

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 426/2001****Reserved on 03.04.2019****Delivered on 08.04.2019**

(Arising out of judgment of conviction and order of sentence dated 30.4.2001 passed by the Sessions Judge, Durg, CG in Sessions Trial No.21/1998)

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Ramnarayan, aged about 26 years, s/o. Roopram, R/o. Village Shipkonha, P.S. Patan Distt. Durg (CG)

Appellant

VERSUS

The State of Chhattisgarh through P.S. Patan Distt. Durg (CG)

Respondent

 For Appellant : Ms. Savita Tiwari and Ms. Minu Banerjee. 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 30.4.2001 passed by the Sessions Judge, Durg, CG in Sessions Trial No.21/1998 whereby and whereunder he convicted the appellant as under :-

Conviction u/S	Sentence	Fine sentence
307 IPC	RI for 7 years	Rs. 1000/- in default RI for 6 months
324 IPC	RI for 3 Years	--
498A IPC	RI for 3 years	Rs. 500/- in default RI for 3 months

All the jail sentences are directed to run separately.

2. In brief, prosecution case is that appellant is the husband of complainant Smt. Premlata. Complainant Smt. Dulari Bai is the mother of complainant Smt. Premlata. Complainants were residing in the village Rangkathera. The marriage of complainant Smt. Premlata was solemnized with appellant 2 years prior to the incident. Appellant was harassing complainant Smt. Premlata doubting on her character, thus, she was residing in her paternal house. On 09.12.1996 at about 20:30 hrs, appellant reached in their house and made dispute with them, caused injuries on mouth, breast of complainant Dulari Bai by sickle.

When complainant Smt. Premlata intervened he also caused injuries on her back and hand by sickle. On hearing of shouting the father of complainant Smt. Premlata namely Pawan Kumar and some other persons reached there. Appellant fled away from the spot. On very day at about 22:30 hrs complainant Smt. Premlata gave the information to the outpost Ranitarai where '0' numbered FIR was lodged. Thereafter, numbered FIR was lodged in police station Patan. After completion of investigation a charge sheet was filed against him under Section 307, 498A of the IPC. The trial Court framed charges against him under Section 307 on two counts, 498A of the IPC. He abjured the charges levelled against him and faced trial. To bring home the charges against him, prosecution examined as many as 11 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.

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. At the time of alleged incident night was dark, thus, the identification of appellant is doubtful. All the prosecution witnesses are interested witnesses. Thus, the conviction and sentences of the appellant are bad in eyes of law. Hence, he may be acquitted of the aforesaid charges.

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

6. As per the alleged MLC report Ex. P-18, P.W. 9 Dr. S.A. Ali had examined complainant Smt. Premlata and found following injuries on her person :-

- (1) One incised wound on back side below the right scapula, size 2 cm x 1 cm x skin deep,
- (2) One incised wound mid scapular region, size 1cm x 1 cm x skin deep,
- (3) One incised wound on right of lateral elbow, size 1.5 cm x 1 cm x skin deep,

(4) Two incised wound on 4 cm above the left elbow, one lateral and second middle side, size 1 cm x 1 cm x skin deep,

(5) One incised wound on middle part of front of left thigh, size 1 cm x 0.5 cm x skin deep,

(6) One incised wound on right ring finger, size 1 cm x 0.5 cm x skin deep,

(6) P.W. 9 Dr. S.A. Ali opined that injuries of Smt. Premlata were simple in nature and 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-18 is not believable. Thus this Court believes on Ex. P-18.

8. As per the alleged MLC report Ex. P-19 PW-9 Dr. S.A. Ali had examined complainant Smt. Dulari Bai and found following injuries on her person :-

(1) One incised wound at left angle of mouth , size 1.5 cm x 1 cm x $\frac{3}{4}$ cm,

(2) One incised wound on upper part of left breast, size 2 cm x 1 cm x skin deep,

(3) One incised wound at base of right index finger dorsal side, size 2 cm x 0.5 cm x skin deep,

(4) One incised penetrating wound below and lateral to umbilicus , size 1 cm x 0.5 cm , fat coming through the wound.

9. P.W. 9 Dr. S.A. Ali opined that injuries No. 1, 2 3 of the Smt. Dulari Bai were simple in nature, injury No.4 was grievous in nature, all the injuries were caused by hard, sharp and pointed object.

10. There is no such evidence on record on strength of which it can be said that Ex. P-19 is not believable. Thus this Court believes on Ex. P-19.

11. As per the alleged query report Ex. P-20 P.W. 9 Dr. S.A. Ali opined that injury No.4 of complainant Smt. Dulari Bai was dangerous for life.

