

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 29-8-2019****Pronounced on 30-8-2019****CRIMINAL APPEAL 31/2003**

(Arising out of judgment of conviction and order of sentence dated 22.10.2002 passed by Sessions Judge, Raipur (CG) in Sessions Trial No.207/2002)

Santosh Sahu son of Ram Kumar Sahu, aged about 23 years, occupation Auto Mechanic, R/o. Shakti Nagar, P.S. Pandari, Distt. Raipur (CG)

---Appellant**-VERSUS-**

State of Chhattisgarh, through the District Magistrate, Raipur (CG)

---Respondent

For appellant	: Ms. Bulbul Agrawal, Adv.
For respondent/State	: Mr. Vinod Tekam, Panel Lawyer.

Hon'ble Shri Sharad Kumar Gupta, Judge

1. In this criminal appeal the challenge is levied to the judgment of conviction and order of sentence dated 22.10.2002 passed by Sessions Judge, Raipur (CG) in Sessions Trial No.207/2002 whereby and whereunder he convicted and sentenced the appellant as under :-

Offence u/S.	RI for	Fine Rs.	RI in default of payment of fine
307, IPC	8 Years	5,000/-	5 Months

2. In brief the prosecution story is that complainant Mohd. Umar was a resident of Dabrapara Krishna Nagar, Bhanpuri, Raipur (CG). At the time of alleged incident he was 37 years of age. On 02.10.2002 at about 2.00 a.m. the complainant was sleeping outside of the room near the door. His maternal niece Nazma was also lying on the cot. Hearing some sound she woke up and came near the door. She saw that the appellant was causing injury on his head by spade. She shouted then appellant ran away from the spot. She and other family members took the complainant to Hospital. A week prior he had quarreled with the complainant on account of land dispute. On very day, at about 7.30

a.m. she went to police station Khamtarai where Dehati Nalishi was lodged. Thereafter, first information report was lodged. After completion of investigation, a charge sheet was filed against him under Sections 307, 201 of Indian Penal Code (in brief, 'IPC'). Trial Court framed charge against him under Section 307 of IPC. He abjured the charge and faced trial. To bring home the charge the prosecution examined 06 witnesses in all. He examined only 1 witness on his defense. After completion of trial, trial Court convicted and sentenced him as aforesaid.

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

4. Counsel for the appellant argued 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, appellant may be acquitted of the aforesaid charge.

5. Counsel for the State argued that the conviction and sentence of the appellant are based on clinching evidence led by the prosecution. The conviction and sentence of the appellant do not call for any interference by this Court.

6. As per the alleged MLC report Ex. P-10, P.W.5 Dr. Santosh Bhandare had examined complainant Mohd. Umar on 02.10.2001 and found following injuries on his person -

- i. One incised wound size 8 cm x 3 cm over lower frontal area, bone deep, active bleeding present,
- ii. One incised wound size 5 cm x 1/2 cm over dorsum of nose, subcutaneous deep,
- iii. Perforation of both eyeball.

7. P.W.-5 Dr. Santosh Bhandare opined that the aforesaid injuries were caused by hard and blunt object within 0 to 6 hrs.

8. 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.

9. As per the alleged discharge ticket Ex. P-4, the complainant was admitted in the hospital of P.W. 3 Dr. Tribhuwan Jain. His brain tissues were exposed, frontal bone was also exposed, eyeball exposed from orbit, frontal bone, maxilla were exposed. No vision was in both eyes. P.W.-3 Dr. Tribhuwan Jain says in paras No.3 and 4 of his statement

given on oath that injuries were dangerous to life. If he could not have been properly treated than he would have died.

10. P.W.-3 Dr. Tribhuwan Jain says in para No.5 during his cross-examination that he forgot to sign on Ex. P-4.

11. P.W. 3 Dr. Tribhuwan Jain had examined the complainant. He wrote Ex. P-4. In these circumstances, this court finds that from the aforesaid statement of para 5 of his statement, it cannot be said that Ex. P-4 is untrustworthy.

12. There is no such evidence on record on strength of which it can be said that Ex. P-4, aforesaid statement of para 3 and 4 of P.W. 3 Dr. Tribhuwan Jain are not believable. Thus, this Court believes on Ex. P-4 and aforesaid statement of para 3 and 4 of P.W. 3 Dr. Tribhuwan Jain.

13. P.W.-1 Mohd. Umar says in paras No.1 and 4 of his statement given on oath that the appellant had caused injury on his head by spade, on account of land dispute. This is wrong to say that on that day light was not switched on.

14. P.W.-2 Nazma says in paras No.1 & 2 of her statement given on oath that she had seen the appellant causing injury on the head of Mohd. Umar. At that time, bulb was switched on.

15. D.W.-1 Smt. Sita Sahu, who is the sister of appellant says in para No.1 of her statement given on oath that at the time of alleged incident the appellant had gone to Khamtarai along with her father.

