

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 31 of 2017**

Ram Babu Singh S/o Shri Sakaldev Singh, Aged About 26 Years
Occupation Cloth Seller, R/o Village Jagdishpur, Kothiya, District Shivdur
Seoni Madhya Pradesh Present Address Bazarpara Bemetara
Chhattisgarh , Chhattisgarh.

---- Appellant**Versus**

State Of Chhattisgarh Through Police Station House Bemetara, District
Bemetara Chhattisgarh , Chhattisgarh.

---- Respondent

For Appellant	:	Shri Gajendra Sahu, Advocate.
For Respondent/ State	:	Shri Adil Minhaj, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgment on Board****02/04/2019**

Heard.

(1) Challenge in this appeal is to the judgment of conviction and order of sentence dated 26.10.2016 passed by Learned Sessions Judge, Bemetara, District Bemetara, Chhattisgarh in Sessions Trial No. 42 of 2015 whereby and whereunder the learned Sessions Judge after holding the appellant guilty for the offences under Sections 452 and 307 (twice) of the Indian Penal Code, sentenced him to undergo rigorous imprisonment for 3 years and 7 years (twice) and to pay fine of Rs.1,000/- and Rs.1,000/- (twice) in default of payment of fine, to further undergo additional RI for 6 months and 6 months (twice) 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) The case of the prosecution, in brief, is that on 25.12.2014, when complainant – Meena Sinha (PW-1) was on her way at about 1:45 pm in the afternoon, the appellant met her and asked her to do his facial, then the complainant refused to do so but the appellant kept insisting and he followed the complainant to her house where he all of a sudden took out a knife and with intention to cause death of Meena Sinha (PW-1) assaulted her on her chest, hands, thighs and causing injuries to her. Hearing the cries of Meena Sinha (PW-1), her brother Ashish Sinha (PW-3) came to intervene, who was also assaulted with knife by the appellant due to which, one injury was caused on his chest. The injured victims were immediately shifted to the hospital where they were given preliminary treatment and referred to Medical Hospital, Raipur. The FIR vide Ex. P/1 was lodged by Pushpa Sinha (PW-2), on the basis of which, the offence was registered against the appellant. The victims were medically examined and the entire investigation was carried out. One statement in the form of dying declaration of Meena Sinha (PW-1) vide Ex. P/5 was also recorded. Apart from that, seizure of articles and knife were made from the appellant during the investigation. Query report was obtained from the doctor who had earlier examined the victims. 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 against the appellant.

(4) The appellant was charged for the offences under Sections 452 and 307 (twice) of the Indian Penal Code. He denied the charges and prayed for trial. In order to prove the guilt of the appellant, the prosecution examined 17 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. No witness was examined in defence.

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

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

(7) Learned counsel appearing on behalf of the appellant submits that the conviction of the appellant under Section 307(twice) of the IPC is bad in law because none of the injuries caused to the victims were fatal in nature and there is no report of examined doctor Dr. Sharad Kumar Kohade (PW-9) that the injuries were sufficient to cause death in ordinary course of nature. The evidence of all the prosecution witnesses was unreliable which should not have been made the basis for conviction of the appellant. Hence, no case for conviction is made out against the

appellant and it is prayed that the appellant be acquitted in the case. In the alternative, it is prayed that if this Court is not inclined to allow the appeal and acquit the appellant, then looking to the long detention of the appellant in jail, his sentence of imprisonment may be reduced to the period of custody already undergone by him.

(8) Per contra, learned counsel for the respondent/ State opposed the prayer and submission. He further submitted that the prosecution has proved its case beyond reasonable doubt. Meena Sinha (PW-1) and Ashish Sinha (PW-3) have made very clear statement against the appellant that he was the person who made the assault with knife and caused injuries, which has been corroborated by the evidence of witnesses Dr. Sharad Kumar Kohade (PW-9), Dr. Harish Kumar Duva (PW-10), Dr. Ajay Pathak (PW-11), Pushpa Sinha (PW-2) and eyewitness Ku. Laxmi Dhimar (PW-4) and other witnesses Ghanshyam Sinha (PW-5), Rakesh Kumar (PW-6), therefore, no case is made out for acquittal or for reduction in the sentence imposed upon the appellant.

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

(10) Meena Sinha (PW-1) stated that on the date and time of the incident when she was on her way to home, the appellant met with her and asked her to do facial for him. She refused to do so and when she was entering into her house, the appellant all of a sudden took out a knife and with intention to cause her death made assault on her causing

injuries on her palm of left hand, near wrist, on forearm, on chest and on her left thigh. She stated that if had she not escaped from the spot, then the appellant could have killed her. In cross-examination, she has denied the adverse suggestions and the story of defence developed on behalf of the appellant, otherwise, her statement has remained totally unrebutted and there is no such admission made by her so as to hold that she has contradicted her statement in examination-in-chief.