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

be said that Ex. P-20 is not believable. Thus this Court believes on Ex. P-20.

13. P.W. 10 Dr. S.J. Rijwi says in para 1, 4, 5 of his statement given on oath that during the admission in I.C.U. of Sector 9 hospital at Bhilai complainant Smt. Dulari Bai was operated, two perforation were present at jejunum size 3 cm x 2 cm, one small perforation was also present on retropetionum injuries were grievous in nature and if immediate surgical treatment was not provided, then she could have died.

14. There is no such evidence on record on strength of which it can be said that aforesaid statements of P.W. 10 Dr. S.J. Rijwi, alleged bed head ticket Ex.P-21, are not believable. Thus this Court believes on them.

15. P.W.1 complainant Smt. Premlata says in para 1, 3 and 4 of her statement given on oath that appellant was harassing her on account of doubting on her character. He had come in their house, he had caused injuries on abdomen, mouth of complainant Smt. Dulari Bai by knife. He also caused injuries on her hand, back, thigh by knife.

16. P.W.2 Smt. Dulari Bai says in para 1 and 3 of her statement given on oath that appellant had reached in their house, caused injuries on her breast, mouth by knife. Complainant Smt. Premlata intervened, he also caused injury on her body by knife. Appellant was harassing Smt. Premlata on account of doubting her character.

17. P.W.3 Pawan Kumar says in para 1 and 3 of his statement given on oath that he saw that complainants Smt. Premlata and Smt. Dulari Bai were present in the house in injured conditions. Complainant Smt. Premlata had told him that appellant had caused injuries on her body and body of complainant Smt. Dulari Bai. Appellant was harassing complainant Smt. Premlata on doubting her character.

18. P.W.4 Jeewan Lal says in para 1 of his statement given on oath that complainant Smt. Premlata had told that appellant had caused injuries on her body by knife.

19. P.W.11 Sukhi Ram says in para 2 of his statement given on oath that complainant Smt. Premlata had told that appellant had caused

injuries on her body by knife.

20. Appellant is husband of complainant Smt. Premlata and son-in-law of complainant Smt. Dulari Bai. This is not the case where complainants had seen appellant first time during the alleged incident. Moreover at the time of alleged incident appellant was very near to the complainants. Moreover, P.W.1 Smt. Premlata says in para 14 that earthen lamp was lighting. Thus, in these circumstances it cannot be said that said complainants allegedly had not identified the appellant.

21. There is no such material available on record on strength of which it can be said P.W. 4 Jeewan Lal, P.W. 11 Sukhi Ram had made aforesaid statements only because they had good relation with the P.W.3 Pawan Kumar, knowingly that appellant allegedly had not committed any crime.

22. No such material omissions and contradictions have been dealt on behalf of appellant during the cross-examination of P.W. 1 Smt. Premlata, P.W. 2 Smt. Dulari Bai, P.W. 3 Pawan Kumar, P.W. 4 Jiwan Lal, P.W.11 Sukhi Ram which may adversely affect the aforesaid testimony of para No. 1, 3 and 4 of P.W. 1 Smt. Premlata, para 1 & 3 P.W. 2 Smt. Dulari Bai, para 1 & 3 of P.W. 3 Pawan Kumar, para 1 of P.W. 4 Jiwan Lal and para No.2 of P.W.11 Sukhi Ram.

23. In alleged Dehati Nalishi Ex. P-1 it has been mentioned that appellant was harassing P.W.1 Smt. Premlata on account of doubting on her character. He had caused injuries on back and hand of her and mouth and breast of P.W.2 Smt. Dulari Bai. As per the Ex. P-1 injuries were caused by some sharp object.

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

25. 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.

26. Looking to the above mentioned facts and circumstances of the case this Court finds that aforesaid statements of para 1, 3 and 4 of P.W. 1 Smt. Premlata, para 1 & 3 of P.W. 2 Smt. Dulari Bai, para 1 & 3 of P.W. 3 Pawan Kumar, para 1 of P.W. 4 Jiwan Lal and para 2 of P.W.11 Sukhi Ram are simple, natural and normal. Thus this Court

believes on them.

27. After appreciation of the evidence discussed here before, on the strength of aforesaid statements of para 1, 3 and 4 of P.W. 1 Smt. Premlata, para 1 & 3 of P.W. 2 Smt. Dulari Bai, para 1 & 3 of P.W. 3 Pawan Kumar, para 1 of P.W. 4 Jiwan Lal and para 2 of P.W.11 Sukhi Ram, Ex.P-1, Ex. P-18, Ex. P-19, Ex. P-20, Ex. P-21, this Court finds that prosecution has succeeded to prove that appellant had caused aforesaid injuries to P.W.1 Smt. Premlata mentioned in Ex. P-18, and P.W.2 Smt. Dulari Bai mentioned in Ex. P-19, injuries of P.W.1 Smt. Premlata were simple in nature, injury No. 4 of P.W.2 Smt. Dulari Bai was grievous in nature and dangerous to life, injuries were caused by knife.

28. Counsel for the appellant relied in **Sarju Prasad v. State of Bihar** (AIR 1965 SC 843) wherein Hon'ble Supreme Court has laid down following judicial precedent:-

'If accused caused injury to complainant in a vital region with a knife but no vital organ has been cut, it would not by itself be sufficient to take the act of accused out of the purview of Section 307 IPC. In order to bring the offence punishable u/s 307 home to accused, the prosecution must establish that his intention was one of three kinds mentioned in Section 300 IPC. State of mind of accused has to be deduced from surrounding circumstances and motive would be a relevant circumstance. If evidence is not sufficient to establish with certainty existence of requisite intention or knowledge of accused, he can be convicted only u/s 324 IPC and not u/s 307 IPC.'

29. Counsel for the appellant relied in **Naib Singh v. State of Punjab**, AIR 1986 SC 2192 wherein the accused was teacher in Govt. School, he caused injury in heat of moment to complainant resulting fracture of skull and the incident took place 13 years back, in these circumstances, Hon'ble Supreme Court has laid down judicial precedent that sending accused to jail would not be proper, and reduced the sentence of RI for one year to imprisonment till rising of court and fine of Rs. 5000/-.

30. Counsel for the appellant relied in **Ram Singh v. State of M.P.** (2011) 14 SCC 563 wherein out of five incised wounds only injury No. 1

on lower right side of abdomen could invite applicability of Section 307 IPC and this too was very small dimension, other injuries were on hand and simple injury, and incident happened 18 years ago, in these facts and circumstances, Hon'ble Supreme Court held that sentence of 5 years awarded to appellant is somewhat excessive, thus reduced it to RI for 2 years.

31. Counsel for the appellant relied in **Mouju Ram v. State of C.G.** 2006 (1) CGLJ 257 wherein the Division Bench of this Court has laid down following judicial precedent:-

“ in offence u/s 307 of the IPC only factor is not the injury or its nature but a number of factors, circumstances, nature of injury, weapon used, interruption, etc. are required to be taken into consideration. It is established that accused brutally pierced pointed iron rod in the body of complainant and caused number of stab injuries on her vital parts who on raising voice for rescue by the victim left and ran away, all that clearly shows that intention of accused to kill her.”

32. 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.”

33. 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.

34. 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.

35. 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.”

36. From the evidence discussed herebefore, it is noticeable that appellant had caused aforesaid injuries on body of P.W.2 Smt. Dulari Bai with the intention of causing death or with the intention of causing injuries which were sufficient in the ordinary course of nature to cause her 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), **Sarju Prasad** (Supra), by the Division Bench of this Court in the matter of **Mouju Ram** (Supra) are applicable against the appellant.

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

38. Considering the entire evidence, this Court finds that the prosecution has succeeded to prove the charges under Section 324, 307, 498A of the IPC against the appellant. Thus, this court holds that the appellant is guilty of the offences punishable under Sections 324, 307, 498A of the IPC. Thus, aforesaid conviction of appellant is hereby affirmed.

39. Looking to the above-mentioned facts and circumstances, looking to this fact that about 20 years have been elapsed from the date of incident, this Court finds that the jail sentences awarded by the trial Court are excessive. In the case in hand it cannot be said that aforesaid injuries were caused in heat of moment by the appellant, in the case in hand appellant is not a government servant. Thus, appellant does not get any help from the aforesaid judicial precedent laid down by Hon'ble Supreme Court in the matter of **Naib Singh** (Supra), but aforesaid judicial precedent laid down by Hon'ble Supreme Court in the matter of **Ramsingh** (supra) is applicable in favour of appellant the reference that jail sentences may be reduced. Thus, awarded RI for seven years for offence punishable under Section 307 is reduced to RI for 5 (five) years, awarded RI for three years for the offence punishable under Section 324 is reduced to RI for 1 (one) year, awarded RI for three years for offence punishable under Section 498A is reduced to RI for 1 (one) year. The fine sentences awarded by the trial Court to the appellant are affirmed with default clause. All the jail sentences are directed to run concurrently.

40. Appeal is partly allowed.

41. 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 sentences, if any. The trial Court is also directed to take the appellant in custody forthwith for undergoing the remaining part of sentences.

Sd/-
(Sharad Kumar Gupta)
Judge