

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SB: Hon'ble Mr. Justice Ram Prasanna Sharma****CRA No. 926 of 2007**

- Madha @ Subelal s/o. Bhagwani Sahu aged about 36 years, r/o. Station Maroda, PS Nevai, District Durg (CG) Presentg address village Baigatola, PS Someni, Dist. Rajnandgaon (CG).

---- Appellant.**Versus**

- State of Chhattisgarh through Station House Officer, PS. Nevai, District Durg (CG).

---- Respondent

For Appellant	:	Mr. M.K. Beag, Advocate
For respondent/State	:	Mr. Ratan Pusti, Panel Lawyer

Oral Judgment**(31-3-2018)**

1. This appeal is preferred against the judgment of conviction and order of sentence dated 31-8-2007 passed by the 4th Additional Sessions Judge, Sessions Division Durg (CG) in ST No. 124 of 2005 wherein the said court convicted the appellant for offence punishable under Sections 307, 394 read with Section 397 of the IPC, 1860 and sentenced to undergo RI for seven years and fine of Rs.2000/- on each count with default stipulations for committing attempt to murder of one Shankar Rao and for causing voluntary grievous hurt at the time of committing robbery of currency notes worth Rs.500/- and bi-cycle on 7-9-2004 at about 8.00 a.m., at Nevaibhata.

2. In the present case, name of the victim is R.Shankar Rao (PW/13).

As per version of this witness, appellant assaulted him by article namely Ustra (sharp weapon) and again committed robbery of Rs.500/- and bicycle. Identification of bi-cycle and currency notes is not mentioned in first information report. As per version of Inspector Jagdish Uike (PW/15), he seized Rs. 110/-, one Hero bi-cycle and one blade from the appellant, but bi-cycle was not subjected to identification from the appellant. Description of currency notes is not mentioned in first information report. Even in examination-in-chief, complainant did not depose about seized currency notes or bi-cycle. In absence of statement of identification, it is not established that Rs.110/- and one bi-cycle seized from the appellant is article removed from the complainant R. Shankar Rao. For committing robbery, it has to be established by the prosecution that certain articles were removed from the possession of the complainant and that was found in possession of the culprit, but in absence of evidence of the complainant regarding identification, it is not established that articles were subjected to robbery, therefore, offence under Section 394 or 397 of IPC is not established in absence of evidence.

3. As per version of complainant R. Shankar Rao (PW/13), appellant inflicted injury on left side of rib close to his left shoulder. In support of his statement, three Doctors were examined by the prosecution. Dr. C.S. More deposed (para 10) that at the time of giving opinion he was not confirmed whether the injuries were simple or grievous. Dr. A.K. Sahu (PW/10) deposed that no fracture was found in x-ray of the victim. Dr. Surya Prakash Saxena (PW/14) deposed (para 3) that

the injuries were simple. He further deposed that injuries were not sufficient to cause death of the victim.

4. Now, the appellant is charged for commission of offence under Section 307 of IPC. All the ingredients of offence of murder defined in Section 300 of the IPC has to be established by the prosecution which may be read as under.

“300. Murder.—Except in the cases hereinafter excepted, culpable homicide is murder,

(i) if the act by which the death is caused is done with the intention of causing death, or—

(ii) 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—

(iii) 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—

(iv) 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”

For commission of offence under Section 304 Part I or Part II of IPC and Section 307 of IPC, intention of the culprit has to be established as mentioned above.

5. In the present case, no expert has opined that the injuries could cause death of the victim. On the contrary, they deposed that the injuries were simple. Causing voluntary injury by sharp object is an offence under Section 324 of the IPC and from the evidence adduced by the prosecution, only offence which is proved is under Section 324 of the IPC. Considering all the facts and circumstances of the case and the legal principles, I am of the view that the finding arrived at by the trial Court is not sustainable.
6. Accordingly, the appeal is partly allowed and the appellant is acquitted of the charges under Sections 307, 394 and 397 of the IPC, 1860 and instead the appellant is convicted under Section 324 of the IPC and sentenced to undergo RI for three years. It appears from the record that the appellant already suffered jail sentence from 10-9-2004 to 17-3-2008 which comes out to more than three years, therefore, he is not required to be sent back to jail.
7. Accordingly, the appeal is partly allowed to the extent indicated above.

Sd/-

(Ram Prasanna Sharma)
Judge

Raju