

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 555 of 2015**

Bhagwat Kalar S/o Ranjeet Kalar Aged About 60 Years R/o Village - Gitpahar, Police Station - Narharpur, District North, Bastar Kanker Chhattisgarh. , Chhattisgarh.

---- Appellant**Versus**

State Of Chhattisgarh S/o Through The Station House Officer, Police Station - Narharpur, District - North Bastar Kanker Chhattisgarh, Chhattisgarh.

---- Respondent

For Appellant	:	Shri Arun Kochar, Advocate.
For Respondent/ State	:	Shri Ashish Shukla, G.A.

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

Heard.

(1) Challenge in this appeal is to the judgment of conviction and order of sentence dated 23.4.2015 passed by Learned Additional Sessions Judge, North Bastar Kanker, Chhattisgarh in Sessions Trial No. 123 of 2014 whereby and whereunder the learned Additional Sessions Judge after holding the appellant guilty for the offences under Sections 307 of the Indian Penal Code on two counts, sentenced him to undergo rigorous imprisonment for 10-10 years and to pay fine of Rs.1,000-1,000/-, in default of payment of fine, to further undergo additional imprisonment for 3-3 months, respectively with a direction to run both the sentences concurrently.

(2) Conviction is impugned on the ground that without there being any iota of evidence, the trial Court has convicted and sentenced the appellant as aforementioned and thereby committed illegality.

(3) As per case of the prosecution, in brief, complainant – Parmanand (PW-3) and the appellant had some previous dispute regarding demarcation of agricultural land. On 1.10.2014 at about 12:30 pm, complainant – Parmanand (PW-3) accosted the appellant and said that why he is influencing the witnesses, on that, the appellant started abusing and threatening him and then by using a knife he assaulted the complainant on his chest with intention to cause his death. Complainant's daughter Poornima (PW-4) who came to intervene was also assaulted by the appellant in her abdomen with intention to cause her death. Complainant – Parmanand (PW-3) lodged FIR Ex. P/10.

(4) Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code'). The investigation was carried out and on completion of the same, the charge-sheet was filed before the concerned Court. The appellant was charged for the offences under Sections 294, 307 and 506 of the IPC. He denied the charges and prayed for trial.

(5) In order to prove the guilt of the appellant, the prosecution examined 13 witnesses. Statement of the appellant was recorded under Section 313 of the Cr.P.C. in which he denied all the incriminating evidence against him, pleaded innocence and false implication in the

crime in question. Only one witness was examined in defence.

(6) After affording opportunity of hearing to both the parties, learned trial Judge convicted and sentenced the appellant as aforementioned.

(7) I have heard learned counsel for the parties, perused the judgment impugned and records of the Court below.

(8) Learned counsel appearing on behalf of the appellant submits that the conviction of the appellant under Section 307 of the IPC is bad in law. According to the medical evidence, the injuries caused to the injured persons were simple in nature and the witnesses have also admitted that there had been enmity on account of some dispute between both the parties because of which, this incident has taken place. It is further submitted that if the evidence of the prosecution taken as it is, the only offence that is made out against the appellant would be under Section 326 of the IPC which is a lesser offence. The appellant is in jail since the date of judgment i.e. 23.4.2015. Hence, it is prayed that the appeal be allowed with modification and the sentence of imprisonment against the appellant be reduced to the sentence already undergone by him.

(9) Per contra, learned counsel for the respondent/ State opposed the prayer and submissions. It is a clear case of attempt to murder on two persons by the appellant as the appellant came armed with knife which shows an intention and he also used that weapon to cause injuries to the injured persons. Hence, no case is made out for any modification or

reduction of sentence of the appellant in this appeal.

(10) In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the prosecution.

(11) Parmanand (PW-3) stated that there had been a dispute regarding demarcation of agricultural land and the case was pending before the Court of Tehsildar, North Bastar, Kanker. The appellant used to influence the witnesses because of which, this witness has asked the appellant as to why he is influencing the witnesses. He further stated on 1.10.2014, in the afternoon, when he came out of his house, the appellant using abusive words and threatening him to kill pulled him by hand and then assaulted on his chest with a knife. The witness raised alarm and upon hearing the same, his wife Pushpa (PW-6), mother Devli Bai (PW-5) and daughter – Poornima (PW-4) came on the spot. He has stated that when his daughter tried to catch the hand of the appellant, then the appellant stabbed her twice on her lower abdomen and thus, caused injuries to her. Subsequent to which, the appellant fled from the spot. He stated about lodging of FIR Ex. P/10. In cross-examination, he denied that at the time of incident, the appellant was caught by his mother and children and he could not see how his daughter was assaulted and injured and then he also developed his statement that the appellant came from behind and assaulted with knife. He has admitted in cross-examination that for the similar incident one prosecution is going on against him before the Court of JMFC.

