

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL APPEAL No. 603 of 2001

Asim Das S/o Shant Masih Das, aged about 30 years, resident of Swabandha Sector, Quarter No.11-B, PS Bhilai Nagar, District Durg (CG).

... Appellant

Versus

The State of Chhattisgarh through the Station House Officer, Police Station, Bhilai Nagar, District Durg (CG).

... Respondent

For Appellant	:	Shri L.C. Das, Advocate.
For Respondent/State	:	Ms. Smita Ghai, Panel Lawyer

Hon'ble the Chief Justice &
Hon'ble Shri Justice P. Sam Koshy

CAV Judgment

Reserved on 27/03/2017

Delivered on 03/04/2017

Per, P. Sam Koshy, J.

1. The appellant stands convicted for the offence under Section 307 IPC and has been sentenced to undergo RI for life and fine of Rs.5000/- with default stipulation vide judgment dated 22.06.2001 passed by the First Additional Sessions Judge, Durg, in Sessions Trial No.318 of 1999.
2. The case of the prosecution in brief is that, on 13.05.1998 the appellant is said to have reached Success Point Coaching Institute at Sector-10, Bhilai, District Durg, and is said to have called the complainant Babita Singh (PW-1) out of classroom and is thereafter attacked her with a knife with an intention to kill her as a result of

which Babita Singh got grievous multiple injuries. An FIR in this regard was lodged at Police Station, Bhilai Nagar, District Durg, where the case was registered as Crime No.245/1998. In due course of time, after investigation, the matter was put to trial before the court of First Additional Sessions Judge, Durg vide Sessions Trial No.318 of 1999. Initially the Appellant was charged for the offence under Section 307 IPC and also under Sections 25 and 27 of the Arms Act.

3. The prosecution, in all, has examined as many as 14 witnesses and the Appellant examined as many as three witnesses in defence.
4. After conclusion of trial, the court below found that the charge under Sections 25 and 27 of the Arms Act could not be established and he was acquitted from the said charge. However, the court below found that there was sufficient material available with which it stood established that it was the Appellant who had assaulted the injured victim Babita Singh causing grievous injuries and convicting the Appellant sentenced him to undergo Rigorous Imprisonment for life with fine of Rs.5000/- with default stipulation. It is this judgment of conviction and sentence which is under challenge in this appeal.
5. Learned counsel for the Appellant submits that the conviction of the Appellant for the said offence and sentencing him with RI for life is highly excessive and harsh. The offence charged is not one in which requires conviction for life. According to Appellant, though there are large number of injuries but most of the injuries are on the non vital part of the body which by itself indicates that the Appellant did not have any intention to murder the victim Babita Singh, but it was only

out of frustration that he had attacked her. Therefore, the sentence for life imprisonment is not called for and the impugned judgment deserves to be set aside.

6. It was also contented by the Appellant that if at all if the Appellant had any intention to murder Babita Singh then the attack would have been more on the vital part of the body and not on the other parts of the body. This itself gives sufficient indication of Appellant not being premeditated for murder of the deceased. The Appellant also tried to contend that it was a case where it appears that the parties were known to each other and that there was some sort of relationship which seems to have failed causing annoyance to the Appellant and out of frustration the Appellant appears to have committed the said act of assaulting the victim.
7. It was lastly contended that considering the fact that the Appellant had not caused any grievous injuries on the vital part of the body of victim, the charge under Section 307 IPC is not made out. At best, it could be a case under Section 325 or Section 326 IPC.
8. The State counsel, on the contrary, opposing the Appeal submitted that it is a case where the prosecution has in fact proved its case beyond all reasonable doubt by leading sufficient cogent evidence establishing the offence. Thus, there is no ground for interference with the impugned judgment. The State counsel took the court through the MLC of the victim and pointed out that there were 20 injuries caused on the victim which itself depicts the magnitude of the attack. Therefore, the court below has rightly convicted the Appellant under

Section 307 IPC and considering the manner in which the Appellant had brutally assaulted the victim, the maximum punishment imposed by the court below is justified. It was also contended by the State counsel that a bare perusal of the evidence which have come on record would also show that the prosecution has infact been able to corroborate the evidence of the injured victim, PW-1 by the two independent eyewitnesses i.e. the Teacher who was conducting the class as also one of the student who was there in the classroom along with the victim. In view of fact that the statement of the injured stands corroborated by two independent eyewitnesses, the scope of interference further gets diminished. Thus, prayed for dismissal of the Appeal.

9. Having heard the rival contentions put forth by the counsel for the either side and on perusal of the records, some admitted and undisputed facts which have come on record is; the occurrence of incident on 13.05.1998; the place of incident being Success Point Coaching Institute; the victim undertaking the coaching for ICWA course at the said coaching point; PW-4, Anmol Murthi, being another student of the same class; PW-9, Srinivas Rao, being the Teacher of the class which the victim and PW-4 were attending; the victim sustained 20 injuries and the injuries sustained by the victim was proved by PW-2, Dr. V.V. Rao, who had accepted that the injuries number 3,4,5,6,7 and 20 were grievous in nature and the rest were simple in nature.

- 10.** Taking into consideration the aforesaid admitted factual matrix of the case, if we look into the evidence which have come on record, indisputably there is statement of injured witness PW-1 Babita Singh, who has in very categorical terms established the fact that the Appellant had reached to classroom, called her out and then is said to have started assaulting with knife that he was carrying. When she tried to escape and took shelter inside the classroom, the Appellant is said to have followed her and thereafter in spite of intervention by PW-4 and PW-9, the Appellant is overpowered the victim and caused 20 injuries all over her body. The said statement of victim does not find and contradiction, omission or any improvement from the statement made during the course of investigation and there also does not seem to be much change in the version that was recorded in the First Information Report at the instance of PW-9.
- 11.** The said statement of the victim stood fully corroborated by the evidence of two eyewitnesses PW-4, Anmol Murthi, studying along with the victim and who was also attending the class at the time of incident, as also the statement of PW-9, Srinivas Rao, the Teacher who was conducting the class at the relevant point of time who had also tried to intervene and persuade the Appellant not to attack, but his efforts went in vain. There also does not seem to be much that was extracted from the cross examination of these two witnesses so as to give rise to any doubt in the version of the prosecution story.
- 12.** Hence, we are of the opinion that the court below was justified in reaching to the conclusion that the charge against the Appellant stood

proved beyond all reasonable doubt. We also do not find any illegality or perversity in the conclusion of trial court holding that it is the offence under Section 307 IPC which is made out. The contention of the Appellant that it could be a case at best under Section 325 or 326 IPC cannot be accepted for the simple reason that the Appellant has not been able to establish the fact that the incident had occurred out of heat of passion or from the sudden provocation coupled with the fact that the Appellant is said to have inflicted repeated blows on the victim causing as many as 20 injuries out of which some injuries were grievous in nature as per PW-2, Dr. V.V. Rao.

13. Now the second issue which crops up for consideration is whether the sentence of RI for life imprisonment which has been imposed upon the Appellant by the court below is proper, legal and justified or not.
14. A perusal of the evidence which have come on record particularly the evidence of victim Babita Singh, PW-1, and also other witnesses, it is apparently clear that the victim and the Appellant both were known to each other. Their family members were also known to each other. The residence of two individuals also were in the same vicinity and the Appellant could be said to one of the neighboring residents to the house of the victim.
15. From the nature of evidence which have come on record particularly the cross examination of the victim as also the statement of DW-1, Dr. A.K. Viswas and DW-2, Dr. Jageshwar Mahto, the two Doctors examined on the part of the defence strongly compels us to draw an inference that it appears to be a case of one sided love affair which on

failure resulted in frustration which could have led to assaulting of the victim when she had come back to her parents home after some time of her marriage. It appears that the Appellant was infatuated and was not able to come to terms in spite of fact that the victim got married and went away to her matrimonial home. From the records it also does not appear to be a case where the Appellant had any criminal track record. The description of the weapon used which has been reflected in Ex. P/7 also does not show it to be a weapon of assault, but it seems to be a small cutter like thing.

16. All these facts and circumstances narrated in the preceding paragraphs leads us to take a slightly more lenient view on the sentence part and we are of the opinion that in the given factual matrix of the case, the sentence of Rigorous Imprisonment for life awarded to the Appellant does not seem to be proper, legal and justified. The same is accordingly set aside. The sentence of life imprisonment is thus reduced to the period of 10 years. The fine amount and default stipulation remains the same as has been awarded by the trial court.
17. The appeal is partly allowed to the extent that conviction of the Appellant stands maintained, however, the sentence part stands modified and the Appellant is sentenced to RI for 10 years in place of RI for life. The bail bonds of the Appellant stands cancelled. He is directed to surrender and/or be taken into custody forthwith for serving out remaining jail sentence.

Sd/-
(Thottathil B. Radhakrishnan)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE