

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 12-9-2019****Pronounced on 16-9-2019****CRIMINAL APPEAL No.690/2009**

(Arising out judgment of conviction and order of sentence dated 22.09.2009 passed by Addl. Sessions Judge, Bemetara, District Durg (CG) in Sessions Trial No.13/2009)

Rajkumar @ Thakur Ram, son of Asharam, caste Satnami, aged about 25 years, R/o. Modhe Thana Dadhi, Distt. Durg (CG)

---Appellant**-VERSUS-**

State of Chhattisgarh, through the PS Dadhi, Distt. Durg (CG)

---Respondent

For Appellant	: Ms. Sareena Khan, Advocate
For Respondent/State	: Mr. Dinesh Kumar Tiwari, Dy.G.A.

Hon'ble Shri Sharad Kumar Gupta, Judge
C.A.V. JUDGMENT

1. In this criminal appeal the challenge is levied to the judgment of conviction and order of sentence dated 22.09.2009 passed by Addl. Sessions Judge, Bemetara, District Durg (CG) in Sessions Trial No.13/2009 whereby and whereunder he convicted and sentenced the appellant as under:-

Offence u/S.	RI for	Fine Rs.	SI in default of payment of fine
307, IPC	5 Years	200/-	2 Months
294, IPC	-	200/-	1 Month

2. In brief the prosecution story is that the complainant Jeevan Singh Satnami was the resident of village Modhe Khaar. On 17.12.2008 he and his father Gangadas had gone to their field to plough. The complainant was digging uncultivated land by pick-axe. At about 10:00 a.m. appellant reached there and asked him as to why he is digging his ridge. Thereafter, he abused him in the name of mother and sister, threatened him to kill. He caused injury on his head by a crowbar. On

very day at about 13.00 hrs complainant lodged an FIR in police station Dadhi. After completion of investigation, a charge sheet was filed against him under Sections 294, 323, 324, 506, 307 of Indian Penal Code (in short, 'IPC'). Trial Court framed charge against him under Sections 294, 506B, 323, 324, 307 of IPC. He abjured the charges and faced trial. To bring home the charge the prosecution examined 9 witnesses in all. He did not examine any witness on his defense. After completion of trial, trial Court convicted and sentenced him as aforesaid. However, the trial Court acquitted him from the charges punishable under Sections 506B, 323, 324 of IPC.

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 sentences of the appellant are bad in eyes of law. Hence, appellant may be acquitted of the aforesaid charges.
5. Counsel for the State argued that the conviction and sentences of the appellant are based on clinching evidence. The conviction and sentences of the appellant do not call for any interference by this Court.
6. As per the alleged MLC report Ex. P-13, P.W.-7 Dr. A.M. Shrivastava had examined the complainant and found one incised wound over parietal region size 5 inch x 1 inch x bone deep. He opined that injury was caused by hard and sharp object.
7. There is no such evidence on record on strength of which it can be said that Ex. P-13 is not believable. Thus this Court believes on Ex. P-13.
8. As per the alleged query report Ex. P-10, P.W.-7 Dr. A.M. Shrivastava opined that if the complainant could not have been treated properly he would have died.
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 the alleged report Ex. P-14 which was given after the examination of X-ray of the said complainant fracture was present on left parietal bone.

11. There is no such evidence on record on strength of which it can be said that Ex. P-14 is not believable. Thus, this Court believes on Ex. P-14.

12. P.W.-1 Jeevan Singh says in para No.1 of his statement given on oath that the appellant had abused him in the name of mother and sister, caused injury on his head by crowbar.

13. P.W.-2 Smt. Ganga Bai, who is the mother of the complainant says in para No.1 of her statement given on oath that the appellant had abused in the name of mother and caused injury on the head of complainant by crowbar.

14. P.W.-4 Ashwani Kumar says in para No.1 of his statement given on oath that the appellant and complainant had quarreled with each other. Appellant had a crowbar.

15. P.W.-5 Savita Bai, who is the wife of complainant says in para No.3 in her statement given on oath that the appellant had caused injury on head of her husband by crowbar.

16. P.W.-9 Ganga Das, who is the father of complainant says in para No.1 of his statement given on oath that the appellant had abused in the name of mother and sister, he caused injury on the head of the complainant by crowbar.

17. There is no such evidence available on record on strength of which it can be said that P.W.-4 Ashwani Kumar had made aforesaid statement because he was interested with said complainant on some ground or he was prejudiced with appellant on such ground.

18. There is no such evidence on record on strength of which it can be said that P.W.-1 Jeevan Singh, P.W.-2 Smt. Ganga Bai, P.W.-5 Savita Bai, P.W.-9 Ganga Das had made aforesaid statements only on account of animosity present between them and appellant.

19. No such material omissions and contradictions have been dealt on behalf of appellant during the cross-examination of P.W.-1 Jeevan Singh, P.W.-2 Smt. Ganga Bai, P.W.-5 Savita Bai, P.W.-9 Ganga Das, which may adversely affect the aforesaid testimony of P.W.-1 Jeevan Singh, P.W.-2 Smt. Ganga Bai, P.W.-5 Savita Bai, P.W.-9 Ganga Das.

20. In alleged F.I.R. Ex. P-1 it has been mentioned that the appellant had abused complainant in the name of mother and sister, caused injury on his head by crowbar.

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 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 Jeevan Singh, P.W.-2 Smt. Ganga Bai, P.W.-5 Savita Bai, P.W.-9 Ganga Das are simple, natural and 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 Jeevan Singh, P.W.-2 Smt. Ganga Bai, P.W.-5 Savita Bai, P.W.-9 Ganga Das, Ex.P-1, Ex.P-13, Ex.P-10, Ex.P-14 this Court finds that prosecution has succeeded to prove that the appellant had caused aforesaid injury to P.W.1 Jeevan Singh mentioned in Ex. P-13 & Ex. P-14, the aforesaid injury was grievous in nature caused by hard and sharp object, if the complainant could not have been properly treated he would have died.

25. The Hon'ble Supreme Court in **State of Maharashtra v. Balaram Rama Patil**, (AIR 1983 SC 3051) 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**, [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.”

29. 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. 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.

30. From the evidence discussed herebefore, it is noticeable that appellant had caused aforesaid injury on the person of P.W.-1 Jeevan Singh with the intention of causing death or with the intention of causing injury which was 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), Fireman Gulam Mustaffa (Supra), Kanhaiya Lal (Supra) are applicable against the appellant.

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

32. Considering the entire evidence, this Court finds that the prosecution has succeeded to prove the charges under Sections 294, & 307 of the IPC against the appellant. Thus, this Court holds that the appellant is guilty of the offences punishable under Sections 294 & 307 of the IPC. Thus, aforesaid conviction of appellant is hereby affirmed.

33. Looking to the above-mentioned facts and circumstances of the case this Court finds that sentences awarded by trial Court are not excessive. Thus, aforesaid sentences are also affirmed.

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

35. 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