

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.281 of 2011

Judgment Reserved on : 17.9.2019

Judgment Delivered on : 16.12.2019

Sunil Kale, S/o Sadashiv Rao Kale, aged about 45 years, occupation Private Service, R/o Santoshi Nagar, Krishna Colony, Raipur, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through Station House Officer, Police Station Tikrapara, District Raipur, Chhattisgarh

--- Respondent

For Appellant	:	Shri S. Imtiaz Ali, Advocate
For Respondent	:	Shri Sushil Sahu, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against the judgment dated 29.3.2011 passed by the 2nd Additional Sessions Judge, Raipur in Sessions Trial No.51 of 2010, whereby the Appellant has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 307 of the Indian Penal Code	Rigorous Imprisonment for 5 years and fine of Rs.1,000/- with default stipulation
Under Sections 25(1B)(b) and 27(1) of the Arms Act [Wrongly mentioned as Section 25(क) by the Trial Court]	Rigorous Imprisonment for 3 years each and fine of Rs.500/- each with default stipulation

2. Facts of the case, in brief, are that injured Swarna Kale (PW3) is wife of the present Appellant. Both were residing together with their daughter Priyanka (PW4) and son Gaurav (PW5) in a rented house. The Appellant used to consume liquor and quarrel with his

wife and commit *marpeet* with her. On 26.10.2009 at about 12:40 p.m., he came home in drunken condition and abused his wife and threatening her that he will kill her he assaulted her with a knife. When daughter Priyanka (PW4) tried to intervene, he assaulted her also with the said knife. Having heard the shouts, son Gaurav (PW5) came and intervened. The Appellant threatened him also. The matter was reported by Gaurav (PW5) vide First Information Report (Ex.P5). Injured Swarna Kale (PW3) was medically examined by Dr. Pushpa Sonteki (PW1). Her report is Ex.P1. During the course of investigation, vide seizure memo Ex.P4, the knife was seized from the Appellant. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. On completion of the investigation, a charge-sheet was filed. Charges were framed against the Appellant.

3. In support of its case, the prosecution examined as many as 8 witnesses. In examination under Section 313 of the Code of Criminal Procedure, the Appellant denied the guilt. No witness has been examined in his defence.
4. On completion of the trial, the Trial Court convicted and sentenced the Appellant as mentioned in first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant submitted that without there being sufficient evidence on record against the Appellant the Trial Court has wrongly convicted him. All the witnesses are close relatives of the injured and, therefore, they are interested witnesses. The Trial Court has not properly appreciated the evidence of the prosecution and convicted the Appellant. It was further submitted that if the entire prosecution case is taken as

it is, the Appellant cannot be convicted under Section 307 of the Indian Penal Code and the offence would fall within the purview of Section 324 of the Indian Penal Code. Learned Counsel further submitted that the Appellant has already suffered jail sentence for about 1½ years. He has no criminal antecedent. The issue was a family issue. The Appellant is facing the *lis* from October, 2009, i.e., for the last 10 years. Therefore, if he is held guilty, he may be sentenced with the period already undergone.

6. Learned Counsel appearing for the State supported the impugned judgment of conviction and sentence.
7. I have heard Learned Counsel appearing for the parties and perused the record with due care.
8. In her Court statement, injured Swarna Kale (PW3) has deposed that at the time of incident, at about 12:45 p.m., she was at home. Her husband/Appellant came home in drunken condition and started quarreling with her. Since he had sold their house without telling her, she asked him why did he do so. On this, he came home in drunken condition and abusing, assaulted her with a knife. She suffered injuries over her left hand, below the chin and over her leg. When their daughter Priyanka (PW4) tried to intervene, she also suffered injury on her hand caused by him. Thereafter, son Gaurav (PW5) came and snatched the knife from his hand. Swarna Kale has further deposed that when they started to go to lodge a report, the Appellant again started assaulting with the said knife. On this, house owner Kushwaha caused the Appellant run away. During her cross-examination, this witness has admitted that when they were going to lodge a report, the Appellant had again assaulted them, but she had not told about this to the police.

