

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 320 of 2014**

Ratan Ram Korawa S/o Shri Tugsu Ram Korawa Aged About 45 Years
R/o Bahama Neemtoli, Nakbar, Ps Kansabel Distt. Jashpur C.G.,
Chhattisgarh.

---- Appellant**Versus**

State Of Chhattisgarh Through Ps Kansabel, Distt. Jashpur C.G.,
Chhattisgarh.

---- Respondent

For Appellant	:	Shri Arvind Sinha, Advocate.
For Respondent/ State	:	Smt. Smita Jha, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgment on Board****14/03/2019**

Heard.

(1) Challenge in this appeal is to the judgment of conviction and order of sentence dated 7.5.2013 passed by Learned Additional Sessions Judge, Jashpur, District Jashpur, Chhattisgarh in Sessions Trial No. 10 of 2013 whereby and whereunder the learned Additional Sessions Judge after holding the appellant guilty for the offences under Sections 307 and 323 of the Indian Penal Code, sentenced him to undergo rigorous imprisonment for 7 years and to pay fine of Rs.200/- and 500/-, in default of payment of fine, to further undergo additional RI for 1 month and 1 month, respectively.

(2) Conviction is impugned on the ground that without there being any iota of evidence, the trial Court has convicted and sentenced the appellant as aforementioned and thereby committed illegality.

(3) As per case of the prosecution, in brief, on 9.10.2012 at about 2:00 pm in the afternoon, when Nahiro Bai (PW-1) and Kendlu Ram (PW-2) were present in their residence, the appellant came to the place in inebriated condition. All of sudden, they had some dispute, because of which, the appellant brought a sharp-edged weapon from his house and assaulted Kendlu Ram (PW-2) on his right cheek and left leg causing injuries to him. When Nahiro Bai (PW-1) tried to intervene, she was also assaulted and beaten with hands and fists. Nahiro Bai (PW-1) lodged FIR vide Ex. P/2 in the police station. Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code'). The investigation was carried out and on completion of the same, the charge-sheet was filed before the concerned Court against the appellant.

(4) The appellant was charged for the offence under Sections 307 and 323 of the Indian Penal Code and Sections 25 and 27 of the Arms Act. He denied the charges and prayed for trial. In order to prove the guilt of the appellant, the prosecution examined 14 witnesses. Statement of the appellant was recorded under Section 313 of the Cr.P.C. in which he denied all the incriminating evidence against him, pleaded innocence and false implication in the crime in question. No witness was examined in defence.

(5) After affording opportunity of hearing to both the parties, learned trial Judge convicted and sentenced the appellant as aforementioned.

(6) I have heard learned counsel for the parties, perused the judgment impugned and records of the Court below.

(7) Learned counsel appearing on behalf of the appellant submits that the conviction of the appellant is bad in law as the trial Court has convicted the appellant without there being any reliable evidence of the prosecution. The evidence of Nahiro Bai (PW-1) and Kendlu Ram (PW-2) is not reliable and trustworthy as they had interest in conviction of the appellant and there is no other eyewitness in this case. The witnesses of memorandum and seizure have also not supported the prosecution case and no other witness has given statement about being eyewitness of the incident. Hence, no case of conviction is made out against the appellant and it is prayed that the appellant be acquitted in the case. In the alternative, it is prayed that if this Court is not inclined to allow the appeal and acquit the appellant, looking to the long detention of the appellant in jail, his sentence of imprisonment be reduced to the period of custody already undergone by him.

(8) Per contra, learned counsel for the respondent/ State opposed the prayer and submission. He further submitted that the prosecution has proved its case beyond reasonable doubt. Hence, no case is made out for interference in the impugned judgment.

(9) In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the prosecution.

(10) Nahiro Bai (PW-1) has stated that on the date and time of incident, it was Karma Festival, then she saw the appellant assaulting her husband and she went to intervene in the incident. She saw that the appellant was assaulting her husband with *Dauli* (a sharp-edged weapon/ agricultural tool) because of which, her husband had suffered injuries on his face and right leg. While intervening, she was also beaten by the appellant on her left cheek. Thereafter, the injured victim Kendlu Ram (PW-2) was shifted to the hospital and this witness has lodged FIR in the police station. In cross-examination, her statement has remained un rebutted. She has denied all the adverse suggestions given in defence. The minor omissions and contradictions that have been pointed out are of no consequence.

