

**NAFR****HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 11-7-2019****Pronounced on 15-7-2019****CRIMINAL APPEAL 1089/2003**

(Arising out of judgment of conviction and order of sentence dated 1-8-2003 passed by Addl. Sessions Judge, Dhamtari (CG) in Sessions trial No. 341/2002 )

Jagesh @ Jageshwar son of Hiralal Netam aged 21 years r/o Gram Banrout Thana Arjuni, Distt. Dhamtari (CG)

**---Appellant****-VERSUS-**

State of Chhattisgarh, through P.S. Arjuni

**---Respondent**


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| For appellant        | : Ms.Laxmin Tonde, Adv.          |
| For respondent/State | : Mr. Vinod Tekam, Panel Lawyer. |

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**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 1-8-2003 passed by Addl. Sessions Judge, Dhamtari (CG) in Sessions trial No. 341/2002 whereby and whereunder he convicted and sentenced the appellant as under :-

| Offence u/S. | RI for  | Fine Rs. | RI in default of payment of fine |
|--------------|---------|----------|----------------------------------|
| 307, IPC     | 5 Years | 1,000/-  | 6 Months                         |

2. In brief the prosecution story is that complainant Ranjanabai alias Ranju was a resident of village Banrout. Her husband was running a grocery shop at his house. On 22-6-2002 at about 9.00 pm she was present in the grocery shop. Appellant reached to the grocery shop and purchased mixture, gutka, biscuit intermittently. He was out-facing her. When she was going inside the house, he caused injury by axe on her head from back side. Raju Sahu and Mukesh Sahu were present there. The axe was stuck on her head. After some time her mother in law reached there to whom she narrated the incident. Her husband also reached there. Her family members took her to hospital at Dhamtari. On the way she narrated the incident to her husband also. On very day her

husband Sevan Kumar Dhruv lodged report in PS Arjuni where a Dehati Nalishi was written. Thereafter a numbered FIR was registered in PS Arjuni. After completion of investigation, a charge sheet was filed against him under Section 307 of Indian Penal Code (in brief, 'IPC'). Trial Court framed charge against him under Section 307 of IPC. He abjured the charge and faced trial. To bring home the charge the prosecution examined as many as 18 witnesses. He did not examine any witness on his defense. After completion of trial, trial Court convicted and sentenced him as aforesaid.

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 sentence of the appellant are bad in eyes of law. Hence, appellant may be acquitted of the aforesaid charge.
5. Counsel for the State argued that the conviction and sentence of the appellant are based on clinching evidence. The conviction and sentence of the appellant do not call for any interference by this Court.
6. As per the alleged MLC report Ex. P-13, P.W. 13 Dr. Neeraj Netam had examined complainant Smt. Ranjana Bai on 22.06.2002 and found one lacerated wound on scalp size 6 c.m.x 3 c.m. x 3 c.m. He opined that aforesaid injury was grievous in nature and may be caused by blunt or 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 CT scan report Ex. P-11, P.W.-11 Dr. A.D. Raje had done the CT scan of Smt. Ranjana Bai on 22.06.2002 and found that:-

- (i) Bileteral mild diffuse cerebral edema,
- (ii) Minimal, acute subarachnoid hemorrhage in the left parietal region,
- (iii) Comminuted fractured of the left parietal bone with overlying scalp hematoma.

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

P-11.

10. As per the alleged bed head ticket Ex. P-28 Smt. Ranjana Bai was admitted in Khemka Hospital, Raipur on 24.06.2002 and discharged on 03.07.2002, she was operated on 26.06.2002.

11. There is no such evidence on record on strength of which it can be said that Ex. P-28 is not believable thus, this Court believes on Ex. P-28.

12. As per the alleged report Ex. P-23, P.W.-18 Dr. Sunil Khemka had given the report that fracture was present on the parietal bone of Smt. Ranjana Bai, her dura membrane was torn.

13. There is no such evidence on record on strength of which it can be said that Ex. P-23 is not believable thus this Court believes on Ex.P-23.

14. As per the alleged RFSL report Ex. P-29, blood stains were found on Article -B axe allegedly seized from spot, Article- G full shirt, Article-H full pant, allegedly seized from the appellant.

15. There is no such evidence on record on strength of which it can be said that Ex. P-29 is not believable thus this Court believes on Ex.P-29.

16. As per the alleged seizure Ex. P-3 P.W. 16 Subhash Chandra Chaudhary, the then S.H.O. of P.S. Arjuni, seized one axe from spot.

17. There is no such evidence on record on strength of which it can be said that Ex. P-3 is not believable thus this Court believes on Ex. P-3.

18. As per the alleged seizure Ex. P-5, P.W.-16 Subhash Chandra Chaudhary had seized one full shirt and one full pant from appellant.

19. There is no such evidence on record on strength of which it can be said that Ex. P-5 is not believable thus this Court believes on Ex.P-5.

