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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.871 of 2002

Akram Khan, son of Samiulla Khan, aged about 23 years, occupation Driver,
R/o Santoshi Nagar, Raipur, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through Police Station Tikarapara, Raipur

--- Respondent

For Appellant	:	Shri Raj Kumar Pali, Advocate
For State/Respondent	:	Shri Neeraj Sharma, Dy. Govt. Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

27.4.2018

1. The instant appeal has been preferred against the judgment dated 10.8.2002 passed by the 3rd Additional Sessions Judge, Raipur in Sessions Trial No.331 of 2001, whereby the Appellant has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 307 of the Indian Penal Code	Rigorous Imprisonment for 5 years and fine of Rs.1,000/- with default stipulation

2. After solemnisation of marriage between the Appellant and Complainant Lata Manav, they got divorce. Thereafter, she started residing at her maternal house. It is alleged that on 9.6.2001 at about 8:30 p.m., she, along with her mother, brother and some other persons, was returning after getting treatment from Dr. Pandey. At that time, the Appellant came to her and told her that he wanted to talk to her. When she denied, he assaulted her with a knife. She sustained multiple injuries. She was taken to hospital. Police recorded First Information Report on zero (Ex.P13) in the hospital. Numbered FIR (Ex.P14) was registered

thereafter in Police Station Tikarapara, District Raipur. On the basis of memorandum (Ex.P11) of Appellant, a knife was seized from him vide Ex.P12. Complainant/Injured Lata Manav was examined by Dr. S. Bose (PW7). His report is Ex.P7. Statements of witnesses were recorded under Section 161 of the Cr.P.C. On completion of the investigation, a charge-sheet was filed against the Appellant under Section 307 of the I.P.C. Charge was framed against him under Section 307 of the I.P.C.

3. To bring home the offence against the Appellant, the prosecution examined as many as 13 witnesses. The Appellant was also examined under Section 313 of the Code of Criminal Procedure in which he denied the guilt and pleaded innocence. No witness has been examined in his defence.
4. After trial, the Trial Court convicted and sentenced the Appellant as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant submits that as per the statement of Dr. S. Bose (PW7) though Complainant Lata Manav had received total 6 incised wounds yet none of the injuries were found on any vital part of her body. He further submits that Dr. Bose has admitted in his statement that he was unable to state about the nature of injuries. The doctor has also categorically admitted that no injury was present on any vital part of the body. Therefore, no offence under Section 307 of the IPC is made out. At the most, offence under Section 324 of the IPC is made out. The Appellant has already undergone about 3 months. Therefore, his conviction may be altered to Section 324 of the IPC and he

may be sentenced to the period already undergone by him.

6. On the contrary, Learned Counsel appearing for the State/Respondent supports the impugned judgment and opposes the prayer made on behalf of the Appellant. He submits that though no injury was found on any vital part of the body of the Complainant/injured yet since there was total 6 incised wounds on the body, the intention of the Appellant was to commit murder of the Complainant.
7. I have heard Learned Counsel appearing for the parties and perused the record with due care.
8. Complainant Lata Manav (PW1) has stated that she was returning from the hospital along with her mother and brother. The Appellant came to her and told her that he wanted to talk to her. When she refused, he assaulted her with a knife. The incident was witnessed by her mother Saraswati (PW2), her sister Dhannu Kumari (PW8), her brother Kamlesh (PW11) and Ubaran (PW4). All the above witnesses have supported the statement of Lata Manav (PW1). They have remained firm during their cross-examination.
9. Complainant/injured Lata Manav (PW1) was examined by Dr. S. Bose (PW7). He has deposed that he examined Lata Manav on 9.6.2001 and gave his report (Ex.P7) in which he found the following injuries:
 - (1) Incised wound, 2x1 cms., on the left arm, lateral aspect,
 - (2) Incised wound, 2.5x1 cms., muscle deep, on left arm, 6 cms. below injury No.(1),

- (3) Incised wound, 3x0.5 cms., skin deep, on left thumb, external aspect,
- (4) Incised wound, 2.5x1 cms., muscle deep, on right forearm,
- (5) Incised wound, 2x0.5 cms., skin deep, right palm, external aspect and
- (6) Incised wound, 2x0.5 cms., skin deep, below chin.

The doctor has admitted that he has not given any report regarding nature of the injuries sustained by injured Lata Manav (PW1). There is nothing on record to show that any of the injuries sustained by Complainant Lata Manav was grievous in nature. The doctor has also admitted that he had not sent the Complainant/injured for x-ray examination. He has further admitted that none of the injuries was present on any vital part of the body of the Complainant/injured.

- 10.** A minute examination of the above evidence makes it clear that though 6 incised wounds injuries were present on the body of the Complainant yet none of them were found on any vital part of the body. All the injuries were simple in nature. From the statements of Complainant/injured Lata Manav (PW1) and other witnesses, it is also clear that when the Complainant was returning from the hospital, the Appellant, who was her ex-husband, went to her and told her that he wanted to talk to her. When she refused to talk to him, he assaulted her with the knife. None of the injuries was caused on any vital part of the body of the Complainant and the Appellant after causing the injuries fled from the spot. If the intention of the Appellant was to kill the Complainant, he would have assaulted on vital parts of her body. Therefore, in my opinion, the offence alleged under Section 307 of the IPC is not made out. Rather, the act done by the Appellant falls within the purview of

Section 324 of the IPC. Therefore, the conviction imposed upon the Appellant is altered from Section 307 IPC to Section 324 IPC.

11. So far as sentence part is concerned, the Appellant has already undergone for about 3 months. The matter is pending for about 17 years. The Appellant is facing the *lis* since the year 2001. Therefore, I am of the view that interest of justice would be served if the Appellant is sentenced with the period already undergone by him. Ordered accordingly. The fine imposed upon him by the Trial Court is affirmed.
12. Resultantly, the appeal is allowed in part to the extent indicated above.
13. Record of the Court below be sent back along with a copy of this judgment for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge