

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 885 of 2004

- Laxman @ Jati Yadav, S/o Sadhu Ram Yadav, aged about 36 years, R/o Village Banari, P.S. Janjgir, District Janjgir-Champa (CG)

---- Appellant

Versus

- The State Of Chhattisgarh

---- Respondent

For Appellant	:	Shri N.K. Mehta, Advocate
For Respondent	:	Smt. Madhunisha Singh, Panel Lawyer

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgement

Per P. Diwaker

11/05/2017

1. Present appeal is directed against the judgment dated 12.10.2004 passed by the 3rd Additional Sessions (FTC) Janjgir in Sessions Trial No.84/2004 convicting the accused/appellant for the offence punishable under Section 307 of the Indian Penal Code (for short 'IPC') and sentencing him to undergo RI for life and fine of Rs.1,000/-, in default to undergo additional RI for 3 months.
2. Case of the prosecution, in brief, is that on 26.12.2003 injured Hariom (PW-10) lodged a report alleging in it that on account of previous land dispute, on that day at about 2.00 p.m. the accused/appellant caused axe injury on his head as a result of which he started bleeding. The incident was witnessed by Shiv (PW-1) & Santram (PW-2). Based on this, FIR (Ex.P-10) for commission of offence under Section 307 IPC was

registered against the accused/appellant. Injured was first treated at Janjgir by the doctor (PW-2) vide medical report of Ex.P-11. Subsequently, the injured was shifted to CIMS, Bilaspur where he was treated by the doctor (PW-13) who noticed fracture in the skull and clotted blood. Dr. G.S. Kanwar (PW-6) conducted x-ray examination on the body of injured vide Ex.P-8 and noticed one fracture in the right parietal region of skull. Injured was also treated at Chandulal Chandrakar Hospital between 1.1.2004 & 12.1.2004. After completion of investigation, charge sheet under Section 307 IPC was filed against the accused/appellant and accordingly the charge was framed by the trial Court against him.

3. So as to hold the accused/appellant guilty, the prosecution has examined 19 witnesses in support of its case. Statement of accused/appellant was also recorded under Section 313 Cr.P.C. in which he denied the charge levelled against him and pleaded his false implication in the case.
4. After hearing counsel for the parties, the trial Court by the impugned judgment convicted and sentenced the accused/appellant in the manner as described above.
5. We have heard learned counsel for the parties and perused the material available on record including the impugned judgment.
6. Counsel for the appellant submits that the alleged eyewitnesses to the incident have not supported the prosecution case and turned hostile. He has further submitted that as per medical evidence the injury suffered by the injured was not sufficient to cause his death in the ordinary course of nature and therefore even if the prosecution is accepted in its entirety then also the offence under Section 307 IPC is not made out against the appellant and at the most the offence would fall within the ambit of Section 326 IPC. He further submits that the appellant has already remained in jail for about a year and therefore while converting his conviction under

section 326 IPC, he may be sentenced to the period already undergone by him. He further submitted that the appellant is willing to compensate the victim by paying adequate compensation. Reliance is placed in the matter of Neelam Bahal & another v. State of Uttarakhand reported in AIR 2010 SC 428.

7. On the other hand, counsel for the respondent-State supports the impugned judgment and submits that the manner in which the victim has been assaulted, the intention on the part of the appellant to cause his death is writ large. He further submits that the injured has suffered injury on the vital part of the body i.e. head, and it appears that he survived luckily otherwise the appellant was determined to cause his death. In these circumstances, the conviction of the appellant under Section 307 IPC and the resultant sentence is just and proper and no interference therewith is warranted.
8. Shivkumar (PW-1) & Santram alias Seitram (PW-2), Kailash Gadhewal (PW-3), Sharad Kumar Sahu (PW-4), Pushpanjali (PW-7), Jhalobai (PW-8) have not supported the prosecution case and as such declared hostile.
9. Dr. G.S. Kanwar (PW-6) is the doctor who had examined the injured at CIMS, Bilaspur and noticed one fracture in the right parietal region of the skull.
10. Ganpat Lal (PW-9), brother of injured, is the hear-say witness who came to know about the incident from his brother i.e. injured.
11. Hariom Pastkar (PW-10) is the injured. He has stated that on the date of incident while he was reading newspaper in his shop, the accused came there and assaulted on his head by axe as a result of which he fall down. He has further stated that the accused/appellant assaulted him from his back and he saw the accused running away from there carrying axe in his hand. He has further stated that after being fallen down, Jaggu Sidar

came there and took him inside his house.

