

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 732 of 2001

- Chhotelal @ Tamatar, S/o- Late Sita Ram Sonkar, Occupation- Vegetable Seller, R/o- Near Nilam Chowk, Camp-2, Bhilai, P.S.- Chhawani, District- Durg (C.G.) **---- Appellant**

Versus

- State of Chhattisgarh, through- Station House Officer, P.S.- Chhawani, District- Durg (C.G.) **---- Respondent**

For Appellant : Shri Amiyakant Tiwari, Advocate.

For State/Petitioner : Shri Aman Kesharwani, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment on Board

11/12/2019

1. This appeal is preferred against the judgment dated 15th June, 2001 passed by 4th Additional Sessions Judge, Durg (C.G.) in Sessions Case No. 178/97 wherein the said Court convicted the appellant for commission of offence under Sections 307 and 458 of IPC, 1860 and sentenced him to undergo R.I. for five years and fine of Rs. 500/- and R.I. for three years and fine of Rs. 250/- respectively with default stipulations.
2. The case of the prosecution in brief is that on 21.07.1997 at 0:30 am when Mohan was sleeping in the house of Sushila Bai. The appellant along with other co-accused entered into the house and caused injuries to victim Mohan and Sushila Bai by Khukhari as a result of which they sustained grievous injuries.
3. Learned counsel for the appellant submits that the trial Court failed to appreciate the evidence on record. There is no evidence that the injuries sustained by the victim were sufficient for causing death. There are omissions and contradictions in the statement of

the prosecution witnesses. The trial Court has not evaluated the evidence in its true perspective, therefore, the finding of the trial Court is liable to be set aside.

4. Learned counsel for the State submits that the finding arrived at by the trial Court is based on proper marshaling of the evidence which is not liable to be interfered while invoking jurisdiction of the appeal.
5. I have heard learned counsel for the parties and perused the record of the Court below in which judgment impugned is passed.
6. Though appellant was charge-sheeted for causing fatal injury to one Sushila Bai (PW-3) and Mohan (PW-7), but Sushila Bai (PW-3) did not depose before the trial Court that any injury was caused to her by the appellant, therefore, there is no evidence in relation to victim Sushila Bai (PW-3) against the present appellant. The trial Court recorded finding on the basis of statement of Mohan (PW-7), Dr. Praveen Chand Agrawal (PW-1) and other witnesses of prosecution. As per version of Mohan the appellant assaulted him by sword and he is firm to statement right from investigation regarding the present appellant. As per version of Mohan three persons namely the present appellant and other co-accused Sunil and Tamatar @ Chotelal assaulted him by sword and as per version of this witness three persons have assaulted him. Dr. Praveen Chand Agrawal (PW-1) noticed a number of injuries on the body of victim Mohan, but he did not record his opinion regarding nature of injury. The prosecution examined as many as 15 witnesses, but there is no evidence regarding nature of injury. In absence of any opinion the injuries

shall be treated as simple in nature, and injuries caused by sharp object, therefore, case of the appellant falls within mischief of Section 324 of IPC, 1860.

7. For commission of offence under Section 307 of IPC it has to be established that injuries caused on the body of the victim Mohan were fatal in nature, but the expert has not shown even remote possibility regarding fatal nature of injuries, therefore, the appellant is convicted under Section 324 of IPC instead of Section 307 of IPC, 1860.
8. From the evidence of Mohan (PW-7) incident took place in the house of Sushila Bai (PW-3) and there they assaulted him. As per version of this witness appellant was in possession of one Khukhari, which shows that appellant entered into the house after preparation of assault by knife by commission of house-trespass which falls within mischief of Section 458 of IPC for which the appellant was convicted by the trial Court and same is hereby affirmed.
9. Heard on point of sentence.
10. The appellant has suffered jail term from 01.08.1996 to 27.01.1997 i.e. 5 months and 27 days, he again suffered jail term from 15.06.2001 to 09.05.2002. In all he has suffered jail term for about more than one year and five months. He is convicted for offence under Section 324 and 458 of IPC. In the facts and circumstances of the case, this Court is of the opinion that no useful purpose would be served if the appellant is again sent to jail and sentence awarded to the appellant is reduced to the period already undergone. The appellant is reported to be on bail.

This bail bonds shall continue for further period of six months in view of Section 437-A of Cr.P.C. However the fine imposed by the trial Court shall remain intact.

11. With this modification, the appeal is allowed in part.

Sd/-

(Ram Prasanna Sharma)
Judge

Vasant