

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 682/2002****Reserved on 28-3-2019****Delivered on 3-4-2019**

(Arising out of judgment of conviction and order of sentence dated 13-5-2002 passed by the Special Judge and Additional Sessions Judge Durg, CG in Sessions Trial No.1/1999)

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Santosh alias Banda, S/o. Amru Baya Mahara, aged about 23 years, R/o. Kailash Nagar, Dhamdha Naka, P.S. Mohan Nagar, Distt. Durg (CG)

Appellant

VERSUS

State of Chhattisgarh through P.S. Phoolgaon, Durg, Distt. Durg (CG)

Respondent

 For Appellant : Ms. Shipra Biswash. Adv.
 For Respondent : Mr. Wasim Miyan, Panel Lawyer.

Hon'ble Shri Justice Sharad Kumar Gupta**CAV JUDGMENT**

1. In this criminal appeal, challenge is levied to the judgment of conviction and order of sentence dated 13-5-2002 passed by the Special Judge and Additional Sessions Judge Durg, CG in Sessions Trial No.1/1999 whereby and whereunder he convicted the appellant under Section 307/34 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') and sentenced him to undergo Rigorous Imprisonment for 5 years with a fine of Rs. 2,000/-, in default of payment of fine, to further undergo simple imprisonment for 6 months.

2. In brief, prosecution case is that on 19.09.1998 between 8:30 am to 9:00 am at Kureta Bhata nursery co-accused Ajay Dubey showed complainant Ashok Kumar Sahu a knife and threatened that he would write a letter to his mother demanding 1.50 lacs rupees. Complainant refused to do so. Co-accused Ajay Dubey caused injuries on his person by knife. At that time apellant had pressed her mouth and caught hold him. Thereafter they fled away from the spot.

On very day at about 9:30 am he lodged a report in out post Jewra Sirsa, where a dehati-nalishi was written. An FIR was lodged on very day at police station Pulgaon. After completion of investigation a charge sheet was filed against them under Section 307/34 of the IPC. The trial Court framed charge against him and co-accused Ajay Dueby under Section 307/34 of the IPC. They abjured the charge levelled against them and faced trial. To bring home the charge against them, prosecution examined as many as 14 witnesses. The appellant did not examine any witness on his defence. After conclusion of the trial, the trial Court convicted and sentenced the appellant as aforesaid and co-accused Ajay Dubey for the offence punishable under Section 307 IPC and sentenced him to undergo Rigorous Imprisonment for 5 years with a fine of Rs. 2,000/-, in default of payment of fine, to further undergo simple imprisonment for 6 months.

3. Being aggrieved, the appellant has preferred this criminal appeal.

4. Counsel for appellant submits that trial Court has not appreciated the evidence in proper perspective. Thus, the conviction and sentence of the appellant are bad in eyes of law. Hence, he may be acquitted of the aforesaid charge.

5. The Panel Lawyer appearing for the State argues that the aforesaid conviction and sentence are based on the sufficient evidence available on record. Thus no interference is called for.

6. As per the alleged MLC report Ex. P-9, P.W. 5 Dr. S.R. Churendra had examined said complainant and found following injuries on his person :-

- (1) One incised wound size 12 cm x 6 cm x 4cm on front of neck, trachea cut open air coming out, bleeding was present;
- (2) One stab wound size 2 cm x 0.5 cm on right side of epigastric region, there was bleeding;
- (3) One stab wound size 1 cm x 1 cm on middle of chest right side;
- (4) One stab wound size 2 inch x 2 inch x peritoneal deep

omentum protrude on upper and left of abdomen;

(5) One incised wound size 14 inch x 4 inch x peritoneal deep intestine loop was visible, on lower part of abdomen at below umbilicus right to left transversely;

P.W. 6 Dr. S.R. Churendra opined that injuries were caused by hard and sharp object and grievous in nature.

7. There is no such evidence on record on strength of which it can be said that Ex. P-9 is not believable. Thus this Court believes on Ex. P-9.

8. As per the query report Ex. P-10 P.W. 5 Dr. S.R. Churendra opined that aforesaid injuries may cause death of complainant Ashok Kumar Sahu.

9. There is no such evidence on record on strength of which it can be said that Ex. P-10 is not believable. Thus this Court believes on Ex. P-10.

10. As per alleged report Ex. P-15, P.W. 10 Dr. Smt. Usha Prasad had attended complainant Ashok Kumar Sahu, his condition was serious, stab injuries were present on his neck, number of wounds were present on his abdomen, omentum was coming from two wounds.

11. There is no such evidence on record on strength of which it can be said that Ex. P-15 is not believable. Thus this Court believes on Ex. P-15.

12. As per the alleged bad head ticket Ex. P-21, subordinate doctors of unit P.W. 13 Dr. S.D. Deewan had operated complainant Ashok Kumar Sahu. Injuries were present on his neck and abdomen. Injuries were fatal for life.

13. There is no such evidence on record on strength of which it can be said that Ex. P-21 is not believable. Thus this Court believes on Ex. P-21.

14. P.W. 1 Ashok Sahu says in para 2 of his statement given on oath that appellant had pressed his mouth and caught hold him, co-accused Ajay Dubey had caused injuries on his abdomen, chest and

neck.

15. As per the statement of P.W. 2 Lakhan Singh Janghel given on oath, co-accused Ajay Dubey had caused injuries on his body by knife and appellant was also present along with him.

16. P.W. 3 C.L. Sahu who is father of the complainant says in para 2 of his statement given on oath during his cross-examination that complainant had told that co-accused Ajay Dubey had caused injuries on his body by knife and appellant had caught hold his hand.

