

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 143 of 2009**

1. Fagu Ram S/o Fulchand Kavar, aged about 35 years, R/o Village Sarga, PS Sitapur, District Sarguja, CG.

---- Appellant**Versus**

1. State of Chhattisgarh through DM, Sarguja, CG

---- Respondent

For Appellant : Shri Vivek Kumar Pandey, Advocate

For Respondent/State : Shri Ravindra Agrawal, PL

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Shri R.P. Sharma****Judgment on Board by Pritinker Diwaker, J****17/08/2017**

This appeal has been filed against the judgment of conviction and order of sentence dated 22.11.2008 passed by Additional Sessions Judge Ambikapur, Sarguja in Sessions Trial No. 86/2008 convicting the accused/appellant under Sections 307 and 323 IPC and sentencing him to undergo imprisonment for life and pay fine of Rs. 2,000/- u/s 307 and RI for one year with fine of Rs. 100/- u/s 323 IPC, plus default stipulations.

2. As per the case of prosecution, on 10.11.2007 at 8.45 PM FIR Ex. P-4 was lodged by Kaleshewar (PW-3) alleging that on that day at about 5 PM one Kisanu (PW-2) – the son of injured Dukharan (PW-1) was singing a song in front of the house of the accused/appellant. It is said that after the accused/appellant saw this, he asked Kisanu to stop singing and also started beating him. This act of the accused/appellant was objected to by the injured

and as he tried to separate the two, accused/appellant went to his house, took out an axe and caused injury on his neck saying as to who he was to intervene. The injury started bleeding. This incident is said to have been witnessed by Chandrika Bai, Tubko Bai, Shividhan and Chamru. It is alleged that after causing injury, the accused/appellant got away threatening the injured of being done away with. Based on this FIR, offences under Section 294, 323 and 506-B IPC were registered against the accused/appellant. In the said incident Kisanu (PW-2) and Somaru (PW-5) are also stated to have suffered injuries. Injured Dukharan (PW-1) was first medically examined by Dr. S.N. Painkra (PW-9) who gave his report Ex. P-14 who looking to his condition referred him to Ambikapur where he remained admitted from 10.11.2007 to 01.12.2007 which is clear from the Bed Head Ticket Ex. P-7. After investigation, charge-sheet was filed by the police under Sections 294, 323, 506-B and 307 IPC followed by framing of charge by the Court below accordingly.

3. In order to prove the complicity of the accused/appellant in the crime in question, the prosecution has examined 09 witnesses. Statement of the accused/appellant under Section 313 Cr.P.C. was also recorded in which he denied his guilt and pleaded innocence and false implication in the case.

4. After hearing the parties, the Court below acquitted the accused/appellant of the charges under Sections 294 and 506-B IPC but has convicted and sentenced him as mentioned above.

5. Counsel for the accused/appellant submits as under:

(i) That the accused/appellant had no intention to cause any grievous injury to Dukharan (PW-1) but as there was a trivial dispute between the accused and Kisanu (PW-2) and Dukharan

intervened un-necessarily, he suffered the injury.

(ii) That considering the nature of injury suffered by the victim (PW-1) the accused/appellant can, at the most, be convicted under Section 326 IPC and not u/s 307.

6. State counsel however supports the judgment impugned and submits that the findings recorded by the Court below are based on due appreciation of the evidence on record and there is no infirmity in the same. He submits that the axe injury suffered by the victim has resulted in his complete disfigurement and therefore, the trial Court has been well justified in convicting the accused/appellant under Section 307 IPC.

7. Heard counsel for the parties and perused the material available on record.

8. Injured Dukharan (PW-1) has stated in his evidence that on the date of incident after hearing some quarrelsome activities near the house of the accused/appellant he came out of his house where the accused/appellant assaulted him with axe causing injury on his temple. According to this witness, after suffering injury he became unconscious and was taken to Ambikapur for medical treatment. Though this witness has turned hostile at this stage, in cross-examination he has admitted the entire incident and the manner in which he was assaulted by the accused/appellant. Kisanu (PW-2) – the son of injured (PW-1) has also partially supported the case of the prosecution stating that in the incident his father was assaulted by the accused/appellant. This witness too has turned hostile thereafter. Kaleshwar (PW-3) – the nephew of the injured and the lodger of FIR Ex. P-4 has supported the case of the prosecution but in part. Chandrika (PW-4) – the eyewitness to the incident has

