

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 723 of 2006

Banmali S/o. Anantram, aged about 33 years, R/o. Village Baghanpal,
P.S. Lohandiguda, District Bastar (C.G.)

---- **Appellant**

Versus

State of Chhattisgarh, through Police Station Lohandiguda, Tahsil
Jagdalpur District Bastar (C.G.)

---- **Respondent**

For Appellant : Mr. Vivek Singhal, Advocate.
For Respondent : Mr. Samir Sharma, Dy. Govt. Advocate

Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment on Board

05.08.2020

Facts giving rise to this appeal are that on 03.07.2005 at about 12.00 PM, when the complainant (PW-3) was sitting outside the house of his mother-in-law's at village Baghanpal, the appellant came there abusing him with filthy languages on the old money transaction and caused a knife (*kati*) blow on his stomach and when he ward off the attach of knife, his fingers were also injured. On hearing his voice, Samluram (PW-5), Budhram (PW-8) and wife of Lakhuram namely Mangli @ Nirobai (PW-4) came there for help then the appellant run from there. Thereafter, the complainant was taken to police station

Lohandiguda wherefrom he was sent to hospital for treatment. After completion of investigation, charge sheet was filed against the appellant under Sections 307 IPC followed by framing of charge accordingly.

2. Learned Court below vide judgment impugned dated 14.09.2006 passed in Sessions Trial No. 283/2005 acquitted the accused/appellant under Sections 307 IPC but has held him guilty under Sections 326 IPC with imposition of sentence of three years and to pay fine of Rs. 300/- plus default stipulation. Hence, this appeal.

3. Counsel for the accused/applicant does not press the conviction part of the judgment impugned. His main submission is as regards the sentence imposed on the accused/appellant to be reduced to the period already undergone as he has already remained in jail from 22.07.2005 to 10.04.2007.

4. On the other hand, state counsel supporting the impugned judgment has submitted that the judgment of the trial Court is strictly in accordance with law and well founded and there is no illegality or infirmity in it warranting any interference by this Court.

5. Heard counsel for the parties and perused the material available on record including the judgment impugned.

6. I have considered the rival submission, having gone through the impugned judgment and scrutinizing the prosecution evidence on record, it appears that as per the version of injured Lakhuram (PW-3), when he was sitting outside the house of his mother-in-law's the

accused/ appellant namely Banmali came there and abused him with obscene word on the old money transaction and inflicted injury on his stomach with knife (*kati*). Mangli @ Nirobai (PW-4) stated in her evidence that when she come out of her house she saw that her husband was laying on the ground and blood was oozing from his stomach. She stated that her husband has disclosed the name of the appellant namely Banmali inflicted knife injury him. In cross-examination also this witness remained firm to what she has stated in the examination-in-chief. Samluram (PW-5) is the witness to memorandum of the accused/appellant under (Ex.P-7) and seizure of knife (*kati*) under (Ex.P-8) and have admitted his signature thereon. It is true that PW-2 Indranath has not supported the prosecution case and has been declared hostile. Dr. Narayan Singh Nag (PW-1) examined the injuries of the complainant and he found lacerated wound on right side of abdomen at lumber region and expansion of abdomen material. He opined that the injuries on right abdomen was caused by sharp edged weapon and the injuries on lumber region was found to be grievous in nature under (Ex.P-1). ASI Surendra Shrivastava (PW-9) is the investigating officer who has supported the case of the prosecution

7. Thus the aforesaid factual scenario and the evidence of the witnesses make it clear that it is the accused/appellant who assaulted the complainant with sharp edged weapon on his stomach, which eventually proved fatal to his life. Though the intention of the accused/appellant to cause such bodily injury which may be grievous

to life in the ordinary course of nature is not visible yet the manner in which he dealt blows on his stomach definitely prove that while causing injuries he had the knowledge that such injuries may be dangerous to life in the long run. Being so, his conviction under Section 326 IPC does not seem to suffer from any illegality or infirmity and therefore it is maintained.

8. As regards sentence, looking to the fact that the incident had taken place about 15 years back and that by now the accused/appellant has already suffered a lot by fighting a long drawn legal battle since then, this Court does not see any reason to again disturb his life by again sending him to jail and therefore, his sentence is reduced to the period already undergone, which comes to about 1 year and 8 months in this case. Order accordingly.

9. Appeal is thus allowed in part.

Sd/-

(Vimla Singh Kapoor)

JUDGE

Santosh