

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1334 of 2014**

- Nemichand Rao S/o Late Dashrath Rao, Aged About 43 Years, R/o Mana Camp E.T.C. Colony, Q.No.18, Raipur, PS Mana, Distt. Raipur C.G. , Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh Through The Out Post Police Station Birejhar, PS Kurud, Distt. Dhamtari, C.G. , Chhattisgarh

-----Respondent

For Appellant	: Shri Goutam Khetrapal, Advocate.
For Respondent/State	: Shri Avinash K. Mishra, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Judgment on Board

24/10/2018

1. This appeal has been preferred against judgment dated 30-10-2014 passed in S.T. No.17/14 by the Additional Sessions Judge, Dhamtari, C.G. convicting the appellant under Section 307 of the and sentencing him with R.I. for 7 years along with fine Rs.200/- with default stipulation.
2. The prosecution story, in brief, is this, that sister of complainant Sunita Bhosale (PW-1), i.e., wife of the appellant namely Anita Bhosale (PW-2) had been to her parental house where the appellant arrived on 20-05-2014 who quarreled and objected that his wife has come without his permission and is not coming back. In that incident the appellant also assaulted and injured his wife with hands and fists and then all of a sudden he took out a knife from his pocket and stabbed the victim causing injury to her. The injured was

shifted to the hospital for treatment and an unnumbered FIR (Ex.-P/1) was lodged by her, which was later on registered as numbered FIR (Ex.-P/16). The police completed the investigation and charge sheet was filed before the concerned Court.

3. The appellant was charged with offence under Section 307 of the IPC to which he denied and prayed for trial. After completion of the prosecution evidence, on being examined under Section 313 of the Cr.P.C. the appellant denied all the incriminating evidence against him and pleaded innocence and false implication. No witness was examined in defence.
4. After completion of the trial the impugned judgment of conviction and order of sentence was passed by the trial Court wherein the appellant has been convicted and sentenced as mentioned hereinabove.
5. Learned counsel for the appellant submits that no case is made out for conviction of the appellant under Section 307 of the IPC. Hence, the conviction against him is bad in law. None of the injuries caused to the injured were on the vital part of the body. The statement given by the victim is not reliable as she is interested to see the appellant in jail. Rest of the witnesses are interested witnesses being related to the victim, which should not have been formed basis of the conviction against the appellant. Hence, it is prayed that the appeal may be allowed and the appellant may be acquitted of the charges. In the alternative it is submitted that if the Court is not convinced to acquit the appellant, then his sentence of imprisonment may be

reduced to the period already undergone by him in jail.

6. Per contra, learned counsel for the State opposing the grounds raised in this appeal and the submission made submits that the prosecution has proved its case beyond reasonable doubt. There is clear statement of prime witness Anita Bhosale (PW-2) that the appellant inflicted injuries on her body by using knife making clear his intention that he wanted to kill her. Hence, it is clear case of attempt to murder and there is no scope for interference in the impugned judgment.
7. Heard learned counsel for the parties and perused the record of the trial Court.
8. Main witness in this case is Anita Bhosale (PW-2). She has stated that she had been to her parental house from 14-04-2014. On 20-05-2014 at about 12 in the afternoon her husband, the appellant came and started assaulting her with hands and fists abusing her and then all of a sudden he took out a knife from his pocket and assaulted her on her stomach causing injuries to her. The mother and sister of this witness intervened. She has also stated the appellant was making statement that he will kill her. In cross-examination her statement has remained unrebutted and she has confirmed that she suffered injuries on her stomach and not on the chest and also made it clear that while trying to save herself she suffered one injury on the left hand also. There is no other statement in her cross-examination so as to rebut or contradict her statement made in examination-in-chief.

9. Smt. Sunita Bhosale (PW-1) has stated about witnessing the incident of assault by the appellant firstly with hands and fists and then with a knife. Her statement has remained unrebutted in her cross-examination. Sakshi Shinde (PW-3) has also similarly stated and her statement has remained unrebutted. She is daughter of the appellant and victim.
10. Doctor Siris Yadu (PW-11) has stated that on 20-05-2014 the victim was admitted in M.M.I. Hospital. She had injury on her chest with bleeding. On examination he found that she had one incised wound of size 1.5 cm. on left chest near the midline which was bleeding. Another incised wound was on her right side of the chest which was about 3 to 4 cm. long and 2 to 3 cm. deep. She has third incised wound on her left palm near middle finger of size 1 to 1.5 cm. long. Her injuries were operated on the same day and the statement has been made vide report Ex.-P/13. He has opined that injuries caused to the victim were dangerous to her life. In cross-examination he has admitted that the victim/injured was conscious when she was admitted. Her first injury was muscle deep, whereas, the second injury was not so deep. He has not given any other opinion regarding the injuries.
11. There is no need to scrutinize and appreciate other evidence on record. The statement given by the victim is corroborated by the eye-witnesses and the examining doctor, which is sufficient to hold that the appellant was the person who assaulted the victim with knife causing injuries on her body.

12. On the basis of the evidence present in this case, whether a case is made out under Section 307 of the IPC, is a question which needs consideration.
13. There is no such opinion given by the examining doctor that death would have been the direct result of the injuries caused to the victim in this case. He has only opined that the injuries were dangerous to life had it not been treated immediately. This being the fact regarding injuries, another look has to be given to the incident that took place.
14. As it has appeared from the evidence that the appellant was annoyed with his wife, the victim for not returning to her matrimonial home and for this reason on the date of incident he came to her parental house where she was residing and firstly he started abusing and assaulting with hands and fists and when the quarrel at its height, he all of a sudden took out a knife and assaulted her. Had it been the intention of the appellant to cause death of the victim/injured, he would have directly assaulted her with knife, instead of starting with abusing and beating her. Apart from that, the nature of the injuries caused on the body of the victim may have resulted in her death if not treated, is not a reason for direct conclusion that the assault was made with intention to cause death. But the act of the appellant seems to be that which defines in Exception 1 of Section 300 of the IPC in case the death have resulted, but the same consideration is done for the case of attempt to murder also. Hence, after close scrutiny and analysis of the evidence present on record, it appears that it is more of a case

under Section 308 of the IPC rather than a case under Section 307 of the IPC. Hence, for this reason, I am of this opinion that conviction of the appellant under Section 307 of the IPC suffers from infirmity which needs interference.

15. Accordingly, the appeal is allowed in part. Conviction and sentence passed against the appellant under Section 307 of the IPC is hereby set aside, instead thereof, the appellant is now convicted under Section 308 of the IPC, as the case is, the appellant is in jail since 21-05-2014 and so far he has undergone 4 years and 5 months in jail. Hence, for the offence for which he is convicted he is sentenced with R.I. for the period of detention already undergone by him in jail.
16. The appeal stands disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge