

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 10-10-2018****Pronounced on 11-10-2018****CRIMINAL APPEAL No. 1923 of 2000**

(Arising out of judgment of conviction and order of sentence dated 30.05.1999 passed by the First Additional Sessions Judge, Baloda-Bazar District - Raipur in Sessions Trial No 298/99)

Panchram son of Guharam Dhimar, aged about 30 years, R/o. Village Sakin Kohrod, Police Station Kasdol, Distt. Raipur (CG)

----Appellant**-versus-**

State of M.P. now Chhattisgarh through Police Station Kasdol, Distt. Raipur (CG)

---- Respondent

For appellant	: Mr. Sheikh Gulam Vasim, Advocate
For Respondent/State	: Mr. S.K. Mishra, Panel Lawyer

Hon'ble Mr. Sharad Kumar Gupta, Judge**C.A.V. JUDGMENT**

1. In this criminal appeal, challenge is levied to the judgment of conviction and order of sentence dated 30-05-2000 passed by the First Additional Sessions Judge, Baloda-Bazar District - Raipur in Sessions Trial No 298/99 whereby and whereunder she convicted the appellant as under: -

Section	Sentence
341 IPC	RI 1 month
506 B IPC	RI 6 months
307 IPC	RI 5 years and fine of Rs. 1,500/, in default of payment to further undergo RI 1 year.

All the sentences are directed run concurrently,

2. In brief the prosecution case is that complainant Salikram is the resident of village – Kauhraudh. On 04.05.1999 at about 07:15 pm he was returning back from pond after taking bath. Near the barn of Prasanna Kumar, appellant stopped him, abused him, gave threatening

to kill him. He caused injuries on left side of abdomen, on left thigh of the complainant by scissors. Appellant had doubt that he had illicit relation with his wife. On very day complainant gave the information regarding incident to police station Kasdol where Dehati Nalisi was registered in '0' number. Thereafter, FIR was lodged in PS Kasdol. He was sent for medical treatment to Government Hospital, Kasdol. After completion of investigation, a charge sheet was filed against him. The trial Court framed charges against him under Sections 294, 341, 506B, 307 of the IPC. The appellant abjured the charges levelled against him and faced trial. To bring home the charges, prosecution examined as many as 11 witnesses. Appellant did not examine any witness in his defence. After conclusion of the trial, the trial Court acquitted him of charge punishable under Section 294, IPC however convicted and sentenced him as aforesaid.

3. Shri Sheikh Gulam Vasim, counsel for the appellant argued that Trial Court has not appreciated the evidence in proper perspective. Therefore, the conviction and sentences of the appellant are bad in eyes of law. Thus, he may be acquitted of the aforesaid charges.

4. Shri S.K. Mishra, Panel Lawyer for the State argued that the conviction and sentences of the appellant are based on clinching evidence. The conviction and sentences of the appellant do not call for interference by this Court.

5. As per the alleged M.L.C. report Ex. P-14-A, P.W. 11 Dr. Y.K. Sharma had examined complainant and found one abrasion below the neck, one incised wound in left hypochondrium region size 1½ cm x 1 cm x 5 cm, one incised wound in left thigh size 2 cm x 1 cm x 7 cm. He opined that these injuries might have been caused by sharp and pointed object.

6. There is no such evidence on record on the strength of which it can be said that Ex. P-14-A is not believable. Thus, this Court believes on Ex. P-14-A.

7. As per the alleged query report Ex. P-13-A, P.W. 11 Dr. Y.K. Sharma had replied that injury No.1 was on vital organ, thus, is grievous in nature. If he would not have timely treated death might have been possible.

8. There is no such evidence on record on the strength of which it can be said that Ex. P-13-A is not believable. Thus, this Court believes on Ex. P-13-A.

9. As per the alleged seizure Ex. P-2, one scissors was seized from the complainant Salikram by P.W. 10 Ratnesh Mishra, SO Kasdol.

10. There is no such evidence on record on the strength of which it can be said that Ex. P-2 is not believable. Thus, this Court believes on Ex. P-2.

11. As per the alleged RFSL report, Ex. P-19, blood was found on part of scissors- Article A.

12. There is no such evidence on record on the strength of which it can be said that Ex. P-19 is not believable. Thus, this Court believes on Ex. P-19.

