

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 607/2001****Reserved on 27-3-2019****Delivered on 29-3-2019**

(Arising out of judgment of conviction and order of sentence dated 22-5-2001 passed by the Addl. Sessions Judge, Jashpur Nagar, CG in Sessions Trial No. 194/1999)

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Rambilas son of Padru Korba, aged about 30 years, R/o. Village Tatkela, PSH Bageecha, Distt. Jashpur (CG)

Appellant

VERSUS

State of Chhattisgarh through P.S.H. Officer, P.S.H. Bageecha, Distt. Jashpur (CG)

Respondent

 For Appellant : Mrs. Meena Shashtri, 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 22-5-2001 passed by the Addl. Sessions Judge, Jashpur Nagar, CG in Sessions Trial No. 194/1999 whereby and whereunder he convicted the appellant under Section 307 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') and sentenced him to undergo Rigorous Imprisonment for 5 years with a fine of Rs. 500/-, in default of payment of fine, to further undergo RI for 2 months.

2. In brief, prosecution case is that complainant Gunjibai is the mother-in-law of appellant. On 9-11-1999 at about 12.00 pm she had gone to see her grand son Butru to the house of the appellant. In front of the door of his house, he caused injuries on her head, below left eye and back by blunt side of an axe. The complainant lodged a report on very day at 16.00 hour which was written in Rojnamcha Sanha. After the inquiry, an FIR was lodged on 14-11-1999 at police

station Bageecha. After completion of investigation a charge sheet was filed against him under Section 307 of the IPC. The trial Court framed charge against him under Section 307 of the IPC. He abjured the charge levelled against him and faced trial. To bring home the charge against him, prosecution examined as many as 10 witnesses. The appellant also examined one witness in 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 the trial Court has not appreciated the evidence in proper perspective. Doctor had not given opinion that alleged injuries were sufficient to cause death. The prosecution failed to prove that there was intention to kill the complainant. Thus, the conviction and sentence of the appellant are bad in eyes of law. Hence, he may be acquitted of the aforesaid charge. In alternate, she submits that even if the prosecution case is accepted as it is, even then, at the most the appellant may be convicted for offence under Section 325, IPC.

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

6. As per alleged MLC report Ex. P-3, P.W. 3 Dr. Christ Dular Bakhla had examined said complainant and found following injuries on her person :-

- (1) One lacerated wound – 2.5 cm x 2.5 cm on left zygomatic region, congestion was present on left eye;
- (2) One lacerated wound size 1.5 cm x 1.5 cm x 0.5 cm on right frontal region;
- (3) One lacerated wound size 3.5 cm x 0.5 cm x 1 cm on left end of parietal region;
- (4) Swelling on the left side of below the back of scapula.

7. 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.

8. As per the alleged X-ray report Ex. P-12, P.W. 10 Dr. S. Singh after examination of the X-ray plates of skull and left cheek zygomatic region of said complainant, opined that there was fracture on left parietal bone.

9. There is no such evidence on record on strength of which it can be said that Ex. P-12, alleged X-ray plates Ex. P-13, Ex. P-14, Ex. P-15 are not believable. Thus this Court believes on them.

10. P.W. 4 Gunjibai Nagesia says in para 1 of her statement given on oath that appellant had caused blows by axe on her head, near the left eye and back.

11. P.W. 1 Dularibai Nagesia who is wife of the appellant and daughter of the complainant says in para 1 of her statement given on oath that this is true that her mother had told her that appellant had caused blows on her body.

12. P.W. 5 Roop Kumar Yadav, former sarpanch says in para 1 of his statement given on oath that complainant had told him that appellant had caused blows near her eye and head by axe.

13. P.W. 6 Bhanjan Ram Nagesia, who is the nephew of complainant says in para 1 of his statement given on oath that Sarpanch had told him that appellant had caused injuries to the complainant.

14. D.W. 1 Dularibai who has been already examined as P.W. 1 says in para 1 of her statement given on oath that appellant had not caused injuries on body of the complainant, she had fallen and sustained injuries. The people of their community were unhappy from the marriage of her and appellant because appellant is of Korva caste and she is by caste Nagesia.

15. P.W. 4 Gunjibai says in para 2 during her cross-examination that this is true that appellant is from different caste, they wanted to marry their daughter in their caste but the appellant had forcibly kept her.

16. There is no material available on record on strength of which it can be said that the complainant had lodged the report and made aforesaid statement of para 1 only because appellant belongs to different caste and kept her daughter, knowingly that he had allegedly

not caused injuries to her. Thus, appellant does not get any help from the aforesaid statement of para 2 of P.W. 4 Gunjibai Nagesia and from the aforesaid statement of D.W. 1 Dularibai that, people of their community were unhappy from the marriage of her and appellant because appellant is of Korva caste and she is by caste Nagesia.

17. P.W. 5 Roop Kumar Yadav says in para 3 during his cross-examination that this is true that earlier he had made complaint against the appellant in police station Bageecha on strength of which police had filed a complaint case against the appellant under Section 107/116 of the Cr.P.C.

18. There is no such material available on record on the strength of which it can be said that P.W. 5 Roop Kumar Yadav had made aforesaid statement of para 1 only on account that he was allegedly prejudiced with the appellant, without occurring of alleged incident. Thus, appellant does not get any help from the aforesaid statement of para 3 of P.W. 5 Roop Kumar Yadav.

