

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 579 of 2002

Beti Joga, S/o Hidma Muriya, 35 years, R/o Village Patel Para
Parcheli, Kate Kaliyan, PS Katekaliyan, District Dantewada
(CG)

-- Appellant

Versus

State of CG, through District Magistrate, Dantewada (CG)

--- Respondent

For Appellant	:	Mr. Keshav Dewangan on behalf of Mr. Prafull N. Bharat, Advocate.
Respondent/State	:	Mr. Raghvendra Verma, GA.

Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment On Board

26/06/2020

On 09.03.2001 when injured Beti Kuma had returned home after vending tamarind seeds in the market, the accused/appellant herein came to his house and asked for some amount from him. Since the accused/appellant at the relevant time was under the influence of liquor, the victim asked him to come later on. After saying so, when the victim engaged himself in his routine work, the accused/appellant took out the axe and aimed the blow on his head, which fortunately fell on his neck. The impact of injury made the victim fall down on the ground and lose consciousness. After regaining consciousness, he saw Budhu (PW-5) and Manglo (PW-6) present there. Thereafter he was taken to hospital for medical treatment and then FIR (Ex.P-1) was registered in Police Station with the help of translator as the victim stated the things in his Gondi vernacular. On the basis of this report, offence under Section 307

IPC was registered against the accused/appellant followed by filing of *challan* and framing of charge accordingly.

2. Learned Court below vide judgment impugned dated 26.04.2002 passed in ST No.285/2001 acquitted the accused/appellant of the charge under Section 307 but found him guilty under Section 324 IPC instead, with imposition of 2 years RI and fine of Rs.200/-, plus default stipulation. Hence this appeal.

3. Counsel for the accused/appellant submits that the findings recorded by the Court below are not in accordance with the evidence of the witnesses and therefore cannot be allowed to stand. He submits that except the victim, the other independent witnesses PW-5 and PW-6 have not supported the case of the prosecution and turned hostile. Even the medical evidence, according to the counsel for the appellant, does not standby the case of the prosecution.

4. State counsel however, supports the judgment impugned as a whole and submits that the findings recorded by the Court below being based on proper appreciation of the evidence of the witnesses, does not call for any meddling with the same.

5. Of course, PW-5 and PW-6 who, as stated by the victim (PW-4), have not supported the case of the prosecution but the statement of victim right from the beginning has been consistent to the effect that on the date of incident when she asked the accused/appellant to come later for collecting money, as he at that time, was in an intoxicated condition, the accused/appellant hurled an axe blow aiming the same at his head but the blow missed its aim and fell on his neck, as a result of which he fell down on the ground and became unconscious. In cross-examination also this witness did

not budge to the things stated in the examination-in-chief. Doctor (PW-2) who medically examined the victim and gave his report Ex. P-9A stating that he had noticed an incised wound on the neck in the size of 3 inch x ½ inch x 1 inch, which was caused by some sharp edged weapon. This witness is also stated to have referred the victim to the Radiologist to ascertain the nature of injuries. He however has opined the injury to be simple in nature and could have been caused by the axe produced before him for examination. He also emphasized that had the wound been little more deep, his death could have been possible. Apart from these witnesses, the witness to seizure of axe made under Ex.P-6 being PW-3 has also supported the case of the prosecution. The medical evidence thus nowhere says that the injury of the victim was grievous in nature and therefore fatal to life. In these circumstances, learned Court below has rightly acquitted the accused/appellant under Section 307 IPC. However, looking to the evidence of the witnesses particularly that of the victim to the effect that the accused/appellant dealt an axe blow which fell on his neck and made him unconscious, the involvement of the accused/appellant under Section 324 IPC for causing voluntary hurt to the victim is fully proved. The seizure of axe made on the memorandum of the accused under Ex.P-6, and the medical evidence as well supports the case of the prosecution. Being so, the view of the Court below holding the accused/appellant guilty under Section 324 IPC is fully justified. Conviction part of the judgment impugned is thus maintained.

6. Looking to the period of detention which in this case comes to about two months and considering the fact that the accused/appellant had already been battling this case for last 20 years, this

Court does not see any reason in further dispatching him to jail and ruining his settled family life. Accordingly, in the interest of justice the sentence imposed on him is reduced to the period already undergone.

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

Sd/-
(Vimla Singh Kapoor)
Judge

Jyotishi/Ajay