

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 679 of 2008**

Sonsai Pando, aged about 46 years, S/o Hiralal, R/o village Anga, Police Station Patana, District Koriya (CG)

---- Appellant**Versus**

State Of Chhattisgarh Through Police Station Patna, District Koriya (CG)

---- Respondent

For Appellant : Ms. Purnima Singh, Advocate

For State/ Respondent : Shri Aditya Sharma, Panel Lawyer

HON'BLE SHRI JUSTICE RAM PRASANNA SHARMA**JUDGMENT ON BOARD****28.4.2018**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 22.5.2008 passed by the Sessions Judge, Sessions Division Koriya (Baikunthpur) (CG) in ST No.88/2007, wherein the said Court has convicted the appellant for commission of offence under Sections 307 and 452 of the Indian Penal Code and sentenced to undergo R.I. for 3 years and fine of Rs.500/-, R.I. for 2 years and fine of Rs.100/- respectively with default stipulations.

2. The conviction is impugned on the ground that without there being any iota of evidence, the Court below has convicted and sentenced the appellant as aforementioned and thereby committed illegality.

3. In the present case, name of the injured is Jaitun Bai (PW1). It is alleged that the appellant inflicted one injury on her left hand by axe and when he again tried to cause second injury, one person namely Bachhalal intervened and snatched the axe from the appellant. Sahelal (PW2) and Bachhalal (PW3) are the witnesses of the incident and as per their version it was the appellant who inflicted one axe injury to Jaitun Bai (PW1). Version of these witnesses is supported by the version of Dr. A.K. Sharma (PW6) who examined Jaitun Bai (PW1) on 7.5.2007 and noticed one incised wound on her left arm measuring 2" x ½" x ½". As per version of this witness, injuries were simple and caused by hard and sharp object within 8 hours of the examination.

4. I have heard learned counsel for the parties and perused the record.

5. Now, the point for consideration is whether the appellant had an intention to kill Jaitun Bai (PW1). As per opinion of the medical expert Jaitun Bai (PW1), sustained single injury. Though it has come in evidence that the appellant tried to inflict another injury, but the axe was snatched by Bachhalal and the fact remains that Jaitun Bai (PW1), sustained only one injury and that too on the left arm which is not a vital part. The incident took place in the house of paternal uncle of Jaitun Bai (PW1), and it has been established by the witnesses that the appellant entered into the house with axe and

that shows his intention to cause injury to the person present in the dwelling house.

6. For commission of offence under Section 307 IPC, definition of murder under Section 300 should be established which reads as under:

300.Murder- Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or-

Secondly- If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or-

Thirdly- If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or-

Fourthly- If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

7. In the present case, injury found on the body of the injured Jaitun Bai (PW1), is not on vital part and as per version of Dr. A.K.Sharma (PW6) it is the simple injury. When simple injury is caused on non-vital part, it is not proper to hold that the appellant had intention to kill Jaitun Bai (PW1). The offence does not fall under Section 307 IPC but it falls under Section 324 IPC. Accordingly, the appeal is partly allowed and conviction of the appellant under Section 307 IPC is hereby set-aside and instead thereof he is convicted under Sections 324 and 452 IPC.

8. The appellant had suffered jail term from 11.5.2007 to 22.5.2008 i.e. more than 1 year during trial and after conviction he was granted bail on 10.11.2008 and remained in jail again for more than 6 months. In all, he remained in jail for 1 year and 6 months. Considering the facts and circumstances of the case, the sentence of period already undergone by the appellant would be sufficient for the offence under Sections 452 and 324 IPC and same is reduced to the period already undergone by him. The fine amount shall remain intact.

9. With these modifications, the appeal is partly allowed.

Sd/

(Ram Prasanna Sharma)

JUDGE