(11) Kendlu Ram (PW-2) is the victim, who has stated that at the time of incident he had been to the house of the appellant where he was drinking *Hadiya* (wine). All of sudden without any reason, the appellant picked up *Dauli* (a sharp-edged weapon) and assaulted him on his jaw and head and then also on his leg causing injuries to him. He has stated that his wife Nahiro Bai (PW-1) came to intervene and thereafter, he was shifted to the hospital. In cross-examination, he has not made any such statement so as to hold the statement given by him is contradicted. He has agreed about some earlier dispute with the appellant, but there is no

such admission that the dispute had been the reason to falsely implicate the appellant.

(12) Shiv Prasad (PW-3) is a Kotwar of the village who was informed about the incident. He had accompanied the complainant and the victim to the hospital and then accompanied the complainant to the police station where she lodged the FIR. In his cross-examination, there is no such statement so as to hold that his statement and examination-in-chief has been rebutted. The other witnesses on this point, namely, Abhiram (PW-5) and Majno Bai (PW-11) have not supported the prosecution case. Therefore, they were declared hostile.

(13) Dr. Sunil Khes (PW-4) had examined the victim Kendlu Ram (PW-2) on 9.10.2012. He found the victim in semiconscious condition. He had one deep incised wound starting from chin to ear on his left side in which the bone was visible. The victim had another injury on his left knee size 5 x 0.5 x 0.5 cm. He has opined that the injuries are caused by the use of sharp-edged object, which were of grievous nature, vide Ex.P/4. He had also examined Nahiro Bai (PW-1) and found one lacerated wound size 5 x 0.5 cm on the frontal part of the head, and one contusion of size 2 x 2 cm on her left cheek, as also redness and swelling on her eyes. He has opined that the injuries were caused by hard and blunt object, which were of simple in nature. In cross-examination, his report regarding injuries on the body of Kendlu Ram (PW-2) has remained unrebutted.

(14) Dr. Vinod Lakda (PW-8) has treated the victim for his injuries. This evidence directly corroborates the statement of Kendlu Ram (PW-2). As there is nothing to suggest that the injuries found on the body of Kendlu Ram (PW-2) could have been caused otherwise, therefore, this evidence supports that the injuries were caused to Kendlu Ram (PW-2) and Nahiro Bai (PW-1) by the appellant.

(15) There is no need to scrutinize the evidence of rest of the witnesses as they are the witnesses of investigation procedures. This evidence is sufficient that the victim in this case and the other eyewitness Nahiro Bai (PW-1) have given ocular account, that they saw the appellant armed with a sharp-edged weapon, which was used in assaulting and injuring Kendlu Ram (PW-2). Although, the independent witnesses of search and seizure have not supported the prosecution, but the evidence of eyewitness by itself is sufficient to hold that the appellant was armed with a sharp-edged weapon at the time of incident and the injuries found on the body of the victim Kendlu Ram (PW-2) and Nahiro Bai (PW-1) were caused by the appellant. Therefore, findings given by the trial Court that it was the appellant who caused injuries to Kendlu Ram (PW-2) by using a sharp-edged heavy weapon and causing simple injuries to Nahiro Bai (PW-1) need not to be interfered with.

(16) The trial Court had held that the appellant had intention to cause death of victim Kendlu Ram (PW-2) and on the basis of the facts and circumstances of this case, the same also needs no interference. After overall consideration, I am of this opinion that the conviction against the

appellant as held by the trial Court does not suffer from any infirmity, however, after considering all the circumstances in which the incident started and ended and for the reason that the appellant is in jail since more than 6 years and he is nearly going to complete the sentence which may be completed in another few months, I feel inclined to give some relaxation to the appellant.

(17) After due consideration of the entire evidence and on the basis of the discussions made herein-above, this appeal is allowed in part and the conviction of the appellant recorded by the trial Court is upheld. However, the sentence imposed upon the appellant for the offence under Section 307 of the IPC is reduced to the period of detention already undergone by him in jail. Hence, if the appellant is not required in jail in any other case, he may be set at liberty.

(18) Accordingly, the appeal is disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
JUDGE