(12) Ku. Poornima (PW-4) has stated that she saw that the appellant and her father Parmanand (PW-3) were quarreling with each other and then she saw the appellant assaulting her father with knife which caused injury on his chest and when she tried to intervene, she also got injured with the same knife held by the appellant in his hand. In cross-examination, her statement has remained unrebutted.

(13) Devli Bai (PW-5) has stated about witnessing the incident in which her son Parmanand (PW-3) and grand-daughter Poornima (PW-4) were assaulted and injured with knife by the appellant. In cross-examination, her statement has remained unrebutted and un-contradicted.

(14) Pushpa (PW-6), is the wife of Parmanand (PW-3) who has also witnessed the incident and her statement has not been shaken in her cross-examination.

(15) Manohar Komra (PW-7) has partly supported the prosecution stating that he saw the appellant assaulting Parmanand (PW-3) with knife and then he also saw Poornima lying unconscious and injured on the spot. In cross-examination, he admitted that he did not see the appellant assaulting Poornima and the other statement regarding witnessing the assault on Parmanand (PW-3) has remained unrebutted.

(16) Dr. Swati Dewangan (PW-2) has examined the injured persons. She has stated that on examining Poornima (PW-4) she found one stab

wound on the left side of her groin of size 2 x 0.7 x 2.2 cm which was bleeding. She opined that this injury was grievous and fatal in nature. Another injury of incised wound was found on the palm of right hand size 1 x 0.4 x 0.5 cm which was also bleeding and this injury was simple in nature. She is the author of the MLC report Ex. P/7 in this respect. She also stated that on examining Parmanand (PW-3) she found one incised wound on right side of chest 8 x 2.5 x 1 cm, which was bleeding vide her report Ex. P/8. She has opined that the injury was grievous and dangerous to life and caused by some hard and sharp object. In cross-examination, she admitted that she has not recorded the reason as to why the injuries caused to the injured persons were dangerous to life or fatal. No further question was put to her by the defence counsel to clarify this statement.

(17) Dr. Smith Kumar (PW-1) is the examining doctor. He has also examined the Poornima (PW-4) on the same day and found one incised wound 4 x 3 x 8 cm caused by hard and sharp object. Sonography test was also done on Poornima (PW-4) which was found to be normal, regarding this, he has given MLC report Ex. P/1. He also examined Parmanand (PW-3) on the same day and saw a stitched injury on right side of his chest 3 x 1 cm. He has opined vide his report Ex. P/3 that his injuries were simple in nature. He further stated that both the injuries were treated in the hospital on 1.10.2014 and discharged on 6.10.2014. In cross-examination, he has again admitted that the injuries caused to both the persons were simple in nature.

(18) From the statements of Parmanand (PW-3) and Poornima (PW-4) which stand corroborated with the statements of the examining doctors and further with the support of other witnesses, it is clearly held that it was the appellant who had assaulted Parmanand (PW-3) and Poornima (PW-4) with knife and caused injuries to them.

(19) Now the question is whether the injuries caused to both the injured persons were with intention to cause death and thus, a case of attempt to murder. The statements regarding the injuries caused to both the injured persons by two doctors are not in conformity with each other. The size of injury that has been reported by Dr. Swati Dewangan (PW-2) and Dr. Smith Kumar (PW-1) are also varying. The opinion given by Dr. Swati Dewangan (PW-2) regarding injuries caused to Poornima (PW-4) and Parmanand (PW-3) being of grievous and fatal in nature has not been explained whereas, the other examining doctor Dr. Smith Kumar (PW-1) clearly admitted that the injuries caused to both the injured persons were simple in nature. The gravity of the injury has to be determined on the basis of the description given under Section 320 of the IPC. In this case, the injuries to the victims may be considered under 8th description of Section 320 of the IPC which says: 'Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.' As it is undisputed that both the victims have undergone treatment for 6 to 10 days and further they had to remain in convalescence period for some days further, hence, it can be safely held that the injuries caused to both the victims were in the 8th description of Section 320 of the IPC which is a grievous injury. Even after holding in

this manner, the injuries caused to both the victims were fatal is not made out. Further, according to the description of incident in the evidence it is clear that a quarrel was going on between both the parties and in the heat of this quarrel the appellant took out the knife and injured the victims. Hence, on the basis of these findings, this appears to be a case under Section 326 of the IPC.

(20) After due consideration and on the basis of the findings herein-above, the appeal is allowed in part. The judgment of conviction and order of sentence of the appellant under Section 307 of the IPC on two counts is set aside and instead thereof now he is convicted for the offence under Section 326 of the IPC on two counts. As the appellant is in jail since more than 3 years, he is sentenced with the imprisonment of period of detention already undergone by him in jail with a fine of Rs.5,000/- on two counts and he be set at liberty forthwith after being satisfied by him the requirement of Section 437A of the Cr.P.C. In case the fine is not paid he shall be required to undergo RI for 6 months in each case.

(21) Accordingly, the appeal is partly allowed.

Sd/-

(Rajendra Chandra Singh Samant)
JUDGE