12. Dr. O.P. Shrivastava (PW-12) is the doctor who had medically examined the injured and noticed following injuries;-

- Incised wound over left side of the head at a distance of about 4" from the ear.
- Incised wound of 4x1/2" size, deep skull bone exposed and cut.
- Brain matter was visible.

This witness has stated that he referred the injured to CIMS, Bilaspur for x-ray. His report is Ex.P-11.

13. Dr. A.K. Yende (PW-13) is the doctor who after examination of the injured advised for operation of head of injured vide Ex.P-13. Banjarilal (PW-15) is the Patwari who had prepared the spot map of Ex.P-2. Pramod Pandey (PW-16) is the investigating officer who has duly supported the prosecution. Louis Ekka (PW-18) is the police person who helped in the investigation. Dr. Rajan Tiwari (PW-19) is the person who treated the injured at Chandulal Chandrakar Hospital, Bhilai from where the injured was discharged vide Ex.P-19.

14. From perusal of the FIR and the statement of injured (PW-10), it is evident that on the fateful day when the injured was in his shop and reading newspaper, the accused/appellant came there and caused axe blow on the head of the injured as a result of which he fell down. The injured (PW-10) has categorically stated that while he was reading newspaper in his shop, the accused/appellant came from his back, assaulted on his head by axe and he saw the accused running away from there carrying axe in his hand. Evidence of injured gets corroboration from the promptly lodged FIR and medical evidence in which injury on the skull of injured was noticed and according to treating doctor, the same was caused by sharp and hard edge object. Immediately after the incident, a blood stained axe

was seized from the possession of accused/appellant and no explanation was offered by the accused/appellant as how his axe was blood stained.

True it is that two main eyewitnesses i.e. PW-1 & PW-2 turned hostile and did not support the case of the prosecution but it is settled position that the testimony of the injured witness, though eyewitnesses have turned hostile, is alone sufficient to prove the complicity of accused/appellant in the crime in question because the injury to the witness is an in-built guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, on the basis of aforesaid evidence, complicity of accused/appellant in commission of the offence in question stands proved beyond reasonable doubt.

15. Now the question to be considered by this Court is whether the act of the accused/appellant makes him liable to be convicted under Section 307 IPC?
16. Looking to the facts and circumstances of case and the nature of injury coupled with the medical evidence wherein the doctor, who initially examined the injured, had not mentioned that the bodily injury caused to the victim was sufficient in the ordinary course of nature to cause death and further considering the fact that there is nothing on record to suggest that the appellant wanted to cause some other injuries, it would not be safe to hold that the appellant assaulted the victim in an attempt to commit his murder. However, the nature of injury caused, the weapon used for causing such injury and the fact that the victim had remained in the hospital for 17 days due to head injury caused to him, it can be safely said that the accused/appellant had caused grievous injuries to the victim with dangerous weapon making him liable to be convicted under Section 326

IPC.

17. As regards the sentence, considering the fact that the appellant has already remained in jail for a period of one year and the incident had taken place in the year 2003 i.e. about 14 years have elapsed since then, this Court is of the considered opinion that it will be in the interest of justice to sentence him to the period already undergone by him.
18. Accordingly, the appeal is partly allowed. While acquitting the appellant of the charge under Section 307 IPC, he is held guilty under Section 326 IPC and sentenced to the period already undergone by him. He is directed to deposit an additional sum of Rs.25,000/- with the concerned trial Court within a period of six months from today, failing which he shall have to suffer jail sentence of one year. The amount so deposited shall be paid as compensation under Section 357 (3) of Cr.P.C. to injured Hariom Pastkar (PW-10) by the trial Court after due verification.
19. The applicant is already on bail. His bail bonds are discharged.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(RCS Samant)
Judge

roshan/-