

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 21/07/2017

Delivered on 08/08/2017

Criminal Appeal No. 1061 of 2014

- Wasam Santi S/o Wasam Laxmeya, Aged Near About 47Years R/o Village Polem, Bhopalpatanam, P.S. Bhopalpatanam, Tahasil And District Bijapur (C.G.)

----Appellant

Versus

- State Of Chhattisgarh Through The In Charge Officer Bhopalpatanam, Tahasil And District Bijapur (C.G.)

---- Respondent

For Appellant	:	Mr. Vijay K. Deshmukh, Advocate
For State	:	Mr. Avinash Singh, Panel Lawyer

Hon'ble Shri Justice Sharad Kumar Gupta

CAV JUDGMENT

1. In this Criminal Appeal the challenge levied is to the judgment of conviction and order of sentence passed by Sessions Judge, South Bastar, Dantewada on 26.08.2014 in S.T. No. 145/2007 whereby and whereunder the appellant Wasam Santi was convicted for the offence under Section 307 of the Indian Penal Code (hereafter called as 'IPC') for rigorous imprisonment of 7 years and a fine of Rs. 100/- in default of payment of fine additional rigorous imprisonment for 1 month.
2. In brief the prosecution case is that, on 09.02.2007 by 5:00 pm the complainant Lambadi Gopal was going toward his house after grazing cattle, his one calf entered in the farm house of the appellant. That span of time the appellant become annoyed and caused a blow by an

axe on his head resulted in injury caused above his right ear on temporal parietal region. The appellant's wife and some other persons had seen the incident. Then, the appellant went to police station Bhopalpatnam next day on 10.02.2007 by 18:10 hours and lodged the report.

3. Further prosecution story is that after the completion of the investigation a charge-sheet has been filed against the appellant. Charge under Section 307 IPC was framed against him. He denied the allegation leveled against him.
4. To bring home the charge the prosecution has examined as many as 8 witnesses. The appellant has not examined any witness on his defence. After the conclusion of the trial he was convicted as mentioned herebefore.
5. Shri Vijay K. Deshmukh, advocate for the appellant advanced the argument that the prosecution has failed to prove its own case beyond reasonable doubt. The impugned judgment is perverse and contrary to the evidence available on record. The FSL report has not been filed by the prosecution.
6. Shri Avinash Singh, Panel Lawyer of the State urged that findings of the Court below are reasonable and do not require any interference.
7. PW-7 Dr. R. K. Bansod says in para No. 1, 2 and 3 of his statement on oath that he had examined the complainant Lambadi Gopal and found one incised wound 2" above the upper part of right ear on temporal parietal region which was 3½" X 2½" X ½" in size which may have been caused by a hard and sharp object.

8. There is no such evidence on record on strength of which it could be said that above mentioned statement of PW7 the Doctor and his report Ex. P7 regarding said statement are not believable. Thus this Court believes above mentioned statement and Ex.P7 regarding said statement.
9. PW7 the Doctor further says in para No. 6 that he had also examined a sealed axe and given the opinion that above mentioned injury may be caused by that axe, it may be also caused death, blood stains present in that axe may be of human blood.
10. There is no such evidence on record on strength of which it could be said that above mentioned statement and report Ex. P8 do not inspire the confidence. Thus, this Court believes on the above mentioned statement and Ex. P8.
11. PW2 Lambadi Gopal says in para No.1 of his statement on oath that when he was returning back after grazing the cattle the appellant caused a blow on the temporal parietal region by an axe. PW3 Pochu Bai wife of appellant, PW4 – Mane Shankar, PW5 – Mane Bose Kaiyya in para No. 1, PW8 Gurla Mallaiya in para No.3 on their statement on oath, stated same facts.
12. This is noticeable that, during the recording accused statement under section 313 Cr.P.C. the appellant says that, he does not know that he had caused the injury on the temporal parietal region of the complainant by axe, instead of strong denial.
13. FIR Ex.P3 contains the description of alleged incident, the name of the appellant and the manner in which the incident occurred. Being night and the distance are the sufficient ground for lodging Ex.P3 on

next date. There is no material on strength of which it could be said that Ex.P3 is fabricated or lodged after thought.

14. There is no material on record which indicates that alleged memorandum Ex. P4 and alleged Seizure Memo Ex. P5 are not believable. Thus, this Court believes on Ex. P4 and Ex. P5.

15. Considering the evidence adduced by the prosecution this Court is of the opinion that non production of the FSL report is not fatal to the prosecution case.

16. On foregoing discussions this Court finds out that said statements of PW2 Lambadi Gopal, PW3 Pochu Bai, PW4 Mane Shankar, PW5 Mane Bose Kaiyya, PW8 Gurla Mallaiya appears trustworthy.

17. The Hon'ble Supreme Court in **State of Maharashtra v. Balaram Rama Patil, AIR 1983 SC 3051** observed that “ To justify a conviction under this section it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the Court has to see is whether the act,

irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in this section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.”

18. The Hon'ble Supreme Court in **Fireman Ghulam Mustafa Vs State of Uttaranchal , AIR 2015 SC 3101** held that “ to justify a conviction under Sec-307, IPC the court has to see whether the act was done with the intention to commit murder and it would depend upon facts and circumstances of the case – although nature of injuries caused may be of assistance in coming to a finding as to intention of accused , such intention may also be gathered from the circumstances like nature of weapon used, parts of body where injuries were caused , severity of blows given and motive , etc.”
19. From above mentioned evidence this is manifest that the appellant has done such act with intention of causing said injury which was sufficient in the ordinary course of nature to cause death. In this case there is no exception referred to Section 300 IPC. Thus, above mentioned judicial precedents laid down by Hon'ble Supreme Court applicable in favor of prosecution case.
20. Considering the entire evidence this court finds out that prosecution succeeded to prove the charge under sec-307 against the appellant.
21. After the complete and full appreciation of the evidence, this Court finds out that the Sessions Judge, Dantewada has not committed any error in convicting and sentencing the appellant as aforesaid. Thus,

this Court affirms the impugned judgment of conviction and order of sentence.

22. Hence the Criminal Appeal stands dismissed.

Sd/-

(Sharad Kumar Gupta)
JUDGE