

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 177 of 2005

Order reserved on 06.02.2019

Order pronounced on 21.11.2019

Lal Say, S/o Nan Say, aged about 40 years, R/o Village Davna, P.S.
Jhilmili, District Sarguja (CG) ----- **Applicant**

Versus

State of Chhattisgarh through P.S. Jhilmili(C.G.) --- **Respondent**

For Applicant : Mr. A.K. Shukla, Advocate

For State/Respondent : Mr. Aman Kesharwani, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V. Order

It is undisputed that injured being the sole off-spring of her parents she was residing in her maternal home along with the accused/appellant even after marriage. However, after their marriage the father of the injured was blessed with a son and it is then the dispute leading to the incident surfaced. Allegation against the present applicant is that over a dispute regarding the partition of property of his father-in-law he asked his wife to get separated from him to live elsewhere. As his wife (victim) PW-1 namely Rambai did not listen to the accused, he got infuriated and caused injury on her leg with the help of carpenter's axe.

2. Learned trial Court vide judgment dated 18.09.2003 passed in Criminal Case No.570/1993 convicted the accused/applicant under Section 326 IPC imposing the sentence of RI for 2 years with fine of Rs.500/-. Findings recorded by learned Magistrate received affirmation even in appeal vide judgment impugned dated 18.03.2005 passed in Criminal Appeal No.250 of 2003. Hence this revision.

3. Counsel for the accused/applicant submits that the judgment impugned being contrary to the evidence of the witnesses is liable to be set aside. On the other hand State counsel supports the judgment impugned.

4. From the evidence of PW-1, PW-3 and PW-5, it is evident that the accused/applicant had attacked the victim PW-1 with the help of carpenter's axe causing injuries on her foot. Though according to the victim she had suffered injuries on her left leg whereas medical report states the same to be in the right foot. The variation in the report of the doctor and the statement of the victim as to the injuries caused in the right foot or the left foot hardly makes any difference for the reason that it is undisputed that she had suffered injury on her foot and, therefore, the same cannot give any benefit to the applicant. Doctor (PW-8) who medically examined the victim and gave his report (Ex.P-3) has categorically stated that the bone of her right leg was cut and the said injury was caused by hard and sharp edged weapon. According to him, the blood clot was also present below her calf. He has thereafter clarified that on account of the cut in the tibia bone there was a fracture. PW-3 and PW-4 have also partially supported the case of the prosecution.

5. In view of this, the findings recorded by learned Court below convicting the accused/applicant under Section 326 IPC cannot be said to be contrary to the material available on record and being so, they are hereby maintained.

6. As regards sentence, considering the fact that the incident had taken place about 35 years back and that the accused/applicant had already remained in jail for about one month and a week and by facing the long drawn prosecution he has already suffered a lot, this Court deems it to be just and proper to reduce the sentence imposed on him to the period already undergone. Order accordingly.

7. Revision is thus allowed in part with the observations made above.

Sd/-
(Vimla Singh Kapoor)

Judge