

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 337 of 2011**

Jaggu @ Tilakraj S/o Shri Hari Singh Pav, aged about 40 years, R/o village Chainpur, P.S. & Tahsil Manendragarh, District Korea, Chhattisgarh.

---- Appellant**Versus**

State of Chhattisgarh through District Magistrate, Korea, District Korea, Chhattisgarh.

---- Respondent

For the Appellant : Ms. Purnima Singh, Advocate.
For the Respondent/ State: Shri Aditya Sharma, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgment on Board****16.09.2017**

1. This appeal has been preferred against the judgment of conviction and order of sentence dated 20.10.2010, passed by the Learned Third Additional Sessions Judge (F.T.C.), Manendragarh in Sessions Trial No. 48 of 2010, whereby and whereunder the learned Third Additional Sessions Judge has convicted the appellant/ accused as under:

Conviction	Sentence
Under Section 294 of the Indian Penal Code	Simple Imprisonment for 3 months and fine of Rs.100/-, in default of payment of fine, additional S.I. for 5 days.
Under Section 506 part II of the Indian Penal Code	Rigorous Imprisonment for 3 years and fine of Rs.500/-, in default of payment of fine, additional S.I. for 3 months.
Under Section 307 of the Indian Penal Code	Rigorous Imprisonment for 10 years and fine of Rs.1,000/-, in default of

	payment of fine, additional R.I. for 6 months.
Under Section 294 of the Indian Penal Code	Simple Imprisonment for 3 months and fine of Rs.100/-, in default of payment of fine, additional S.I. for 5 days.
Under Section 506 part II of the Indian Penal Code	Rigorous Imprisonment for 3 months and fine of Rs.500/-, in default of payment of fine, additional S.I. for 3 months.
Under Section 307 of the Indian Penal Code	Rigorous Imprisonment for 10 years and fine of Rs.1,000/-, in default of payment of fine, additional R.I. for 6 months.
	All the sentences shall run concurrently.

2. The case of the prosecution, in brief, is that on 4.4.2010, in the evening at about 7:00 pm, the appellant had a quarrel with Teeja Bai (PW-6) and then he started assaulting her with a crowbar causing injuries on her head and other parts of the body. Munni Bai (PW-3), daughter of Teeja Bai (PW-6) intervened in the incident, because of which, the appellant also assaulted Munni Bai (PW-3) and caused injuries on her head and other parts of the body. The First Information Report Ex. P/5 was lodged on the same day against the appellant.

3. After completion of the investigation, charge-sheet was filed against the appellant under Sections 294, 506(b), 307, 324 and 325 of the IPC. The trial Court, after affording due opportunity of hearing and leading evidence to the prosecution and the defence, passed the impugned judgment in which the appellant stands convicted and sentenced as aforementioned.

4. Learned counsel for the appellant submits that the trial Court has erroneously passed the judgment of conviction and the order of sentence

against the appellant. The medical report and the evidence of medical officers do not disclose that the injuries caused to the injured Munni Bai (PW-3) and Teeja Bai (PW-6) were life threatening and were sufficient to cause death in the ordinary course of nature. It is also submitted that the independent witness of this case has turned hostile and not supported the case of the prosecution and as such, the evidence of the interested witnesses should not have been relied by the trial Court. Hence, it is prayed that the appellant may be acquitted on these grounds.

5. On the other hand, learned State counsel has opposed the grounds raised in this appeal and the arguments submitted on behalf of the appellant. It is submitted that the prosecution has proved its case beyond reasonable doubt. Hence, there is no ground to interfere with the impugned judgment.

6. I have heard learned counsel appearing for the parties at length and also perused the material on record.

7. Considering the grounds of the appeal and the submissions made by both the sides, the question for determination in this appeal before this Court is simply that whether the conviction and sentence recorded by the trial Court is sustainable.

