

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1325 of 2017**

- Jethuram S/o Late Prabhuram, Aged About 55 Years, R/o Andhewada, (Chhindtolapara) Kodekhurse, Police Station Kodekhurse, District North Bastar Kanker Chhattisgarh., Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh, Through : Police Station Kodekhurse, District North Bastar Kanker Chhattisgarh.

--- Respondent

For Appellant : Shri Pravin Kumar Tulsyan, Advocate.

For Respondent/State: Shri Aditya Sharma, Panel Lawyer.

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

10/04/2019

1. This appeal has been preferred against judgment dated 10-08-2017 passed in S.T. No.73/2016 by the Additional Sessions Judge, Bhanupratappur, District North Bastar Kanker, C.G. convicting the appellant under Sections 294 and 326 of the IPC and sentencing him with R.I. for 3 months and R.I. for 5 years along with fine Rs.1000/- and Rs.1000/- respectively with default stipulations and direction that both the jail sentences shall run concurrently.
2. The case of the prosecution, in brief, is this, that on 09-07-2016 at about 09.30 a.m. in the morning complainant Indravati Sinha (PW-1) had been to her agricultural field when she saw the cattle of the appellant and other co-accused grazing the crops. She drove the cattle out of her fields. Thereafter, she met with the appellant in front of his house in the evening and complained about her loss because of the cattle of the appellant, then the appellant and his brothers firstly abused and threatened her and all of a sudden appellant Jethuram assaulted her with an axe causing one injury on her head.

She became unconscious and was shifted to the medical center. On information given by her an unnumbered FIR (Ex.-P/1) was lodged and on the basis of which numbered FIR (Ex.-P/22) was registered in the police station Kodekhuse. After registering the offence the police has investigated the case, in which the complainant was medically examined, seizure of articles were made, one axe was seized vide Ex.-P/8, statement of the witnesses were recorded under Section 161 of the Cr.P.C., the appellant and other co-accused were arrested. On completion of the investigation, charge sheet was filed before the concerned Court.

3. The Court below charged the appellant and co-accused persons under Sections 294, 506B, 307/34 of the IPC, to which they denied and prayed for trial.
4. On completion of the prosecution evidence, the appellant and co-accused persons were examined under Section 313 of the Cr.P.C. in which they denied all the incriminating evidence against them, pleaded innocence and false implication.
5. On completion of the trial, the impugned judgment has been passed in which the co-accused persons were acquitted of the charges against them and the appellant has been convicted and sentenced as aforementioned.
6. It is submitted by learned counsel for the appellant has been erroneously convicted by the trial Court without there being reliable and trustworthy evidence of the prosecution, hence, his conviction is bad in law. It is further submitted that the incident had taken place all of a sudden and in a heat of moment. Complainant Indrawati Sinha (PW-1) had herself come to the house of the appellant to

quarrel and assault, in which the appellant had only exercised his right of private defence, therefore, no case is made out. In the alternative, it is prayed that if this Court is not convinced to acquit the appellant from the charges, then his sentence of imprisonment may be reduced to the period already undergone by him in jail.

7. Learned counsel for the State/respondent opposes the grounds raised in the appeal and the submission made in this regard and submits that the prosecution has proved its case beyond reasonable doubt. Therefore, the appeal may be dismissed.
8. Heard learned counsel for the parties and perused the record of the trial Court.
9. The question that requires determination in this appeal is as to whether the prosecution has been able to establish guilt of accused/appellant, on the basis of evidence beyond reasonable doubt?
10. Indrawati Sinha (PW-1) has stated that because of the loss caused to her crop by cattle of the appellant, she has complained with the appellant that he should keep his cattle tied, thereafter, the appellant then after using abusive words for her assaulted her with an axe causing injuries on right side of her cheek, she also suffered one injury on her neck. She has stated that she became unconscious. She lodged the FIR Ex-P/1. She was admitted in the hospital at Dugukondal for two days and thereafter she admitted for treatment remained in a private hospital in Dhamtari for 8 days. In cross-examination she has remained unshaky on this statement.
11. Rambai (PW-2) arrived on the spot of incident after the incident had taken place and saw the appellant present on the spot armed with

axe. Her statement has remained unrebutted in her cross-examination.

12. Maniram Yadav (PW-3) was informed about the incident. Basanta Bai (PW-4) had not seen the incident, but she saw the appellant armed with axe and walking towards his home.
13. Bhaduam (PW-5) and Rajuram (PW-6) both are hostile witnesses.
14. Prem Singh (PW-7) has not stated that he directly saw the incident, but he has witnessed the circumstance of soon after, in which complainant Indrawati Sinha (PW-1) was lying in injured condition and he saw that the appellant was making his escape and he was armed with axe. He has further stated that when Indrawati Sinha (PW-1) came into consciousness, she informed that it was the appellant who had assaulted with the axe and injured her. His statement has remained unrebutted in his cross-examination.
15. Doctor Manoj Kishore (P-15) examined the victim Indrawati Sinha (PW-1) on 09-07-2016 and found one incised wound of size 6 x 0.5 inch on frontotemporal region which was caused by some heavy and blunt object, she had one abrasion on the neck and another abrasion on the fingers of left hand, vide his report Ex.-P/26 and he has opined that according to the CT head and X-ray report the left zygomatic arch of the victim was fractured, therefore, the injury caused was grievous in nature. His statement could not be rebutted in his cross-examination.
16. Other witnesses examined of the prosecution are witnesses of investigation procedures.
17. There is clear statement made by the witnesses whose statement has been discussed hereinabove that the appellant was the person

who was armed with the axe and he used the same to assault victim Indrawati Sinha (PW-1) which resulted in the injury which has been further confirmed by the medical evidence. Therefore, causing grievous injury by use of sharp edged weapon amounts to offence under Section 326 of the IPC regarding which the conclusion drawn by the Court below is correct, which does not suffer any infirmity.

18. Considered on the prayer made for reduction in sentence. After considering all the facts and circumstances of this case, background of this incident and that the appellant in this appeal is in jail for about 2 years, I feel inclined to allow this prayer.
19. As a result, this appeal is allowed in part. Conviction of the appellant under Section 326 and 294 of the IPC are upheld. The jail sentence imposed upon the appellant for offence under Section 294 of the IPC and the fine sentence imposed thereunder is also maintained. However, the jail sentence awarded to the appellant for offence under Section 326 of the IPC is modified and now for this offence the appellant is sentenced with R.I. of the period of detention already undergone by him in jail along with fine of Rs.10,000/- with direction of concurrent running of the jail sentences. In case of non-payment of fine amount the appellant shall undergo further R.I. for six months. The fine on realization shall be paid to complainant Indrawati Sinha (PW-1) as compensation under the provision of Section 357 of the Cr.P.C. The fine imposed earlier, if paid, shall be adjusted.

Sd/-
(Rajendra Chandra Singh Samant)
Judge