17. As per para 1 of the statement of P.W. 4 Ravi Shankar given on oath complainant had told that co-accused Ajay Dubey had caused injuries on his body by sharp object and appellant was also present there along with him.

18. There is no such evidence on record on the strength of which it can be said that P.W. 1 Ashok Sahu, P.W. 3 C.L. Sahu, had made the above statements only because they had allegedly enmity with appellant and without happening alleged incident.

19. There is no such evidence on record on the strength of which it can be said that P.W. 2 Lakhan Singh Janghel and P.W. 4 Ravi Shankar had made the aforesaid statements because they were allegedly interested with the complainant for any reason or prejudiced with the appellant for any reason knowingly that nothing had happened.

20. No such material omissions and contradictions have been dealt on behalf of appellant during the cross-examination of P.W. 1 Ashok Sahu, P.W. 2 Lakhan Singh Janghel, P.W. 3 C.L. Sahu, P.W. 4 Ravi Shankar which may adversely affect the aforesaid testimony of P.W. 1 Ashok Sahu, P.W. 2 Lakhan Singh Janghel, P.W. 3 C.L. Sahu, P.W. 4 Ravi Shankar.

21. In alleged Dehati Nalishi Ex. P-1 it has been mentioned that co-accused Ajay Dubey had caused injuries on abdomen, neck and chest of the complainant by knife and appellant was present along with him. Ex. P-1 had been lodged on very day without any delay.

22. There is no such evidence on record on strength of which it can be said that Ex. P-1 is concocted, lodged after thought, with intention

to falsely implicate appellant in alleged crime.

23. Looking to the above mentioned facts and circumstances of the case this Court finds that aforesaid statements of P.W. 1 Ashok Sahu, P.W. 2 Lakhan Singh Janghel, P.W. 3 C.L. Sahu, P.W. 4 Ravi Shankar are simple, natural, normal. Thus this Court believes on them.

24. After appreciation of the evidence discussed here before, on the strength of aforesaid statements of P.W. 1 Ashok Sahu, P.W. 2 Lakhan Singh Janghel, P.W. 3 C.L. Sahu, P.W. 4 Ravi Shankar, Ex. P-9, Ex. P-10, Ex. P-15, Ex. P-21, this Court finds that prosecution has succeeded to prove that co-accused Ajay Dubey had caused aforesaid injuries to complainant mentioned in Ex. P-9, Ex. P-15 and Ex. P-21 in furtherance of common intention and at that time appellant had pressed the mouth of complainant and caught hold him.

25. The Hon'ble Supreme Court in **State of Maharashtra v. Balaram Rama Patil**, [1983 (2) SCC 28] observed that "To justify a conviction under this section it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in this section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof."

26. In **Lachman Singh -v- State of Haryana** (2006(10) SCC 524)

Hon'ble Supreme Court has held that in order to justify conviction under Section 307, it is not essential that bodily injury capable of causing death to be inflicted, but it is sufficient if there is present an intention coupled with some overt act in execution thereof.

27. In **Ratan Singh -v- State of M.P.** [2009(12) SCC 585], Hon'ble Supreme Court has held that to justify a conviction under Section 307, IPC, it is not essential that bodily injury capable of causing death should have been inflicted, and circumstances that injury inflicted simple or minor will not rule out application of the section.

28. The Hon'ble Supreme Court in **Fireman Ghulam Mustafa Vs State of Uttaranchal**, (AIR 2015 SC 3101) held that “ to justify a conviction under Sec-307, IPC the court has to see whether the act was done with the intention to commit murder and it would depend upon facts and circumstances of the case – although nature of injuries caused may be of assistance in coming to a finding as to intention of accused, such intention may also be gathered from the circumstances like nature of weapon used, parts of body where injuries were caused, severity of blows given and motive, etc.”

29. From the evidence discussed herebefore, it is noticeable that the co-accused Ajay Dubey had caused aforesaid injuries with the intention of causing death or with the intention of causing injuries which were sufficient in the ordinary course of nature to cause death of complainant. Thus, aforesaid judicial precedents laid down by Hon'ble Supreme Court in the matter of **State of Maharashtra** (Supra), **Lachman Singh** (Supra) **Ratan Singh** (Supra), **Fireman Gulam Mustaffa** (Supra) are applicable against the appellant.

30. This Court finds that no exception referred to Section 300, IPC is attracted in the case in hand.

31. Considering the entire evidence, this Court finds that the prosecution has succeeded to prove the charge under Section 307/34 of the IPC against the appellant. Thus, this court holds that the appellant is guilty of the offence punishable under Section 307/34 of the IPC.

32. Looking to the above-mentioned facts and circumstances, this

Court is not inclined to take a lenient view regarding sentence. The sentence awarded by the trial Court to the appellant is just and proper and does not call for any interference.

33. After complete and full appreciation of the evidence discussed herebefore this Court finds trial Court has not committed any error in convicting and sentencing the appellant as aforesaid.

34. Thus, this Court affirms the impugned judgment of conviction and order of sentence dated 13-5-2002. Hence, the appeal being devoid of merit deserves to be and is hereby dismissed.

35. The appellant is reported to be on bail. His bail bonds are cancelled. He is directed to surrender immediately before the trial Court for undergoing the remaining part of the sentence, if any. The trial Court is also directed to take the appellant in custody forthwith for undergoing the remaining part of sentence.

Sd/-
(Sharad Kumar Gupta)
Judge