19. P.W. 3 Dr. Christ Dular Bakhla says in para 3 during her cross-examination that aforesaid injuries cannot be received on falling on bushes. This witness has not mentioned in her report Ex. P-3 that complainant was in drunken condition at the time of the examination. Moreover on behalf of the appellant it was not suggested to P.W. 4 Gunjibai Nagesia during her cross-examination that allegedly she was in drunken condition and fell on ground and received injuries.

20. D.W. 1 Dulari Bai says in Para 2 during her cross-examination that this is true that at the time of alleged incident she was not present in the house.

21. No such material omissions and contradictions have been dealt on behalf of appellant during the cross-examination of P.W. 1 Dulari Bai Nagesia, P.W. 4 Gunjibai Nagesia, P.W. 5 Roop Kumar Yadav, P.W. 6 Bhanjan Ram Nagesia which may adversely affect the aforesaid testimony of para 2 of P.W.1 Dularibai Nagesia, para 1 of P.W.4 Gunjibai Nagesia, P.W.4 Roop Kumar Yadav, P.W. 6 Bhanjan Ram Nagesia, in the reference that appellant had caused injuries to complainant by blunt side of axe.

22. In the alleged Rojnamcha Sanha Ex. P-5 it has been mentioned that appellant had caused the injuries on body of complainant near eye, skull and back by blunt side of axe.

23. Ex. P-5 has been lodged on very day by 16:00 hours, promptly without any delay.

24. There is no such evidence on record on strength of which it can be said that Ex. P-5 is concocted, lodged as an afterthought, with intention to falsely implicate the appellant in alleged crime.

25. Looking to the above mentioned facts and circumstances of the case, this Court finds that aforesaid statements of para 2 of P.W. 1 Dularibai Nagesia, Para 1 of P.W. 4 Gunjibai Nagesia, P.W. 5 Roop Kumar Yadav, P.W. 6 Bhanjan Ram Nagesia are simple, natural, normal in the reference that appellant had caused injuries to complainant by blunt side of axe. Thus this Court believes on them in that reference and disbelieves aforesaid statement of D.W.1 Dularibai Nagesia that appellant had not caused injury on body of her mother and she had fallen after consuming liquor and sustained injuries.

26. After appreciation of the evidence discussed here before, on the strength of aforesaid statements of para 2 of P.W.1 Dularibai Nagesia, para 1 of P.W.4 Gunjibai Nagesia, P.W.1 Roop Kumar Yadav, P.W. 6 Bhanjan Kumar Nagesia, Ex. P-3, Ex. P-12, Ex. P-13, Ex. P-14, Ex. P-15, this Court finds that prosecution has succeeded to prove that appellant has caused aforesaid injuries to complainant mentioned in Ex.P-3, fracture was found on her left parietal bone which is mentioned in Ex. P-12.

27. Counsel for the appellant placed reliance on a decision of Hon'ble Supreme Court in the matter of **Jaynarain Mishra and others Vs. State of Bihar**, [1971(3) SCC 762] wherein following judicial precedent has been laid down-

“The accused was responsible for causing an injury which was a penetrating wound on the right side of chest caused by a bhala. The wound was of a grievous nature as the patient developed surgical emphasica on the right side of chest. Out of the four injuries received by the injured only this injury was of a grievous

nature while the other three injuries were simple in nature. Where four or five persons attack a man with a deadly weapon it may well be presumed that the intention is to cause death. However, when three injuries are of simple nature though deadly weapons were used and the fourth injury, though endangering life could not be deemed to be an injury which would have necessarily caused death but for timely medical aid the benefit of doubt must be given to the accused with regard to the injury intended to be caused. Therefore, the offence is not one under Section 307 but under Section 327, I.P.C.”

28. 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.”

29. 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.

30. 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.

31. 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.”

32. In the matter of **Jainarain Mishra (Supra)** no fracture was found in the chest of the complainant, chest injury was grievous in nature as the complainant developed surgical emphysema. In the case in hand complainant had received two head injuries out of which one was grievous in nature on account of fracture. Moreover from the evidence discussed herebefore, it is noticeable that the appellant had caused head injuries with the intention of causing death or with the intention of causing injuries which were sufficient in the ordinary course of nature to cause death. Thus appellant does not get any help from the aforesaid judicial precedent laid down by Supreme Court in the matter of **Jainarain Mishra (Supra)**, and aforesaid judicial precedent laid down by Hon'ble Supreme Court in the matter of **State of Maharashtra (Supra)**, **Lachman Singh (Supra)** **Ratan Singh (Supra)**, **Fireman Gulam Mustafa (Supra)** are applicable against the appellant.

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

34. 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.

35. Looking to the above-mentioned facts and circumstances, this Court is not inclined to take a lenient view regarding sentence. The sentence awarded by the trial Court is just and proper and does not call for any interference.

36. After complete and full appreciation of the evidence discussed herebefore this Court finds that trial Court has not committed any error in convicting and sentencing the appellant as aforesaid.

37. Thus, this Court affirms the impugned judgment of conviction and order of sentence dated 22.05.2001. Hence, the appeal being devoid of merit deserves to be and is hereby dismissed.

38. As the appellant is already in jail in this case, no further is required.

Sd/-
(Sharad Kumar Gupta)
Judge