20. P.W. 4 complainant Smt. Ranjana Bai says in Para No.1, 2 and 4 of her statement given on oath that she was in her husband's grocery shop. Appellant had come there and purchased some articles intermittently. He caused blow on her head from back side by an axe. Injury was caused on her head. The axe was stuck on her head. He ran away from spot.

21. P.W.-5 Mukesh Kumar says in Para No.1 of his statement given on oath that he was present in veranda of shop of Sevan Kumar, he saw that an axe was stuck on the back side of head of Smt. Ranjana Bai, appellant ran away from the spot.

22. P.W. 6 Rajkumar says in Para No.1 and 3 of his statement given on oath that he was present near the shop of Sevan Kumar, appellant had come to that shop and purchased some articles from Smt. Ranjana Bai, he heard loud sound, he saw that appellant was running away and an axe was stuck on her head.

23. P.W. 7 Sevan Kumar who is the husband of complainant says in Para 6 during his cross-examination that this is true that in the hospital his wife told him about the incident.

24. P.W. 12 Ram Bai who is the mother-in-law of Smt. Ranjana Bai, says in Para 1 and 2 of her statement given on oath that she saw that blood was coming from her head, she had told that appellant had caused injury.

25. P.W. 15 Kheman Bai who is relative of P.W. 4 Smt. Ranjana Bai says in Para 1 of her statement given on oath that she had told that appellant caused had injury by an axe.

26. There is no such evidence on record on strength of which it can be said that P.W. 5 Mukesh Kumar, P.W.-6 Rajkumar had made aforesaid statements because they were interested with said complainant for any reason or they were prejudiced with appellant for any reason.

27. There is no such evidence on record on strength of which it can be said that P.W. 4 Smt. Ranjana Bai, P.W. 7 Sevan Kumar, P.W. 12 Ram Bai, P.W. 15 Kheman Bai had stated aforesaid statements only on account of alleged animosity present between complainant and appellant.

28. No such material omissions and contradictions have been dealt on behalf of appellant during the cross-examination of P.W. 4 Smt. Ranjana Bai, P.W.-5 Mukesh Kumar, P.W.-6 Rajkumar, P.W.-7 Sevan Kumar, P.W.-12 Ram Bai, P.W.15 Kheman Bai, which may adversely affect the aforesaid testimony of P.W. 4 Smt. Ranjana Bai, P.W.-5 Mukesh Kumar, P.W.-6 Rajkumar, P.W.-7 Sevan Kumar, P.W.-12 Ram

Bai, P.W.-15 Kheman Bai.

29. In alleged Dehati Nalishi Ex. P-9 it has been mentioned that P.W.-7 Sevan Kumar had seen P.W.-4 Smt. Ranjana Bai in injured condition, blood was coming from her head, during taking her to hospital she told that appellant caused injury on her head by an axe.

30. Ex. P-9 has been lodged on very day promptly and without delay.

31. There is no such evidence on record on strength of which it can be said that Ex. P-9 is concocted, lodged as an after thought, with intention to falsely implicate appellant in alleged crime.

32. Looking to the above mentioned facts and circumstances of the case this Court finds that aforesaid statements of P.W. 4 Smt. Ranjana Bai, P.W. 5 Mukesh Kumar, P.W. 6 Rajkumar, P.W.7 Sevan Kumar, P.W. 12 Ram Bai, P.W.15 Kheman Bai, are simple, natural and normal. Thus this Court believes on them.

33. After appreciation of the evidence discussed here before, on the strength of aforesaid statements of P.W. 4 Smt. Ranjana Bai, P.W.-5 Mukesh Kumar, P.W.-6 Rajkumar, P.W.-7 Savan Kumar, P.W.-12 Ram Bai, P.W.15 Kheman Bai, Ex. P-13, Ex. P-11, Ex. P-28, Ex. P-23, Ex. P-29, Ex. P-3, Ex. P-5, Ex. P-9 this Court finds that prosecution has succeeded to prove that appellant had caused aforesaid injury to P.W.4 Smt. Ranjana Bai mentioned in Ex. P-13, Ex. P-11, Ex. P-28, Ex. P-23 injury of P.W. 4 Smt. Ranjana Bai was grievous in nature, injury was caused by blunt or sharp object, an axe was stuck on her head. Sticking of an axe on the head of P.W.-4 Smt. Ranjana Bai itself speaks that blow was caused with heavy force.

34. 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.”

35. 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.

36. 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.

37. The Hon'ble Supreme Court in **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.”

38. 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, is 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.

39. From the evidence discussed herebefore, it is noticeable that appellant had caused aforesaid injury on the person of P.W.4 Smt. Ranjana Bai 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), Gulam Mustaffa (Supra), Kanhaiya Lal (Supra)** are applicable against the appellant.

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

41. Considering the entire evidence, this Court finds that the prosecution has succeeded to prove the charge under Section 307 of the IPC against the appellant. Thus, this court holds that the appellant is guilty of the offence punishable under Section 307 of the IPC. Thus, aforesaid conviction of appellant is hereby affirmed.

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

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

44. 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.

**Sd/-**  
**(Sharad Kumar Gupta)**  
Judge