(11) Ashish Sinha (PW-3) has stated about witnessing the incident when his sister Meena Sinha (PW-1) was assaulted and injured by the appellant and has stated that the appellant stabbed him with knife on his chest once, because of which, he got injured. In cross-examination, he has remained unshaken in his statement in examination-in-chief prominently and he has denied all the adverse suggestions and the suggestions given in defence.

(12) Ku. Laxmi Dhimar (PW-4) is another eyewitness who has stated about witnessing the incident and she has also remained firm on her statement. The discrepancies pointed out on the basis of her previous statement vide Ex. D/2 cannot be said to be material and having any effect on her statement given before the Court.

(13) Smt. Pushpa Sinha (PW-2) arrived on the spot immediately after the incident had taken place and found the victims in injured condition. Meena Sinha (PW-1) narrated to her about the incident, thereafter, she made arrangements for shifting the victims to the hospital and she had

lodged FIR vide Ex.P/1. In cross-examination, she has stated that she had lodged named FIR, according to the information given to her by the witnesses. She has admitted that when the police came to the spot they found the appellant in unconscious condition in the bathroom of her house. Without putting a question that the appellant was administered some poison, on being asked, she has stated that she does not know about administering of poison to the appellant, which does not show any relevance. There is no such investigation made in this case to show that the appellant had consumed poison and because of that, he was found in unconscious condition in the bathroom of witness - Smt. Pushpa Singh (PW-2). Otherwise, her statement about hearing the narrations from the victim and lodging the FIR is unrebutted.

(14) Dr. Sharad Kumar Kohade (PW-9) examined Meena Sinha (PW-1) on the same day and found incised wounds on internal side of right hand of size 0.5 x 5 cm, incised wound on right forearm of right hand of size ½ x 2 cm, two incised wounds on her left leg of size 0.5 x 7 cm and 0.5 x 1 cm respectively vide his report Ex. P/9. He had referred the victim for further treatment to higher center. He also examined Ashish Sinha (PW-3) on the same day and found one punctured wound on his left chest of size 0.5 x 2 cm which was bleeding vide his report Ex. P/10 and has referred for further treatment to Medical Hospital, Raipur. He has also opined that the injuries were caused to the victim by using hard and sharp object. After seizure of knife, he has examined the knife and also replied to the query vide Ex. P/12 that if the victims had not been provided with immediate treatment the injuries may have proved fatal.

There is nothing in his cross-examination against the statement made by him in his examination-in-chief.

(15) Dr. Ajay Pathak (PW-11), who has treated Meena Sinha (PW-1) confirmed about the injuries present on her body. He has also made a statement that she had one more injury of size 3 x 1 cm on her right chest. He has reported vide Ex.P/18 that the injury that was found in the palm of her right hand was of grievous nature because time of healing of that injury was 12 weeks whereas, remaining injuries were of simple in nature. His statement regarding description, nature of injuries has remained intact in his cross-examination. There is no further need to examine the statements of other witnesses regarding the investigative procedures as there is sufficient confirmation that some hard and sharp object was used to assault the victims in this case. Therefore, finding of the Court below that this appellant was the person who assaulted the victims with a knife is without any defect.

(16) The conviction under Section 307 (twice) of the IPC is put to question in this appeal, which is taken into consideration. The report regarding injuries of Meena Sinha (PW-1) vide Ex. P/8 by Dr. Ajay Pathak (PW-11) says that only one injury was found which was of grievous in nature and rest of the injuries were simple in nature. The statement of Dr. Sharad Kumar Kohade (PW-9) that the injuries may have proved fatal if were not treated immediately shows, that the death could not have been direct consequence of the injuries caused to the victim. Similarly, there is no detailed report regarding the injuries caused

to Ashish Sinha (PW-3). Though there is statement made by Meena Sinha (PW-1) that the appellant had intended to cause his death, it is a general statement. Looking to the nature of injuries caused, it cannot be held that the appellant had intention to cause her death, therefore, the act of the appellant in causing injuries to Meena Sinha (PW-1) by using hard and sharp object and causing grievous injuries amounts to an offence under Section 326 of the IPC whereas, his act in causing injuries to victim – Ashish Sinha (PW-3) with hard and sharp object amounts to under Section 324 of the IPC. Therefore, on this point the impugned judgment needs interference.

(17) After due consideration of the entire evidence and on the basis of the discussions made herein-above, this appeal is allowed in part. The conviction and sentence imposed upon the appellant under Section 452 of the IPC is maintained, however, the conviction and sentence imposed upon the appellant under Section 307 (twice) is set aside and instead of that the appellant is now convicted under Sections 326 and 324 of the IPC and sentenced with RI for 5 years and 3 years and to pay fine of Rs.1,000/- and Rs.1,000/- in default of payment of fine, to further undergo additional RI for 1 month and 1 month respectively with a direction to run both the sentences concurrently.

(18) Accordingly, the appeal is disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
JUDGE