

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 671 of 2014**

Baisakhu Ram Rawate, Aged about 50 years, S/o Alali Ram Rawte, R/o Village Kandadi, Police Station - Manpur, District Rajnandgaon (C.G.).

---- Appellant**Versus**

State of Chhattisgarh Through Police Station, Manpur, District Rajnandgaon (C.G.)

---- Respondent

For Appellant	:-	Shri Yogesh Chandra Pandey, Advocate.
For Respondent/State	:-	Smt. Smita Ghai, P.L.

SB: Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgement on Board****13-04-2017**

1. This appeal has been preferred against the judgement of conviction and order of sentence dated 24-12-2013 passed by Second Additional Sessions Judge, Rajnandgaon (C.G.) in S.T. No. 40 of 2012 convicting the appellant for offence punishable under Section 307 of the IPC and sentencing him to undergo RI for 7 years and to pay fine of Rs.200/- with default stipulation.

2. Case of the prosecution, in brief, is that complainant Ramdayal (PW-10) was sleeping in his agricultural field while guarding his crops on 02-05-2012. At about 12-00 in the night, the appellant who happened to be brother of the complainant came to the spot armed with a trident and assaulted the complainant on his abdomen and the elbow of left hand. Complainant raised alarm. On arrival of the witnesses on the spot, the appellant ran away. FIR (Ex. P-13) was lodged by Ramdayal Rawte in Police Station Manpur, District Rajnandgaon. An offence was registered under Section 324 of the IPC against the appellant. Ramdayal (PW-10) was medically examined by Doctor Mohan

Tikam (PW-11). Vide his report Ex. P-11, stab injuries were found on the abdomen of Ramdayal (PW-10). Dr. Mohan Tikam (PW-11) further opined vide his query report Ex. P-12-A that death was possible from the injuries caused to the complainant. While conducting investigation, spot map Ex. P-1 was prepared by Revenue Officer and spot map (Ex. P-2) was prepared by Investigating Officer (IO). The appellant was apprehended and interrogated. He made statement vide Ex. P-5 for getting recovered the trident and at his instance, the trident was recovered and seized vide Ex. P-6. Blood stained clothes of Ramdayal were seized vide Ex. P-7. Seized weapon and clothes were examined by the doctor and further sent for FSL examination. FSL Report Ex. P-20 is submitted on record. On completion of investigation, the appellant was charge-sheeted before the trial Court.

3. Charge under Section 307 of the IPC was framed against the appellant. He denied the charge and demanded for trial. The prosecution examined as many as 15 witnesses. On examination under Section 313 of Cr.P.C., the appellant denied all the incriminating evidence against him, pleaded innocence and false implication in the crime in question. No witness has been examined in defence. The impugned judgement was passed in which the appellant stands convicted and sentenced as mentioned in first paragraph of this judgement.

4. The grounds in this appeal are that the the trial Court has erroneously passed the judgement of conviction against the appellant. The prosecution has failed to prove the motive against the appellant. There is no eyewitness to this incident and the injuries caused to the complainant Ramdayal (PW-10) could not have been caused by the weapon seized in this case. For these reasons, the impugned judgement cannot stand which may be set aside.

5. It is submitted by learned counsel for the appellant that no motive has been proved by the prosecution. Ramdayal (PW-10) has not stated any previous enmity with the appellant who is his real brother. There is no eyewitness in this case. The conviction solely rests on the evidence of Ramdayal (PW-10) which was not safe to rely upon for giving finding of conviction against the appellant. Apart from that there is no medical evidence that the injuries caused to the complainant was life threatening in real sense. Hence, for these reasons, the appellant is entitled for benefit of doubt.

6. I have heard learned counsel for the parties, perused the judgement impugned and record of the Court below.

7. The question for consideration in this appeal is whether the offence under Section 307 of the IPC was made out against the appellant and also the circumstances are taken into account to consider on the question of benefit of doubt.

8. Ramdayal (PW-10) has stated that on the date and time of incident, he was sleeping in his field (bady), the appellant came to the spot carrying a trident like weapon and assaulted him with that weapon causing injuries on his hand due to which he woke up then, the appellant again assaulted on his chest. He raised alarm, hearing which Arjun Singh Rawte (PW-3), Santosh Kumar Rawte (PW-8) arrived at the spot to whom he narrated about the incident caused by the appellant. He was brought to the hospital at Manpur and from there to District Hospital at Rajnandgaon. He stated about the lodging report in the police station Manpur. He also stated about some incident when the appellant was intoxicated and he tried to pacify him otherwise he had a dispute with the appellant. In his cross-examination, his statement has remained unrebutted.

9. Dinesh Kumar Rawte (PW-2) is son of Ramdayal (PW-10) who was informed about this incident by Arjun Singh (PW-3). Arjun Singh (PW-3) has stated that hearing the alarm and cry for help from Ramdayal (PW-10), he went to the spot and he saw that Ramdayal (PW-10) was injured. He has not stated anything against the appellant, hence, the prosecution declared him hostile and cross-examined him even then, he has not supported the prosecution. Sukhen Singh (PW-5) was also cited as witness on the spot but he has also not supported the prosecution case and declared hostile. Ramesh Kumar (PW-6) immediately arrived at the spot and was informed by Ramdayal (PW-10) about the incident in which he has clearly alleged that it was the appellant who used the weapon to stab him, although this witness has been declared hostile for not stating fully in accordance with his previous statement but the statement given about narration given by Ramdayal (PW-10) remained unrebutted.

10. Meenka Bai (PW-7) is daughter of Ramdayal (PW-10) has also supported this version and stated that she was informed by Ramdayal (PW-10) immediately after the incident that the appellant was assailant. Another witness who arrived on the spot was Santosh Kumar Rawte (PW-8) has not supported the prosecution case and was declared hostile.

11. The only witness in this case is namely, Ramdayal (PW-10), his statement about identifying the appellant as the assailant, is intact. The witnesses who immediately arrived on the spot were informed by him that the appellant was assailant, itself is corroboration of his statement which is further corroborated by medical evidence. Dr. Mohan Tikam (PW-11) has stated that he examined Ramdayal on 03-05-2012 in Community Health Centre (CHC), Manpur and found a stab wound on the left side sternum bone which was in the size of 1 x ½ x 5 cm. He found a second wound on left elbow in the size of

1 x ½ cm vide his report Ex. P-11. He opined that the injuries caused by the appellant is grievous in nature. After providing some treatment, he was forwarded for further treatment to District Hospital, Rajnandgaon. Further, reporting a query made by I.O., he opined Ex. P-12-A that death could have been possible, if the treatment could not have been provided immediately. Having no such statement in his cross-examination so as to contradict his statement in his examination-in-chief, the medical evidence amply support the statement of Ramdayal (PW-10).

12. Other witnesses examined by the prosecution are related to the investigative procedures. Jitendra Kashyap (PW-12) recorded FIR (Ex. P-13) at the instance of Ramdayal (PW-10) and conducted the part of investigation. Inspector Noharlal Mandavi (PW-13) has recorded the statement of witnesses. Constable Heera Singh (PW-14) has helped in the investigation. A.S.I. Bhimeshwar Baghel (PW-15) has recorded memorandum Ex. P-5 on the basis of statement given by the appellant and conducted the seizure of spear (Barchhi) vide Ex. P-6. As stated by the prosecution that this seizure was made at the instance of the appellant. This investigative procedure stands contradicted by the statement of Ramdayal (PW-10) who has stated that after stabbing him, the appellant left the weapon and ran away from the spot and it was the complainant himself who pulled out the weapon from his wound. Hence, this evidence of memorandum and seizure vide Ex. P-5 and P-6 cannot be held as believable. On the contrary, there is ample evidence that Ramdayal (PW-10) witnessed himself that appellant was armed with a weapon and used the same to commit the offence.

13. Considering all the statements of witnesses, there seems to be no scope for interference in the finding given by the trial Court. The quality of evidence

in this case is sufficient to hold the conviction against the appellant. Absence of proof of motive by itself does not give any benefit to the appellant. It is very well settled that in case of eyewitnesses, absence of motive is no hurdle in arriving at the conclusion of conviction.

14. It is submitted by learned counsel for the appellant that the appellant is in jail since the date of his arrest i.e. 07-05-2012 which is almost 4 years and 11 months. It is prayed that the sentence of imprisonment may be modified to the period of custody already undergone by him.

15. Considering all the material available on record and the evidence of prosecution, it is found that the period of custody already undergone by the appellant. In the result, this appeal is allowed in part. The conviction of appellant under Section 307 of the IPC is upheld whereas the imprisonment awarded to the appellant is reduced to RI of 5 years along with fine of Rs.200/-.

Sd/-
(**Rajendra Chandra Singh Samant**)
Judge