

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 6 of 2013**

- Devnath Singh S/o Lt.Brijlal Gond Aged About 38 Years R/o Village Patma, P.S. And Tahsil Khandgawan, Distt.-Koriya, Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh Through Sho., Ps. Khadgawan, Distt.-Koria,, Chhattisgarh

---- Respondent

For the Appellant : Mrs. Meena Shastri, Advocate.

For the State/Respondent : Mr. V. B Singh, PL.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgment on Board****25/10/2018**

1. This appeal has been preferred against the judgment of conviction and order of sentence dated 30.11.2012 passed by the Second Additional Sessions Judge, Manendragarh, District Koria, Chhattisgarh in ST No.66/2011 convicting the accused/appellant under Section 307 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo RI for 10 years with fine of Rs.1,000/-, in default of payment of fine further RI for 4 months.
2. The prosecution case, in brief, is this that on 30.3.2011 at about 5.00 am in the morning the appellant assaulted the complainant

Sukhmaniya Bai PW-6 with a farsi (sacrificial axe) and caused injury on her chest. After assaulting the complainant, he fled from the spot. On the same day, FIR was lodged at the instance of victim based on which the investigation had commenced and after completion of investigation, charge-sheet was filed before the concerned Court.

3. The charge under Section 307 of IPC was framed against the appellant which was denied by him and he sought trial. Statement of appellant under Section 313 of CrPC has been recorded in which he denied all the incriminating evidence available against him, pleaded innocence and false implication. No defence witness was examined. After completion of trial, impugned judgment has been passed in which the appellant stands convicted and sentenced as aforesaid.
4. It is submitted by counsel for appellant that the appellant has been erroneously convicted on the basis of unreliable evidence of the victim and other witnesses of this case. Victim Sukhmaniya Bai PW-6 has herself admitted that there was previous animosity between her family and the appellant and this could be the reason for false implication of the appellant. From the admission made by the injured in her cross-examination, it is clear that at the time of incident it was dark and there was no light at or around the spot which shows that there was issue of identity of the assailant on the spot. Hence, for these reasons, the appellant is entitled to be acquitted of the charge by extending him benefit of doubt. In the alternative, it is prayed that even if the entire prosecution case is taken as it is, in that case also the offence that would be made out against the appellant would be

under Section 324 of IPC and not under Section 307 of IPC for which the appellant has been convicted. It is further prayed that in case this Court is not inclined to allow the appeal, the sentence of imprisonment imposed upon him may be reduced to the period already undergone by him, in the interest of justice.

5. Reliance has been place on the judgment of Supreme Court in ***Shyam Sharma Vs. State of Madhya Pradesh & another*** reported in **(2017) 9 SCC 362** in which the Hon'ble Supreme Court has similarly held.
6. Learned counsel for the State has opposed the grounds raised in this appeal as also the arguments advanced by the counsel for the appellant. It is submitted that the prosecution has proved its case beyond reasonable doubt. There is no issue of identification of the appellant on the spot according to the evidence present on record. The medical evidence clearly corroborates the statement of the victim. Doctor has opined in his evidence that if the injury on the complainant was not treated in time, it would have resulted in death of the victim. Hence, it is clear case of attempt to murder.
7. I have heard learned counsel for the parties and perused the record of the trial Court including the impugned judgment.
8. The question that requires determination in this appeal is as to whether on the basis of evidence available on record the prosecution has been able to establish guilt of accused/appellant beyond reasonable doubt ?

9. Victim Sukhmania Bai PW-6 has stated that on the date of incident when she was in front of her house, she saw appellant came running towards her carrying a battle-axe in his hand. Thereafter, appellant assaulted on her chest with that battle axe as a result she sustained injury on her chest. When he tried to repeat the assault, the victim immediately went inside her house. On her raising alarm, her son Sitaram PW-4 and Ghuran Lal PW-1 came on the spot. She has stated about lodging of FIR ExP-10 and treatment given to her in the hospital. In cross-examination, she has denied the adverse suggestions given by defence and also denied that she could not identify the appellant on the spot as there was dark at and around the spot. In this way, her statement has remained unrebutted on record. She has also admitted about the earlier incident in which the daughter of appellant has eloped with the son of this witness and this shows that there was an element of enmity, which shall be considered later on.

