

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.A. No. 227 of 2011

Jagat Ram Korva, S/o. Jhegnaram Korva, aged about 32 years, R/o. Govindpur, Taraidand, Police – Batauli, District – Sarguja (C.G.)

---- Appellant

Versus

State of Chhattisgarh, Through : Police Station – Batauli, District – Sarguja (C.G.)

-----Respondent

For Appellant	: Mr. Mirza Kaiser Baeg, Advocate
For Respondent/State	: Mr. Sameer Behar, Panel Lawyer

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

16/09/2017

Heard.

1. This appeal is preferred against the judgment dated 24.01.2011, passed in S.T. No.237/2009, by the Fourth Additional Sessions Judge (FTC), Ambikapur, District – Sarguja, whereby the appellant has been convicted for the offence under Section 307 of Indian Penal Code and sentenced to under go R.I. for 7 years along with fine of Rs.500.- and in default of payment of fine, further under go R.I. for two months more.
2. Facts of the case in brief is that on 11.03.2009 at about 4.00 pm in evening, appellant was beating his wife with a club, at that time, the victim- Bifan Ram intervened in that incident, on which the

appellant got enraged and he assaulted the victim with thick club and plough and caused injuries on his head and neck because of which victim Bifan Ram (P.W.-5) became unconscious. He was hospitalized and treated for almost one month and six days. FIR Ex.P/7 was recorded by Ram Singh (P.W.-1), the father-in-law of the victim.

3. Initially offence under Section 294, 506 (B) and 323 of Indian Penal Code were registered, but later on after completion of investigation, the appellant was charge-sheeted for trial of offence under Section 294, 506 (B), 323 and 307 of Indian Penal Code. The trial Court has framed the charges against the appellant under Section 294, 506 (B) and 307 of I.P.C. On his denial, the appellant was tried and the impugned judgment was passed, in which the appellant has been acquitted of the charges under Section 294, 506 (B) of the Indian Penal Code, but has been convicted and sentenced as aforementioned.
4. The grounds in appeal are these that the prosecution has failed to prove the charge against the appellant even then the trial Court has erroneously passed the judgment of conviction under Section 307 of I.P.C. The victim Bifan Ram (P.W.-5) has not supported the case of the prosecution and has turned hostile, hence prosecution had no case at all because of which, the conviction against the appellant is unsustainable.
5. Counsel for the State has opposed the grounds raised in this appeal and the submission made on behalf of the appellant. It is submitted that prosecution has proved its case beyond all reasonable doubts

and there is no reason to interfere with the judgment of conviction and order of sentence.

6. I have heard the learned counsel for the parties at length and perused all the documents placed on record.
7. The question for determination in this appeal is whether the judgment of conviction against the appellant is sustainable?
8. Bifan Ram (P.W.-5) is the victim has not supported the case of the prosecution. He was declared hostile and in cross-examination by the prosecutor, he has admitted that when he intervened the quarrel between appellant and his wife, he was abused and assaulted by the appellant with a club and plough, which caused injuries. In cross-examination by the defence, he has stated that he does not know that he suffered injuries because of falling or because of being assaulted as he was under intoxication. This witness has not remained consistent on his statement and has stated by denying and admitting at the same time, hence, he can not be regarded as believable witness.
9. Nayharo Bai (P.W.-3) is the wife of the victim has stated that appellant assaulted her husband, the victim Bifan Ram (P.W.-5) with a plough causing injuries to him. In cross-examination, she has stated that she did not see the appellant bringing the plough, but has confirmed her statement that she saw appellant when he assaulted the victim. She has admitted that she did not see, the incident between appellant and his wife.

10. Bihano Bai (P.W.-8) is another witness, who has stated in her examination in chief that she saw appellant assaulting the victim with plough. In cross-examination, she admitted the suggestion of the defence counsel that she did not see the incident of assault, but she saw, when the victim was lying on the ground. Ram Singh (P.W.-1) is father-in-law of the victim, he came to the spot after the incident had taken place and he was informed that appellant had assaulted the victim Bifan Ram (P.W.-5). Smt. Somari Bai (P.W.-2) has stated that her son-in-law - Bifan Ram (P.W.-5) was assaulted, but she does not know that who assaulted him.
11. Although the victim P.W.-5 is the hostile witness, but the statement of Nayharo Bai (P.W.-3) is unrebutted and believable, which is indirectly supported by the statement of Ram Singh (P.W.-1), Smt. Somari Bai (P.W.-2) and Bihano Bai (P.W.-8), which is sufficient to hold that it was the appellant, who had assaulted the victim Bifan Ram (P.W.-5). Hence the finding on this point by the impugned judgment does not suffer from any infirmity.
12. The finding that the appellant attempted to cause murder of the injured is under question. Dr. Vijay Pradhan (P.W.-6) has examined the victim Bifan Ram (P.W.-5) vide his report Ex.P/3, reporting injuries on his head, neck and left elbow. On further query made by the investigation officer, he reported vide Ex.P/5 that injuries caused to Bifan Ram (P.W.-5) were simple in nature. Dr. Faizul Hasan Firdoshi (P.W.-4) has treated the victim on his admission, from 13.03.2009 when he was brought in the state of unconsciousness and his general condition was poor. He stated that Bifan Ram

(P.W.-5) came to consciousness on 30.03.2009 and thereafter he was discharged on 12.04.2009 and was referred for further treatment in Medical College Hospital, Raipur. There is no evidence, whether Bifan Ram (P.W.-5) was taken to Medical College, Raipur or not.

13. Clearly there is no report of any of the medical officer that the injuries caused to the Bifan Ram (P.W.-5) were sufficient to cause his death in ordinary course of nature. Although during long treatment, Bifan Ram (P.W.-5) was incapacitated due to the injuries to live normal life for more than 20 days, which falls under the definition of grievous hurt under Section 320 of Indian Penal Code. Hence in absence of any medical evidence in this respect that injuries caused to Bifan Ram (P.W.-5) could have caused his death, the only conclusion which could have been safely drawn was that on account of the assault made by appellant, Bifan Ram (P.W.-5) has suffered grievous injuries, which is an offence under Section 325 of I.P.C.
14. After closely scrutinizing the evidence on record and on the basis of the findings arrived at in this appeal, this appeal is allowed in part. The judgment of conviction and order of sentence is set-aside. The appellant instead convicted for offence under Section 325 of Indian Penal Code.
15. As submitted, appellant has remained in jail for two years, three months and 17 days till he was ordered to be released on bail by this Court, this appears to be sufficient punishment to be awarded in this case, hence, the appellant is awarded with imprisonment of

period of custody already undergone in jail along with fine of Rs.5,000/-. In default of payment of this fine, he shall be required to undergo a further R.I. of 6 months. The fine as ordered in the impugned judgment, if is paid that shall be adjusted in payment of fine as ordered by this Court.

16. Accordingly, the appeal stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram