

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 348 of 2009

Judgement reserved on 01.04.2019

Judgement delivered on 11.12.2019

Govind Nishad S/o. Shri Kunwar Singh, Aged about 40 years, R/o. Adarsh Nagar, In front of DMC Kumhari, Police Station Kumhari, District Durg (C.G.)

---- **Appellant**

Versus

State of Chhattisgarh through District Magistrate Durg District Durg (C.G.)

---- **Respondent**

For Appellant : Mrs. Indira Tripathi, Advocate.
For Respondent : Mr. Raghvendra Verma, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

CAV Judgment

1. This appeal is directed against the judgment of conviction and order of sentence dated 23.04.2009 passed by the Additional Sessions Judge, Durg, in Sessions Trial No. 159 of 2008, whereby the accused/appellant has been convicted under Section 307 IPC and sentenced him to undergo R.I. for four years and to pay a fine of Rs. 500/- with default stipulation.

2. The incident is of 07.07.2008 where the accused/appellant gave an axe blow to the victim (PW-4) but the case of the prosecution further speaks that on earlier occasion also the accused/appellant used to stalk her, pass lewd remarks against her and also seek sexual favour from her and that when she did not succumb to his persistence, he lost his temper and attacked her with axe causing injury on her left side of the neck for which report Ex.P-8 was lodged by her after being taken to police station by her husband. Vide report Ex.P-13 initial medical treatment was given to her at Supela hospital from where she was referred to District Hospital Durg and she remained hospitalized for a day. After completion of investigation and effecting seizure of axe under Ex.P-3, charge sheet was filed against the accused/appellant for the offence under Section 307 IPC followed by framing of charge accordingly.

3. In order to prove its case the prosecution has examined 9 witnesses in support of its case. Statements of the accused was recorded under Section 313 of the Code of Criminal Procedure in which she denied her guilt and pleaded innocence and false implication in the case.

4. Learned counsel appearing for the appellant submits that the judgment impugned convicting the accused/appellant under Section 307 IPC is not based on the proper appreciation of the evidence of the witnesses. She submits that there are so many lacunae in the evidence adduced by the prosecution. Learned

counsel for the appellant has pointed out the material contradiction in the evidence given by various witnesses and their unnatural and impossible allegations. She submits that the independent witnesses as well as seizure witnesses have not supported the case of the prosecution. She submits that the trial Court has erred in relying the evidence of Dr. B.P. Tiwari who examined the injured has clearly stated that the injury could not cause by an axe. Lastly, she submits that the trial Court has erred in appreciating the evidence available on record more so looking to the injury report, false implication of the appellant cannot be ruled out.

4. Per contra, learned State counsel supporting the impugned judgment has submitted that the judgment of the trial Court is strictly in accordance with the law and well founded and there is no illegality or infirmity in it warranting any interference by this Court.

5. To substantiate the charge, the prosecution examined as many as 9 witnesses. FIR was lodged on the date of incident in which the appellant is named as culprit of the offence. Pardeshnin Bai (PW-4) is the injured and as per her version, she stated that when she turned inside the house for taking her lunch box, then the appellant came there and assaulted on the left side of her neck by axe and run away from there thereafter the injured along with her husband went to police station for lodging FIR Ex.P-8. The axe was seized on the memorandum statement of the appellant under Ex.P-3 and the seizure of the said axe was made under seizure

memo Ex.P-4. The version of the injured is fully supported by version of Medical Officer (PW-7) who examined the injured victim and found lacerated wound in the size of 8 cm x ½ cm on the left side of neck into skin deep and blood was oozing out from there. Record also shows that for a day she also took treatment at Distict Hospital Durg. Though the so called eye-witnesses have not supported the case of the prosecution yet there is evidence of the victim duly supported by the medical evidence and seizure of axe on the memorandum of the appellant leading to the conclusion that she was assaulted by the accused/appellant and inflicted axe injury on her neck. However, the condition of the victim was not serious and she was fully conscious all along, as has been stated by the treating doctor. The version of the injured was corroborated from the version of Doctor PW-7 who has examined the injured at District Hospital Durg.

6. Thus it is undisputed that the injured was assaulted by the accused/appellant with axe and suffered injuries on her neck. The medical evidence received by her at two places also demonstrate the act of the accused/appellant in causing injuries to her and being so the conviction of the accused/appellant under Section 307 IPC is fully justified and is maintained as such.

7. As far as the sentence part of the judgment impugned is concerned, looking to the fact that the incident had taken place 11 years ago and that the appellant has already remained in jail for more than 10 months 20 days, in my opinion, no useful purpose is

going to be served in again sending him to jail. Accordingly, his jail sentence is reduced to the period already undergone. With the above, the appeal stands allowed in part.

Sd/-

(Vimla Singh Kapoor)
JUDGE

Santosh