8. The main witness in this case is Teeja Bai (PW-6). She stated that on the date and time of the incident, the appellant started abusing her and then he assaulted her with a crowbar causing injuries to her. Her daughter Munni Bai (PW-3) came to intervene, then the appellant also assaulted

Munni Bai (PW-3). In cross-examination, her statement has remained unrebutted and there is no other statement made by her in cross-examination to suggest that she is making a false statement. Munni Bai (PW-3) has stated similarly that when she saw the appellant assaulting Teeja Bai (PW-6), she went to intervene and the appellant also assaulted her causing injury on her head. Her statement has remained unrebutted and there is no reason to suggest that she is making a false statement. Nandu (PW-2) was informed later on about the incident and he has been declared hostile by the prosecution on other counts. Witnesses of the incident, Ramcharan (PW-5) and Sheikh Mukul (PW-7) have turned hostile and not supported the case of the prosecution. Another child witness, Ku. Mamta (PW-8) was examined without administering oath and she stated that she saw the appellant assaulting the complainant. Later on, in cross-examination, she admitted that she did not see the incident.

9. The statement of Munni Bai (PW-3) and Teeja Bai (PW-6) stands corroborated by the medical evidence in this case. Dr. Suresh Tiwari (PW-9) has stated that on examining Teeja Bai (PW-6) he found one incised wound on frontal area, one incised wound on left forearm and one injury on left forearm and wrist with swelling. He suspect fracture on this injury vide his report Ex. P/11. He also examined Munni Bai (PW-3) and found one punctured wound on anterolateral area of right thigh, swelling on left side of chest, one abrasion above the swelling, one incised wound on frontal area and one punctured wound on left forearm. X-ray of the injuries were advised and report Ex. P/10(A) was given to him. In his statement, he has further stated that Teeja Bai (PW-6) was admitted for treatment on 4.4.2010 and discharged on 6.4.2010. On the basis of the x-ray report, fracture of left

radius and ulna bone was found vide Ex. P/16 of Munni Bai (PW-3) and similarly fracture on left radius bone of Teeja Bai (PW-6) was found vide Ex. P/17. In cross-examination, he admitted that no injury of gravity was found on the head of the injured persons and also admitted that the injuries caused on head were simple in nature. Although, there is a dispute with regard to mentioning the name Teeja Bai as Teej Bai, but that is not significant.

10. On going through the statements of the victims and eyewitnesses of the case, which were supported by the medical evidence and also by the investigation, it appears that the prosecution has succeeded to establish that the appellant by using crowbar assaulted Munni Bai (PW-3) and Teeja Bai (PW-6) and caused injuries to them. As per the medical evidence, the gravity of injury was only with respect to the injuries caused on the left hand where fracture of bone was found. The trial Court has given a finding that the act of the appellant amounts to the offence under Section 307 of the IPC which does not find support from the evidence of the prosecution as there is no clear evidence of the medical officer that the injuries caused to the victims are sufficient to cause death in the ordinary course of nature and also the evidence of Dr. Suresh Tiwari (PW-9) that the injuries caused were not sufficient to cause death of any of the victims. Hence, at the most, the finding which could have been safely arrived at in this case, was for the offence of causing grievous injury which is an offence under Section 325 of the IPC.

11. On the basis of the aforementioned reasons and after close scrutiny of the evidence of the prosecution, the appeal deserves to be allowed in part and it is allowed in part. The conviction of the appellant for the offence under Sections 294 on two counts and 506 part II on two counts of the IPC is maintained as it is, whereas the conviction and sentence under Section 307 of the IPC is set aside and instead the appellant is convicted for the offence under Section 325 of the IPC. As submitted by counsel for the appellant, the appellant is in jail since 5.4.2010 till date. Accordingly, on the point of sentence, it is ordered that the appellant is sentenced with the period of custody already undergone by him in jail. He be set at liberty, if not required for detention in any other case.

Sd/-

(Rajendra Chandra Singh Samant)
Judge