16. P.W. 1 Mohd. Umar says in para 2 of his statement given on oath that there was enmity between him and appellant on account of land dispute. P.W. 2 Nazma says in para 2 during her cross-examination that animosity was present between Sita Sahu and appellant on account of wall construction. D.W. 1 Smt. Sita Sahu says in para 1 that she had inimical relation with appellant on account of land dispute. In these circumstances and looking to Ex. D-1, this Court finds that prior to alleged incident, enmity was present between the appellant and Smt. Sita Sahu.

17. Previous enmity is a double edged weapon. It can be used for the attack and also for the defence.

18. There is no such evidence on record on strength of which it can

be said that P.W. 1 Mohd. Umar and P.W. 2 Nazma had made aforesaid statement of para 1 of their statements only on account of alleged animosity present between complainant and appellant, knowing that nothing had happened.

19. No such material omissions and contradictions have been dealt on behalf of appellant during the cross-examination of P.W. 1 Mohd. Umar and P.W. 2 Nazma which may adversely affect the aforesaid testimony of para 1 of the statements of P.W. 1 Mohd. Umar and P.W. 2 Nazma.

20. In alleged Dehati Nalishi Ex. P-1 it has been mentioned that Nazma had seen that appellant was causing the injury on the head of complainant by Spade.

21. Ex. P-1 has been lodged on very day promptly and without delay.

22. There is no such evidence on record on strength of which it can be said that Ex. P-1 is concocted, lodged as an afterthought, with intention to falsely implicate appellant in alleged crime.

23. P.W. 5 Dr. Santosh Bhandare says in para 3 during his cross-examination that aforesaid injuries of the complainant could not have caused by vehicle accident.

24. The appellant had not examined the father of D.W. 1 Smt. Sita Sahu allegedly with whom he was at Khamtarai at the time of alleged incident. Moreover, he has also not examined any person of Khamtarai who may say that allegedly the appellant was present there at the time of alleged incident. Moreover, there is no such evidence on record on strength of which it can be said that it was impossible for the appellant to reach on the spot at the time of alleged incident.

25. If above mentioned facts and circumstances are minutely considered then aforesaid animosity may be a motive for appellant to commit the offence.

26. Looking to the above mentioned facts and circumstances of the case this Court finds that aforesaid statements of para 1 of P.W. 1 Mohd. Umar, P.W. 2 Nazma are simple, natural and normal. Thus this Court believes on them and disbelieves aforesaid statement of para 1 of D.W. 1 Smt. Sita Sahu.

27. After appreciation of the evidence discussed here before, on the strength of aforesaid statements of para 1 of P.W. 1 Mohd. Umar, P.W. 2 Nazma, Ex. P-1, Ex. P-4 and Ex. P-10, this Court finds that prosecution has succeeded to prove that appellant had caused aforesaid injuries to P.W. 1 Mohd. Umar mentioned in Ex. P-4 and Ex. P-10. His injuries were dangerous to life, if he could not have got proper treatment he would have died and the injuries caused by hard and sharp object itself speaks that blow was caused with heavy force.

28. 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."

29. 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.

30. 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.

31. The Hon'ble Supreme Court in **Ghulam Mustafa Vs State of Uttaranchal**, [(2016) 15 SCC 752] 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.”

32. In the matter of **State of Rajasthan Vs. Kanhaiya Lal** [(2019) 5 SCC 639] their Lordship of Supreme Court held that:-

“Accused inflicting single injury on head of deceased by axe which proved to be fatal, is sufficient to attract offence under Section 302 IPC. Mere absence of repeated injury cannot be ground to convert conviction from Section 302 to Section 304 Part-I IPC.

33. From the evidence discussed herebefore, it is noticeable that appellant had caused aforesaid injuries on the person of P.W.1 Mohd. Umar with intention of causing death or with intention of causing injuries which were sufficient in the ordinary course of nature to cause death. 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), **Gulam Mustaffa** (Supra), **Kanhaiya Lal** (Supra) are applicable against the appellant.

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

35. Considering the entire evidence, this Court finds that the prosecution has succeeded to prove beyond reasonable doubt the charge under Section 307 of the IPC against the appellant. Thus, this Court holds that the appellant is guilty of the offence punishable under Section 307 of the IPC. Thus, aforesaid conviction of appellant is hereby affirmed.

36. Looking to the above-mentioned facts and circumstances of the

case, this Court finds that sentence awarded by trial Court is not excessive and appears to be proportionate. Thus, aforesaid sentence is also affirmed.

37. Appeal deserves to be dismissed and is hereby dismissed.

38. The appellant is reported to be on bail. His bail bonds are canceled. 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, if any.

Sd/-
(Sharad Kumar Gupta)
Judge