stage of argument the counsel for appellant submits that appellant was taken into custody on 09/07/2013, since then he is continuously in custody and undergoing the sentence, till now 3 years and 4 months period been passed by him in custody. Looking to the nature of offence committed by him, the appellant deserves to be punished with imprisonment of period of custody

already undergone. It is also argued that on the basis of doctors evidence no such case was made out that appellant-accused intended to cause death of the injured Ramti Bai (PW-3).

6. On the other hand, on behalf of State it has been argued that the impugned judgment does not suffer from any infirmity. The finding of conviction against the appellant is well supported with evidence of prosecution beyond reasonable doubt.

7. After hearing at length both the parties and considering the material on record the finding is arrived at.

8. Kalyani Bai (PW-8) has narrated about the incident that on the date, time and place when she was present on the spot along with her mother Ramti Bai (PW-3), all of sudden appellant came there and first he assaulted Ramti Bai (PW-3), and thereafter assaulted this witness. She gave information about the incident to Police in the hospital. Her statement is unshaken in her cross-examination. Ramti Bai (PW-3) has supported her version and she herself is one of the injured person. Her statement is also unrebutted. She was confronted with her previous statement Ex.D/1 in cross-examination, minor discrepancies which have been established are of no consequence and cannot be considered as material to affect the veracity of her statement in examination-in-chief.

9. Dr. Santosh Luniya (PW-13) stated that Ramti Bai (PW-3)

and Kalyani (PW-8) were admitted in District Hospital, Kawardha on which he sent information (Ex.P/16) to Police Chowki at the hospital. Inspector Sanjay Pudhir (PW-14) recorded Dehati Nalishi (Ex.P/20) on the basis of information given by Kalyani (PW-8) and conducted the investigation procedure.

10. There are no other witness in support of the eye witnesses who have been examined. But the corroboration to the statement of Ramti Bai (PW-3) and Kalyani (PW-8) has come in other manner. Ganpat (PW-1) though a hostile witness has stated that he came on the spot just after the incident and saw Kalyani (PW-8) and her mother lying on the ground, on suggestion given by prosecution he has admitted that Kalyani (PW-8), Ramti Bai (PW-3) were found in injured condition. Chaitram (PW-2) is hostile witness who has not supported the case. Chandan Das (PW-6) heard about the incident and saw the injured persons. Similar statement has been given by Dharmendra (PW-7).

11. Abhishek Kumar Jha (PW-4) is Executive Magistrate who recorded dying declaration of Kalyani Bai vide (Ex.P/3), since Kalyani (PW-8) is alive, the value of this statement for now is just similar to a previous statement. Patwari Shweta Pandey (PW-5) prepared spot map vide (Ex.P/4). Dr. Atul Jain (PW-10) gave treatment to the injured person.

12. Statement of the main witness found support indirectly from the witnesses who arrived at on the spot after the occurrence and

further this statement is well supported by the medical evidence. Dr. Santosh Luniya (PW-13) was the first to examine the injured persons. On examining Kalyani (PW-8) vide (Ex.P/17) he found one lacerated wound on back side of her neck, which was caused by hard and blunt object within six hours prior to the examination. He also examined Ramti Bai (PW-3) and found one incised wound on the lower back side of the neck of size 4"x2"x4". One more incised wound below of first wound of size 4"x2"x2". According to him the condition of injured was grave but her vital organs were functioning properly. He has given report (Ex.P/18). In cross-examination he has admitted, that he did not found any fracture with the wound on this ground the injuries caused to Kalyani can be called simple injury. Regarding Ramti Bai (PW-3) he has opined that her condition was grave. Further he has admitted, that in the injuries of Ramti bai (PW-3) he did not find any bony injury and also admitted that the nature of the injury caused to Ramti bai (PW-3) were not sufficient to cause death in absence of treatment. This witness has not in clear words stated, that injury caused to Ramti Bai (PW-3) was sufficient to cause death in due course of nature. Dr. S.K. Gupta (PW-15) have given statement on the basis of X-ray examination and given negative report regarding any bony injury to injured persons. Dr. Rupesh Kumar Verma (PW-16) treated Ramti Bai (PW-3) who was admitted on 09/07/2013 in the Narayana Hospital, Raipur and discharged on 16/07/2013 after the injuries were healed.

13. After scrutinizing the evidence of prosecution before the trial Court, the evidence regarding the act of appellant-accused on which basis, the finding that the appellant-accused assaulted and caused injuries to Ramti Bai (PW-3) and Kalyani (PW-8) seems to be established. The only question is whether this evidence is sufficient to uphold the conviction of appellant under Section 307 of IPC. In an offence of attempting to cause death, intention or knowledge is one of the ingredients which has to be distinctly proved by the prosecution. Looking to the evidence in this case, the intention or knowledge of the appellant, that his act would in all probability caused death of the person assaulted, does not seem to have been established. Ramti Bai (PW-3) while describing the incident has said that appellant while assaulting her was saying, that she is Tonhi (witch), no statement has been given as to what was the intention of the appellant. Kalyani (PW-8) has stated similarly. The persons who were injured do not have this opinion, that appellant intended to cause death of anyone.

14. Now for the purpose of ascertaining that death was intended in this case, the medical evidence can be looked into. The medical evidence is also not supportive in that manner. Dr. Santosh Luniya (PW-13) who firstly examined Ramti (PW-3) and Dr. Rupesh Kumar Verma (PW-16) who treated her have not given this opinion that the injuries caused to Ramti Bai (PW-3) were sufficient to cause death in due course of nature. Regarding gravity of condition of Ramti Bai (PW-3), the opinion has been given only

on this count, that the incised wound was found on the neck of the Ramti Bai (PW-3) which is considered a vital part of the body. On the basis of this evidence, this conclusion cannot be drawn that the appellant-accused intended or knew that his act would in all probability cause death of Ramti Bai (PW-3), hence the offence under Section 307 is not made out. The injuries on the neck of Ramti (PW-3) though seems to be vital part of the body were not deep enough involving any serious consequence. It has been opined by Dr. Santosh Luniya (PW-13) that this injury was grievous but the grievousness of injury which is defined under Section 320 of IPC, does not cover the kind of injury caused to Ramti Bai (PW-3). For these reasons the offence which was committed against Ramti Bai (PW-3) is covered only under Section 324 of IPC.

15. On the basis of finding arrived at in this appeal, the impugned judgment requires interference. The appeal is allowed in part, by which the conviction and sentence of appellant-accused under Section 307 of IPC is set-aside, in stead of that appellant is convicted under Section 324 of IPC and he is sentenced with imprisonment for the period of custody already undergone by him.

Sd/-

(Rajendra Chandra Singh Samant)
JUDGE