

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 114 of 2013**

- Gendlal Kosariya S/o Ubheram Kosariya, Aged About 24 Years, R/o Village Litiya, Police Station Bori, District Durg C.G., Chhattisgarh

---- Appellant**Versus**

- State of Chhattisgarh through – Police Station Tikrapara, District Raipur C.G., Chhattisgarh

---- Respondent

For Appellant : Ms. Meenu Banarjee, Advocate.

For Respondent/State: Mr. Adil Minhaj, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Judgment on Board

24/01/2019

1. This appeal has been preferred against judgment dated 17-10-2012 passed in S.T. No.219/11 by the 7th Additional Session Judge, Raipur, C.G. convicting the appellant under Section 307 of the IPC and sentencing him with R.I. for 7 years along with fine Rs.1000/- with default stipulation.
2. The case of the prosecution, in brief, is this, that, Lalita (PW-10) was earlier living as wife of the appellant, but because of dispute between them she left him and was living with Chandrashekhar (PW-6) in Village- Sejbahar. Because of this enmity, the appellant on 24-05-2011 came to the spot of incident with intention to teach a lesson to Lalita and others concerned and found Sahodrabai (PW-3), mother of Chandrashekhar (PW-6) and then assaulted her with a knife causing injuries on her chest and thigh. The incident was witnessed by Santuram Hirwani (PW-2) and the FIR (Ex.-P/4) was

lodged by Santuram Hirwani (PW-2) and on that basis offence was registered against the appellant. Victim Sahodrabai (PW-3) was medically examined. The statement of the witnesses were recorded under Section 161 of the Cr.P.C. and after completion of the investigation charge sheet was filed against the appellant.

3. The appellant was charged with offence under Section 307 of the IPC, to which he denied and prayed for trial.
4. On completion of the prosecution evidence, the appellant was examined under Section 313 of the Cr.P.C. in which he denied all the incriminating evidence against him, pleaded innocence and false implication. No witness was examined in defence.
5. On completion of the trial, the impugned judgment has been passed in which the appellant has been convicted and sentenced as aforementioned.
6. It is submitted by learned counsel for the appellant that conviction against the appellant is bad in law as the prosecution has failed to prove its case beyond reasonable doubt. Sahodarabai (PW-3) is victim in this case who has admitted in her deposition that she was not previously acquainted with the appellant and saw the appellant for the first time on the date and time of the incident, which is a ground to hold that the identification of the appellant was doubtful. Similarly, Santuram Hirwani (PW-2) has clearly made admission in his cross-examination at paragraph 11 that he arrived on the spot of the incident after the incident had occurred, hence, he is not an eye-witness. Lata Hirwani (PW-5) has although stated regarding identifying the appellant at the time of incident, but according to her

admission in her cross-examination, it appears that she has also stated that she made the identification on the basis of the information given by Santuram Hirwani (PW-2) that the appellant was the person who had threatened to teach a lesson to the family of Chandrashekhar (PW-6), therefore, her statement becomes doubtful. On this basis the prosecution has failed to establish the identity of the appellant at the time of incident, because of which he is entitled for acquittal.

In the alternative, it is submitted that according to the injury report Ex.-P/9 given by Dr. Sunil Gupta (PW-9) the victim had suffered only two incised wounds. Although the treating doctor has stated that the injuries could have proved fatal, but the injuries caused were not of such nature to cause death in ordinary course of nature, therefore, the offence that would be made out in this case would be under Section 324 of the IPC, therefore, in such a case, the order of conviction against the appellant be modified and his sentence may be reduced to the period of detention already undergone by the appellant in jail.

7. Per contra, learned counsel for the State opposes the grounds raised in the appeal and the submission made in this respect and submits that the prosecution has proved its case beyond reasonable doubt. Sahodarabai (PW-3) has clearly made identification of the appellant and in cross-examination her statement has remained unrebutted. Similarly, Santuram Hirwani (PW-2) was previously acquainted with the appellant and he had knowledge that the appellant had threatened that he will teach a lesson to the family of

Chandrashekhar (PW-6) and the consequence followed in the shape of this incident. Hence, there is no question of incorrect identification of the appellant on the spot of the incident and apart from that, Dr. Sandeep Dave (PW-11) has opined in his deposition that the injuries caused to the victim may have proved fatal if they were not treated immediately. Therefore, there is no case for acquittal or modification in conviction and reduction in sentence.