10. Sitaram PW-4, son of the victim, has stated that on hearing cries of his mother, he came towards the door and saw the appellant standing there, who after seeing him fled from the spot. Thereafter, he saw that there was an injury on the chest of his mother and his mother informed him that it is the appellant who had caused injury to her. In cross-examination, he has admitted about the suggestion of the previous enmity and also admitted that he did not see the appellant inflicting injury on his mother, otherwise his statement has remained unrebutted on the point that he saw the appellant at the

spot after the injury was caused to his mother. Another witness who immediately arrived on the spot is Ghuran Ram PW-1 who has stated that on hearing cries of Sukhmania Bai PW-6, he rushed to the spot where he was informed by Sukhmania Bai PW-6 that appellant had assaulted her with a battle axe and then he saw the injury of the victim. In cross-examination, he has admitted that he did not see the incident and she was not informed about the incident by the victim or Sitaram PW-4. This witness has not clearly supported the version of Sukhmania Bai PW-6 and Sitaram PW-4.

11. Santoshi PW-7 has stated that on the date and time of incident she saw the appellant assaulting Sukhmania Bai PW-6 with a stone and thereafter she saw injury which was bleeding. In cross-examination, she admitted that the incident did not take place inside the house and upon hearing cries of her mother-in-law she came out and by that time the assailant had fled from the spot, but she has again made statement that the appellant was present near the door. This witness is little shaky but any how she in a way supports Sukhmania Bai PW-6.

12. Dr. R.P. Singh PW-3 is the doctor who examined victim Sukhmania Bai PW-6 and noticed one injury of size 1.2x1" on left side of the chest between 3rd and 4th rib in which the muscles were cut and it was bleeding. Apart from that single abrasion found on the right side of the chest, one contusion was present on her right arm. This witness has given his report ExP-3 opining that the injuries were simple in nature. He has further made a statement in reply to the

query vide ExP-6, that if the injury noticed on the person of injured was not treated timely, it would have resulted in her death.. In cross-examination, he has again admitted that all the injuries caused to the victim was not fatal in nature. On the basis of the whole statement of this witness it appears that the injury caused to the victim was superficial in nature and it was only muscle deep not involving any vital part or vital organs of body.

13. After close scrutiny of evidence of all the witnesses, it appears that there had been some enmity between both the parties, but only on that ground the entire evidence available on record cannot be discarded, if it inspires confidence of the Court. The enmity is a double edged weapon. Enmity can be a ground to falsely institute a case against a person but at the same time it can also be a motive for commission of the crime. Further, in this case, the identity of appellant does not appear to be doubtful from any angle. The appellant was known to the victim and the victim has been consistent in her statement regarding identification of the appellant. Hence, the arguments submitted on this point cannot be accepted.

14. Another point that need consideration is whether the appellant had intended to cause death of the victim. It is though clear that appellant came with preparation carrying battle axe, a sharp edged weapon, and used the same to assault the victim, but the looking to the nature of injury caused by him i.e. injury on her chest of the size 1.2x1" and muscle deep, which was simple in nature as opined by the treating doctor, and in absence of any evidence or opinion of the doctor, who

medically examined the injured, that the injury suffered by the injured was sufficient to cause her death in the ordinary course of nature, it is difficult to hold that the injury caused by the appellant was fatal in nature. Hence, on the basis of material on record, it is not made out in any sense that the appellant had intended to cause death of the victim, but, in the given facts and circumstances of the case, it can be safely held that it is a case of voluntarily causing injury to the victim by a sharp edged weapon and therefore the appellant is liable to be convicted under 324 of IPC and not under Section 307 of IPC as has been done by the trial Court.

15. On the basis of the above, the appeal is allowed in part. Conviction of appellant under Section 307 of IPC is hereby set aside and instead thereof he is convicted under Section 304 of IPC.

16. As regards the sentence, the maximum sentence of imprisonment provided under Section 324 of IPC is for three years, it is informed that the appellant has already suffered jail sentence of 3 years, 5 months & 9 days. Hence, he is sentenced with imprisonment for the period of detention undergone in jail. Therefore, the appellant be set free forthwith if not required to be detained in connection with any other offence.

17. Accordingly the appeal is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge