

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.966 of 2001

Gendu alias Gendlal alias Gendram, S/o Lakhan Kurmi, aged about 43 years, R/o Village Munund, P.S. Janjgir, Tahsil Janjgir, District Janjgir-Champa, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through P.S. Janjgir, District Janjgir-Champa

--- Respondent

For Appellant	:	Shri Arun Kochar, Advocate
For State/Respondent	:	Shri Avinash K. Mishra, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

4.12.2017

1. This appeal has been preferred against the judgment dated 4.10.2001 passed in Sessions Trial No.90 of 1999 by the 4th Additional Sessions Judge (FTC), Janjgir convicting and sentencing the accused/Appellant as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 452 of the Indian Penal Code	Rigorous Imprisonment for 2 years
Under Section 307 of the Indian Penal Code	Rigorous Imprisonment for 5 years

2. A certificate of incarceration sent by the Jail Superintendent, Central Jail, Bilaspur would mention that the Appellant has undergone the entire jail sentence imposed upon him by the Trial Court and has already been released on 19.8.2004.
3. Case of the prosecution, in brief, is that on 5.11.1998, at about 7:30 a.m., the Appellant entered the house of Complainant Radhabai (PW9) with an intent to commit her murder on account of an old enmity and assaulted her with a sharp weapon *Tabali*. The occurrence was witnessed by Sonaibai (PW4). She lodged Dehati

Nalishi (Ex.P5) on the basis of which First Information Report (Ex.P4) was registered in Police Station Janjgir. A *Tabali* was seized from the Appellant vide Ex.P12. Plain soil, blood stained soil and blood stained broken pieces of bangles were seized from the place of occurrence vide Ex.P8. Blood stained clothes of Radhabai were seized vide Ex.P11. Injured Radhabai was examined by Dr. U.C. Sharma (PW8). His report is Ex.P9. He found total 5 incised wounds (i) 6 cms x ½ cm, skin deep, present on the right side of cheek, (ii) 3 cms x ½ cm, bone deep, present on the right side of forehead, (iii) ½ cm x ¼ cm x ¼ cm, present below the right ear, (iv) 10 cms x 4 cms, present below neck above back and (v) 1 cm x ½ cm x ½ cm, present on upper part of right shoulder. On completion of the investigation, a charge-sheet was filed against the Appellant for offence punishable under Sections 307 and 452 of the Indian Penal Code. Charges were framed against him under Sections 452 and 307 of the Indian Penal Code.

4. In support of its case, the prosecution examined as many as 10 witnesses. Statement of the Appellant was also recorded under Section 313 of the Code of Criminal Procedure in which he denied the circumstances appearing against him, pleaded innocence and false implication. One witness has been examined in defence of the Appellant.
5. After trial, the Trial Court convicted and sentenced the Appellant as mentioned in the first paragraph of this judgment. Hence, this appeal.
6. Learned Counsel appearing for the Appellant submitted that the prosecution has failed to prove the necessary ingredients of the offence. There are material contradictions, omissions and

improvements in the evidence of the prosecution witnesses. The prosecution witnesses, who have supported the case of the prosecution, are interested witnesses. Therefore, their evidence is not reliable. No definite opinion has been given by the doctor. The Appellant has falsely been implicated in the case.

7. Per contra, Learned Counsel appearing for the State supported the impugned judgment.
8. I have heard Learned Counsel appearing for the parties and perused the record with due care.
9. Radhabai (PW9) has stated that at the time of incident the Appellant came to her house and assaulted her with a *Tabali*. He assaulted on the lower part of the ear, cheek and forehead with the said *Tabali*. Sonaibai (PW4) witnessed the incident. She has supported the statement of Radhabai. Tirathram (PW3) has also supported the case of the prosecution to some extent. He has stated that he had seen Radhabai in injured condition.
10. Rabin (PW6) is the witness who recorded the FIR (Ex.P4). Sub-Inspector Bhawani Shankar (PW10) is the witness who investigated into the offence. Dr. U.C. Sharma (PW8) examined Complainant Radhabai and gave his report (Ex.P9) in which he found the above stated incised wounds. Statement of Radhabai (PW9) is duly corroborated by Dr. U.C. Sharma, his report (Ex.P9) and eyewitness Sonaibai (PW4).
11. In the premises of aforestated, the conviction and sentence imposed upon the Appellant deserves to be affirmed.
12. Consequently, the appeal is dismissed. The impugned judgment of conviction and sentence is affirmed.

- 13.** Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge