

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 273 of 2010**

- Lalu @ Lakhan age 26 years s/o. Jalandar Netam, by Caste Gound-Adivasi, r/o. Village Math;purena Durga Chowk, Police Station and Tahsil Tikrapara, Dist. Raipur (CG).

---- Appellant

Versus

- State of Chhattisgarh through the Police Station Tikrapara, Dist. Raipur (CG).

---- Respondent

 For the appellant : Mr. Jameel Akhtar Lohani, Advocate.
 For the respondent/State : Mr. Suryakant Mishra, P.L.

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment on Board****7-9-2018.**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 31-3-2010 passed by the 10th Additional Sessions Judge, Raipur (CG) in Session Trial No.28 of 2009 wherein the said Court convicted the appellant for commission of offence under Section 307 of IPC and Section 25 of the Indian Arms Act, 1959 (for short, "the Act, 1959") and sentenced him to undergo RI for seven years and fine of Rs.1,000/- and RI for one year and fine of Rs.200/- with default stipulations for committing attempt to murder of one Shyama Bai and for having illegal possession of sharp edged sword in

contravention of notification issued under Section 4 of the Act, 1959.

2. As per case of the prosecution, on 10-10-2008 at about 1.00 pm Bhuneshwari Bai and Shyama Bai were going for immersion of goddess Durga and when they reached near Kadam chowk, the appellant attacked Shyama Bai through sword and assaulted her repeatedly. The matter was reported and investigated and after trial the appellant was convicted and sentenced as mentioned above.

3. Learned counsel for the accused/appellant submits as under:

(i) PW/4 Puniya Bai, PW/5 Janki Bai, PW/6 Santosh Tripathi and PW/7 Narendra Satnami have not supported the version of prosecution and presence of the appellant on the spot is not established.

(ii) Version of Bhuneshwari Bai (PW/1), Shyama Bai (PW/2) and Mukesh Kumar Sinha (PW/3) is full of contradiction and omission and they have improved their version, therefore, they cannot be held to be trustworthy.

(iii) Seizure witnesses have not supported the factum of seizure of sword from the

appellant and therefore, offence under Section 25 of the Act, 1959 is not made out.

- (iv) Weapon is not produced for query as to whether the injuries found on the body of Shyama Bai could be caused by seized weapon and therefore, causing injury by seized weapon is not established.

4. *Per contra*, State counsel supporting the impugned judgment has submitted that the finding arrived at by the trial Court is based on proper marshaling of evidence which is not liable to be interfered with by this Court.
5. I have heard counsel for the parties and perused the material on record.
6. To substantiate the charge, prosecution examined as many as 11 witnesses.
7. PW/2 Shyama Bai is victim of the case and as per version of this witness the appellant assaulted her by sword on abdomen and left hand. Version of this witness is supported by the version of Bhuneshwari Bai (PW/1) and Mukesh Kumar Sinha (PW/3). All the three witnesses have been subjected to searching and incisive cross-examination, but nothing could be elicited in favour of the defence to discard their testimony.

Their version is supported by the First Information Report (Ex.P/1) which is lodged by Bhuneshwari Bai (PW/1) on the same day of incident i.e., 10-10-2008 in which the appellant is clearly named as culprit. Oral and documentary evidence is again supported by version of medical expert Dr. J. Naqwi (PW/9) and Dr. Sandeep Dave (PW/10). As per version of these witnesses injuries found on the body of Shyama Bai may be mentioned as under:

- i) Left elbow IW 2cm muscle deep with bleeding, left hand IW over iv th finger 5-6 CM muscle deep.
- ii) IW over post of (LT) arm abut 2x1, 2x1 cm muscle deep. IW at (RT) lower abdomen about 2-3 cm length depth to be assessed after exploration.
- iii) IW present over left chest wall at post axillary line at 6th ICS obliquely (+) about 2x1 cm in size pleural deep.

8. Now the point for consideration is whether the act of the appellant falls within commission of offence under Section 307 of the IPC.

9. To constitute an offence under Section 307 IPC, two ingredients of the offence must be present:

- “(a) an intention of or knowledge relating to commission of murder; and
- (b) the doing of an act towards it.

The essential ingredients required to be proved in the case of an offence under S. 307, IPC are:

- (i) That the death of a human being was attempted;
- (ii) That such death was attempted to be caused by, or in consequence of the act of the accused;
- (iii) That such act was done with the intention of causing death; or that it was done with the intention of causing such bodily injury as; (a) the accused knew to be likely to cause death; or (b) was sufficient in the ordinary course of nature to cause death, or that the accused attempted to cause death by doing an act known to him to be so imminently dangerous that it must in all probability cause (a) death, or (b) such bodily injury as is likely to cause death, the accused having no excuse for incurring the risk of causing such death or injury.
- (iv) To justify conviction under this Section it is not essential that bodily injury capable of causing death should have been inflicted”

- 10.** In the present case, the appellant inflicted injuries on the body of Shyama Bai repeatedly by deadly weapon sword forcefully. Victim was referred to Ramkrishna Care Hospital, Raipur for long treatment and as per version of Dr. Sandeep Dave (PW/10) (para 2), the injuries were grievous in nature and same could cause death of the victim if proper treatment is not provided within time.
- 11.** Looking to the entire factual matrix, it appears that the appellant has done everything within his power to eliminate the victim but the final result allures that proper treatment was provided to the victim in time. On the totality of the fact it can be easily inferred that the appellant attempted to kill the victim Shyama Bai, therefore, his act falls within the ambit of Section 307 of IPC.

12. As per version of Asst. Sub Inspector PW/11 K.L. Dhruw (para 2), he seized sword from the appellant having length of 23 inches and having pointed portion of 3 inches. The incident took place at Kadam chowk, Tikrapara, Raipur which is a public place and having possession of any sharp edged weapon of more than six inches in public place is prohibited as per notification issued under Section 4 of the Act, 1959. Therefore, mischief of the appellant falls under Section 25 of the Act, 1959 and the trial Court has rightly convicted him for commission of offence under Section 307 of the IPC and Section 25 of the Act, 1959. This court has no reason to interfere with the finding recorded by the trial Court and the same is hereby affirmed.

13. Heard on the point of sentence.

Perused the report of the Central Jail, Raipur, which shows that the appellant is released on 16-5-2013 after getting deductions by authorities and as such he has completed the full term of jail sentence awarded by the trial Court. In view of the above, sentence part is also not liable to be disturbed.

14. Resultantly, the appeal being without any force is liable to be dismissed and it is dismissed as such with the affirmation of the judgment impugned.

Sd/-

**(Ram Prasanna Sharma)
JUDGE**