13. PW1 Salikram says in para – 1 and 2 of his statement given on oath that after taking bath he was returning back from the pond. When he reached near the barn of Prasanna Kumar appellant stopped him, threatened to kill him, caused the injuries on left side of his abdomen, on left thigh by scissors.

14. P.W. 3 Pardeshi, P.W. 4 Sundarlal who is father of the complainant say in para – 1 of their statements given on oath that

complainant had told that appellant had caused injuries by scissors.

15. P.W. 6 Rajkumar, P.W. 8 Kantilal, P.W. 9 Radheshyam say in para-1 of their statements given on oath that they had seen that scuffle took place between appellant and complainant.

16. In Ex. P-1 it has been mentioned that appellant had doubt that complainant had illicit relation with his wife. P.W.1 Salikram says in para 4 that appellant had doubt that he had illicit relation with his wife. Moreover, counsel for the appellant had given suggestion to P.W. 1 Salikram during his cross-examination in para 7 that he had illicit relation with the wife of the appellant. In these circumstances this Court believes on aforesaid statements of para-4 of P.W. 1 Salikram.

17. After the appreciation of the evidence discussed herebefore this Court finds that prosecution has succeeded to prove that the said doubt was motive for committing alleged crime by the appellant.

18. Ex. P-1 has been promptly lodged on very day within 5 hours of the incident. In Ex. P-1 the entire incident with specific role of the appellant is mentioned.

19. There is no such evidence on record on the strength of which it can be said that Ex. P-1 is not natural or it is an afterthought to falsely implicate the appellant.

20. There is no such evidence on record on strength of which it can be said that aforesaid statement of para 1 and 2 of P.W. 1 Salikram, aforesaid statements of P.W. 3 Pardeshi, P.W. 4 Sundarlal, P.W. 6 Rajkumar, P.W. 8 Kantilal, P.W. 9 Radheshyam, are not simple, not natural, not normal.

21. After appreciation of the evidence discussed herebefore, looking to the said motive, Ex. P-1, Ex. P-14-A, Ex. P-13-A, Ex. P-2, Ex. P-19

this Court believes on aforesaid statement of para 1 and 2 of P.W. 1 Salikram, aforesaid statements of PW3 Pardeshi, PW4 Sundarlal, PW6 Rajkumar, PW8 Kantilal, PW9 Radheshyam.

22. The Hon'ble Supreme Court in **State of Maharashtra v. Balram Bama Patil**, (AIR 1983 SC 305) 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."

23. In **Lachman Singh -v- State of Haryana** (2006(10) SCC 524) Hon'ble Supreme Court has held that in order to justify conviction under Section 307, it is not essential that bodily injury capable of causing death to be inflicted, but it is sufficient if there is present an intention coupled with some overt act in execution thereof.

24. In **Ratan Singh -v- State of M.P.** (2009(12) SCC 585), Hon'ble

Supreme Court has held that to justify a conviction under Section 307, IPC, it is not essential that bodily injury capable of causing death should have been inflicted, and circumstances that injury inflicted simple or minor will not rule out application of the section.

25. 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.”

26. From the evidence discussed herebefore, it is noticeable that the appellant has done such act with intention of causing death or with intention of causing injury No. 2 which was sufficient in ordinary course of nature to cause death. Thus, the aforesaid judicial precedents laid down by Hon'ble Supreme Court are applicable against the appellant.

27. Looking to the above-mentioned facts and circumstances of the case, this Court finds that no exception referred to Section 300, IPC is attracted in the case in hand.

28. Considering the entire evidence, this Court finds that the prosecution has succeeded to prove the charges under Sections 341, 506-B, 307 of the IPC against the appellant. Thus, this Court affirms the conviction of the appellant under sections 341, 506-B, 307 of the IPC.

29. Looking to the above-mentioned facts and circumstances, this Court is not inclined to take a lenient view regarding sentences. The sentences awarded by the trial Court are just and proper and does not

call for any interference.

30. After complete and full appreciation of the evidence, this Court finds that the trial Court has not committed any error in sentencing the appellant as aforesaid. Thus, the aforesaid sentences are also affirmed.

31. Hence, the appeal being devoid of merit deserves to be and is hereby dismissed.

32. The appellant is on bail. His bail bonds are canceled. He be taken into custody forthwith to serve the remaining part of sentences.

Sd/-
(Sharad Kumar Gupta)
Judge

Pathak