8. Heard learned counsel for the parties and perused the record of the trial Court.
9. It is not the case that the victim Sahodarabai (PW-3) has not suffered injuries. The person inflicting injuries was the appellant is an issue raised in this appeal, regarding which the identification of the appellant on the spot was made out or not, has to be found on the basis of appreciation of the evidence of the witnesses.
10. Sahodarabai (PW-3) has clearly stated in her examination-in-chief that on the date of incident it was the appellant who had assaulted with a knife causing injuries on her right chest and left thigh. In cross-examination she has admitted that it was dark in the street, when the appellant all of a sudden came and assaulted her. She also admitted that the person assaulting her had covered his face with a cloth, but then she made statement on her own that it was the appellant who had covered his face with a cloth and she has denied adverse suggestion given by the defence that she had been unable to identify the appellant.
11. Santuram Hirwani (PW-2) has stated that he had earlier received phone call from the appellant with whom he was previously

acquainted. He has stated that the appellant had said that he wants to teach a lesson to the family of Lalita (PW-10) and Chandrashekhar (PW-6), he also wanted to know the address of Lalita (PW-10) and Chandrashekhar (PW-6). Regarding the incident he has stated that on the date of incident the appellant was the person who had assaulted Sahodrabai (PW-3) and injured her. In the cross-examination he has admitted that on the date of incident at about 9 p.m. when he was having meals he was informed about the incident on phone by Chandrashekhar (PW-6). Thereafter, he went to the spot and saw Sahodrabai (PW-3) in injured condition who was immediately shifted to the hospital. On the basis of this admission it can be said that this appellant was not an eye-witness and he has made statement regarding the incident only on the basis of the information given by the victim and others.

12. Lata Hirwani (PW-5), daughter of the victim, has stated that she has witnessed that it was the appellant who had assaulted her mother Sahodrabai (PW-3) with a knife and injured her. In cross-examination she has denied the adverse suggestion regarding not witnessing the incident. In her cross-examination she has admitted that on the basis of the information given by Santuram Hirwani (PW-2) she came to know that it was Gendlal/appellant who has assaulted her mother. This makes her statement regarding identifying the appellant doubtful. There is statement of Lalita (PW-10) in her examination-in-chief that she saw the appellant running away from the spot. However, in her cross-examination she has asserted that she has given statement before the police that she

saw the appellant fleeing from the spot, which is not present in her previous statement Ex.-D/5, it shows that she has made improvement in her earlier statement, which raises doubts on her Court statement.

13. On the basis of the analysis of statement of the witnesses, however, it is made out that the appellant was the person who assaulted the victim Sahodrabai (PW-3), as the victim had identified the appellant who was present at the time she was making deposition before the Court, hence, it is a case of dock identification. It is not a rule that dock identification shall always be rejected. Therefore, on this basis it is found that the conclusion drawn by the Court below that it was the appellant who was the person who assaulted and injured Sahodrabai (PW-3) does not suffer from any infirmity.
14. Dr. Sunil Gupta (PW-9) has stated that he found one incised wound of size 3 x ½ x ½ cm on the right side of chest of the victim and another incised wound of size 1 x ½ x ½ cm on the backside of right thigh of the victim. No further opinion has been given by this examining doctor whether the injuries caused were simple or grievous. However, the treating physician Sandeep Dave (PW-11) has stated that according to the query made by the police he had reported that the injuries caused to the victim were of grievous nature and could have caused death. This report is not sufficient to hold that the injuries caused to the victim were fatal in nature, because the death has to be direct consequence of injury caused in such case, it can be reported by the doctor that death would have occurred in ordinary course of nature, it being not so, this Court

cannot go by the opinion given by Dr. Sandeep Dave (PW-11). Apart from that, the victim was admitted in the hospital only for five days for treatment and then she was discharged and also looking to the dimension of the injuries caused to her, in absence of any statement made by any witness that the appellant had intention to cause death of the victim, I am of this opinion that conviction of the appellant under Section 307 of the IPC is erroneous which needs to be modified as it is an offence committed under Section 324 of the IPC.

15. Therefore, after due consideration, this appeal is allowed in part. Conviction of the appellant under Section 307 of the IPC is converted into Section 324 of the IPC. As the appellant has already undergone a period of detention of more than one year in trial and this appeal, therefore, I am of this opinion that the period already undergone by the appellant in jail is sufficient to serve the purpose of punishment in this case and accordingly, the appellant is sentenced to the period of detention already undergone by him in jail for his conviction under Section 324 of the IPC.

Sd/-

(Rajendra Chandra Singh Samant)
Judge