supported the case of the prosecution stating that on the date of incident when the accused/appellant asked Kisanu and Somaru not to sing a song in front of his house, some quarrel started between them and when the injured (PW-1) came out of his house after hearing the altercation and asked the accused to stop quarreling, he (accused) went inside the house, took out axe and caused injury on his temple as a result of which he fell down on the ground and the injury started bleeding. In cross-examination she however has stated that all this happened only on account of intervention by injured otherwise there was no previous dispute between the accused and the injured. Somaru (PW-5) has supported the case of the prosecution but in part stating that on the date of incident when he and Kisanu were singing song near the house of the accused, he asked them to stop all that and also beat them with hand and a wooden piece. Thereafter, injured (PW-1) came and intervened in the matter on which accused went inside, took out axe and assaulted him (Dukharan PW-1) on his temple. Thereafter, this witness too has turned hostile. Dr. Lalmani Singh (PW-6) is the witness who medically treated the victim (PW-1) at Holy Cross Hospital Ambikapur. She has stated the condition on discharge as the injury being cured which was of simple nature. He has stated that at the time when the victim was brought to him, his condition was grievous but not very grievous and the wound suffered by the victim was stitched. All this medical description finds place in the Bed Head Ticket Ex. P-7. Himendra Kumar Kushwaha (PW-7) is the investigating officer who has duly supported the case of the prosecution. Tubko (PW-8) - the wife of injured (PW-1) has stated that after hearing noise she came out of the house and found her husband lying on the ground with bleeding injury on his temple.

She has however has stated that there was no previous dispute between her husband and the accused/appellant. Dr. S.N. Painkra (PW-9) is the witness who initially did the medical examination of the injured and gave his report Ex. P-14 stating that he noticed bleeding and pain on left side of his face, incised wound on left side of face below left ear in the size of 7 x 1/2 cm and then he referred him to District Hospital Ambikapur advising for X-ray of left side of neck and left mandible. The object used for causing such injury has been opined by this witness to be a hard and sharp one.

9. From the material available on record it is apparent that on the date of incident the accused/appellant caused injury on the temple of the injured that too with axe and that after receiving initial treatment by PW-9 he was referred to District Hospital, Ambikapur where he remained hospitalised from 10.11.2007 to 01.12.2007. The argument of the counsel for the accused/appellant that there was no intention on the part of the accused to cause grievous injury on the body of the victim does not appear to be very convincing. This is for the reason that first there was dispute going on between accused, Kisanu and Somaru over singing of song in front of his house and on hearing some quarrelous activities, the victim came out of his house and tried to intervene in the matter and perhaps this intervention made the accused so furious that he went inside the house, picked up axe and caused injury on his temple – a vital part. Had there been no intention on the part of the accused to cause grievous injury, there was no need for him to get inside and take out axe for causing injury to the victim. Being so, this argument of the counsel for the appellant is held to be without substance and is rejected as such. Though the

injured and other eyewitnesses to the incident have not fully supported the case of the prosecution and have chosen to turn hostile for whatever reason, one thing that the accused went inside his house, got back with axe and inflicted injury on the temple of the victim, remains unfaltered. The part chosen for assault by the accused was temple which is characterised as vital one and this also establishes his intention of inflicting grievous injury with a weapon like axe.

10. Thus in view of aforesaid, the accused/appellant has to be held guilty under Section 307 IPC and the finding of the Court below to this effect cannot be dislodged. Judgment impugned so far as it relates to conviction of the accused/appellant under Section 307 and 323 IPC is hereby maintained. However, considering the fact that the incident had taken place on the spur of moment that too about ten years back and there was no previous enmity between the two, this Court is of the opinion to reduce the sentence to three year RI in the interest of justice. It is done so. However, he is directed to deposit a sum of Rs. 15,000/- before the Court below within a period of six months from today to be paid to the victim as compensation under Section 357 of the Code of Criminal Procedure. If he fails to deposit the said amount within the period fixed, he shall be required to remain in jail for further two years. As the accused/appellant is on bail, let him be sent to jail to serve out the remaining part of the sentence.

11. The appeal is thus allowed in part.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(R.P. Sharma)
Judge