

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 469 of 2010

Order reserved on 08.04.2019

Order pronounced on 03.05.2019

Keshav Kumar Das @ Mantudas S/o Rajkumar Das aged about 51 years, Caste Bangali, Occupation Agriculture, R/o Village, Thana and Tahsil Dharmajaigarh, District Raigarh (CG) ---- **Appellant**
Versus

State of Chhattisgarh through Station House Officer, Thana Dharmajaigarh, District Raigarh (C.G.) --- **Respondent**

For Appellant : Shri Rajkumar Pali and Shri
Amit Kumar Sahu, Advocates

For State/Respondent : Shri Aman Kesharwani, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V. Order

Facts of the case in brief are that on 23.07.2009 at about 10:30 AM when the accused/appellant was caning her buffalo, the victim (PW-1) objected to it saying as to why he was doing so. On this, the accused/appellant got enraged and started abusing the victim filthily and also inflicted injury on her chest and head with the help of axe as a result of which she fell down and became unconscious. Matter was reported to the Police by the husband of the victim (PW-3) vide Ex.P-1. She was thereafter taken to the hospital and remained admitted there for about a month. After completion of investigation *challan* was filed against the accused/appellant under Section 307 IPC and the charge was framed accordingly.

2. After going through the record learned Additional Sessions Judge (FTC), Raigarh convicted the accused/appellant under Section 307 IPC and sentenced him to undergo RI for 5 years with fine of Rs.2000/- plus default stipulation. Hence, this appeal.

3. Counsel for the accused/appellant submits that though the story put forth by the prosecution did not get corroboration from the medical

evidence yet the Court below has ignored the same and has erroneously arrived at the conclusion of holding the accused/appellant guilty under Section 307 IPC. He submits that looking to the testimony of the witnesses, the accused/appellant was to be given benefit of doubt but to his misfortune he has been held guilty for the offence which he has not at all committed. According to the counsel for the appellant, though there are number of contradictions and omissions in the statement of daughter and husband of the victim yet the Court below has not considered this aspect of the matter and abruptly held the accused/appellant guilty.

4. State counsel however supports the judgment impugned and submits that learned trial Court has taken into consideration each and every aspect of the evidence available on record while arriving at the conclusion holding the accused/appellant guilty under Section 307 IPC, therefore, no illegality or infirmity can be attached worth interference in this appeal.

5. Heard counsel for the parties and perused the evidence of the witnesses carefully. Victim – Sita Devi (PW-2) while supporting the case of the prosecution has stated that when she objected to the act of the accused/appellant in caning her buffalo, he started hurling filthy abuses and also inflicted injuries on her chest and head with the help of axe as a result of which she fainted and slumped to the ground. She has further stated that for the injuries she was required to remain admitted in the hospital for number of days. Evidence of PW-2 gets full corroboration by the testimony of Kirtilal Devnath (PW-3) – her husband who too has categorically stated that after coming to know about the incident he ran to the spot and found his wife lying on the ground with injuries suffered by her on her body. He has further stated that after he objected to the act of the accused/appellant saying as to why he assaulted his wife, he (accused) again opened an assault on his wife with the help of axe. He has further clarified that 13 stitches were required to be applied on the

head of the victim and that apart the injuries on her chest and back were also inflicted by the accused/appellant. Vinay (PW-5) though has been declared hostile yet he has stated that on the memorandum of the accused/appellant (Ex.P-9), seizure of axe stained with blood like substance was made under Ex.P-6. Dr. L.K. Soni (PW-7) who examined the victim Sita Devi (PW-2) has stated that he noticed number of injuries including lacerations of temple in the in the diameter of 5x1 cm. and 2 x 1 cm. up to bone deep. X-ray report (Ex.P-13) also goes to show that temple bones of the victim were found to be fractured. This witness vide (Ex.P-15) has also opined that injuries present on the body of the victim could be inflicted by the axe produced before him for examination. PW-10 is the Investigating Officer who has duly supported the case of the prosecution.

6. Having seen the evidence of the witnesses referred to above including that of the doctor who medically examined the victim PW-2 and also keeping in view the weapon i.e. axe used in commission of the crime, it is manifest that it is the accused/appellant who caused number of injuries on the vital parts of the victim being head and chest. While inflicting injuries on the vital parts of the body of the victim that too with the lethal weapon like axe it can be summed up that he had the intention as well as the knowledge that injuries caused by him were likely to cause her death. Even the doctor has stated that the said injuries could be caused with the axe produced before him for examination. No illegality appears to be there in the evidence of the witnesses which could deviate this Court from arriving at the conclusion other than one taken by the Court below. Entire evidence appears to have been appreciated by the Courts below in its proper perspective and being so the conviction of the accused/appellant under Section 307 IPC does not appear to suffer from any illegality or infirmity and being so it is hereby maintained.

7. However as regards sentence taking into consideration the fact that the incident had taken place in the year 2009 and thereby more than 10

years have rolled by since then, and further that the accused/appellant has already remained in jail for about one year and 2 months and thereby suffered a lot for his act, this Court thinks it proper and in the interest of justice to reduce the sentence imposed on him to the period for which he already remained in jail by enhancing the fine amount imposed by the Court below. Order accordingly. The fine amount imposed by the trial Court is enhanced to Rs.5000/- from that of Rs.2000/-. Let this amount be deposited in the trial Court within a period of 4 months from today or else this order may lose its efficacy.

8. Appeal thus allowed in part.

Sd/-

(Vimla Singh Kapoor)

Judge

Jyotishi/Ajay