Thus, it is clear that she has developed her statement on this point. The statement of Swarna Kale (PW3) is duly corroborated by daughter Priyanka (PW4) and son Gaurav (PW5). All these three witnesses remained firm during their cross-examination. Though they are close relatives to each other, they are also wife and children of the Appellant. Therefore, there is no substance in the argument that being relatives to each other, these three witnesses are interested witnesses.

9. Swarna Kale (PW3) was medically examined by Dr. Pushpa Sonteke (PW1). Her report is Ex.P1, accord to which, Swarna Kale sustained following 3 injuries:

- (i) cut injury of 4 cms. x 2 cms. below the right wrist,
- (ii) cut injury of 5 cms. x ½ cm. below the lip,
- (iii) cut injury of 7 cms. x 4 cms. below the right knee

It was opined by her that all the above injuries were caused by a sharp edged object and the injuries were of grievous nature. During her cross-examination, in paragraph 11, this witness has further deposed that she stated the injuries sustained by Swarna Kale to be grievous in nature on the basis of the size of the injuries and the period of their healing. The grievous injury is defined in Section 320 of the Indian Penal Code, which reads as under:

“320. Grievous hurt.—The following kinds of hurt only are designated as “grievous”:—

First.— Emasculation.

Secondly.— Permanent privation of the sight of either eye.

Thirdly.— Permanent privation of the hearing of either ear.

Fourthly.— Privation of any member or joint.

Fifthly.— Destruction or permanent impairing of the

powers of any member or joint.

Sixthly.— Permanent disfiguration of the head or face.

Seventhly.— Fracture or dislocation of a bone or tooth.

Eighthly.— Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.”

From the above-quoted definition of grievous hurt, it is established that the injuries sustained by Swarna Kale (PW3) do not fall within the category of grievous injuries. Thus, it is clear that none of the injuries sustained by Swarna Kale (PW3) was grievous in nature.

10. On a minute examination of the evidence available on record, it is clear that injured Swarna Kale (PW3) is wife of the Appellant. The Appellant had sold their house without telling her and due to which the dispute had arisen between them. Thereafter, the Appellant had assaulted her with the knife. None of the injuries were sustained by her on any vital part of her body. From the statement of their son Gaurav (PW5), it is also clear that when he reached at the spot, at that time, his mother Swarna Kale (PW3) had fallen down on the floor and the Appellant was standing there with a knife. Thus, it is also clear that when Gaurav (PW5) reached at the spot, at that time, the Appellant was not making any assault and he was just standing there. If the Appellant had any intention to commit murder of Swarna Kale (PW3), he would not have been just standing there but would have been continuing his assaults with the said knife. Therefore, in my considered opinion, the act of the Appellant does not fall within the purview of Section 307 of the Indian Penal Code, but would fall within the purview of Section 324 of the Indian Penal Code. Accordingly, conviction of the Appellant

is altered from Section 307 of the Indian Penal Code to Section 324 of the Indian Penal Code. His conviction under Sections 25(1B)(b) and 27(1) of the Arms Act does not warrant any interference and is, therefore, affirmed.

11. So far as sentence part is concerned, it is reported that the Appellant has already suffered jail sentence of about 1½ years. The dispute was a family dispute. The Appellant is facing the *lis* for about 10 years. In my considered view, the interest of justice would be served if the Appellant is sentenced for the period already undergone by him for his conviction under Section 324 of the Indian Penal Code and Sections 25(1B)(b) and 27(1) of the Arms Act. Ordered accordingly. The Appellant shall also pay fine of Rs.1,000/- against his conviction under Section 324 of the Indian Penal Code. In default of payment of the fine, he shall be liable to undergo additional rigorous imprisonment for 6 months. If a sum of Rs.1,000/- has already been deposited by him towards fine, the same shall be adjusted against the fine imposed upon him today for his conviction under Section 324 of the Indian Penal Code. The fine sentences imposed upon him by the Trial Court for his conviction under Sections 25(1B)(b) and 27(1) of the Arms Act are affirmed.
12. Consequently, the appeal is allowed in part to the extent indicated above.
13. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
JUDGE