

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 954 of 2002**

- Faggu, S/o Idal Gada, aged about 50 years, resident of village Khorsi, P.S. Sheorinarayan, District Janjgir-Champa (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh Through - P.S. - Sheorinarayan, District Janjgir-Champa (C.G.)

---- Respondent

For Appellant : Mr. Basant Dewangan, Advocate.
For Respondent/State: Ms. Subha Shrivastava, P.L.

Hon'ble Smt. Justice Rajani Dubey**Judgment On Board****05/10/2021**

This appeal arises out of the judgment of conviction and order of sentence dated 06.08.2002 passed by the 2nd Additional Sessions Judge (F.T.C.), Janjgir, Sessions Division Bilaspur (C.G.), in S.T. No.196/99 convicting the accused/appellant under Section 307 of IPC and sentencing him to undergo R.I. for five years with fine of Rs.100/-, in default of payment of fine amount to further undergo R.I. for two months.

02. As per the prosecution case, on 07.11.1997 at morning time, appellant demanded Rs.10/- from injured Harendra Prasad saying that he would return the same today itself after

selling grass, on which he gave Rs.10/- to the appellant. On the very day at about 9.00 pm, injured Harendra Prasad went to the house of appellant to get his money back. He asked the appellant to return the money, then the appellant, who seemed to be in drunken position, came out of his house hurling abuses and inflicted injury over his abdomen by iron spatula saying him to go back, else he will kill him, as a result of which injured Harendra Prasad fell down. Thereafter, injured was first taken to Police Station, Sheorinarayan, and FIR (Ex.P/6) was registered against the appellant, from where he was taken to Civil Dispensary, Sheorinarayan, where Dr. R.S. Prabhakar (PW/6) examined injured Harendra Prasad and gave his report Ex.P/5 noticing following injuries:-

- (i) Punctured wound near epigastric region in the size of 0.5 cm x 0.3 cm. Depth cannot be probed due to muscle spasm.
- (ii) Bowel sound sluggish. Liver dullness obliterated in right costal region.

The Doctor has opined that injury was caused by sharp pointing object and injured was referred to Surgical Specialist, District Hospital, Bilaspur, for determining the nature of injury.

03. Patwari prepared spot map vide Ex.P/2. After filing of charge sheet, the trial Court framed charges against the accused/appellant under Sections 294, 307 and 506(B) of IPC.

04. So as to hold the accused/appellant guilty, the prosecution examined as many as 09 witnesses. Statement of

the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. Two defence witnesses were also examined in the case.

05. The trial Court, after hearing counsel for the respective parties and considering the material available on record, has convicted and sentenced the accused/appellant as mentioned in para-1 of this judgment. Hence, this appeal.

06. Learned counsel for the appellant submits that :

(i) Admittedly, present is a case of single injury caused by the appellant on the abdomen of the injured which was not fatal to life and, therefore, the case of the appellant would fall within the ambit of Section 326 of IPC and not under Section 307 IPC as has been done by the Court below.

(ii) It has been argued that the appellant has already remained in jail for about six months and, therefore, after converting his sentence into Section 326 of IPC, his sentence may be reduced to the period already undergone by him.

07. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that conviction of the accused/appellant is strictly in accordance with law and there is no infirmity in the same.

08. I have heard learned counsel for the parties and perused the material available on record.

09. Motilal (PW/1) is the villager who has not stated anything specific against the appellant. Ramesh Prasad Sahu (PW/2) is the Patwari who prepared spot map vide Ex.P/2. Harendra Prasad (PW/3) is the injured. He has stated that he had gone to the house of appellant to take Rs.10/- which the appellant had borrowed from him. When he reached the house of appellant and demanded his money back, the appellant came out of his house holding iron spatula in his hand and inflicted injury over his abdomen as a result of which he fell down on ground. Thereafter, he called his father Baladram (PW/4) who took him first to Govt. Hospital, Sheorinarayan, from where he was referred to District Hospital, Bilaspur, where he remained hospitalized for 22 days. In cross-examination, this witness remained firm. Baladram (PW/4) is the lodger of FIR and father of injured Harendra Prasad (PW/3). This witness has made almost similar statement as has been made by injured (PW/3). This witness has admitted that when he reached the place of incident, he saw his son injured Harendra Prasad (PW/3) who told him that it is the appellant who inflicted injury over his abdomen. Defence has cross-examined these witness (PW/3 and PW/4) at length but has not been able to elicit anything in cross-examination to discredit their testimonies especially to the fact that the appellant has not caused any injury to the injured (PW/3). Sonau (PW/5) is the hearsay witness. He has stated that at the time of incident while he was going to grocery shop, he heard the noise of

injured Harendra Prasad (PW/3) who told that the appellant has caused injury to him. Dr. R.S. Prabhakar (PW/6) examined the injured (PW/3) and gave his report vide Ex.P/5. D.P. Chandra (PW/7) is the Investigating Officer who had duly supported the prosecution case. Dr. D.R. Jitpure (PW/8) is the Medical Officer, who was posted at District Hospital, Bilaspur. He had taken x-ray of injured (PW/3) vide Ex.P/8. Dr. D.R. Patle (PW/9) is Surgical Specialist, who was posted at District Hospital, Bilaspur. He has stated that he was asked for opinion by the police regarding the nature of injury of injured/victim. He gave his report vide Ex.P/9 opining that the injury sustained by the injured/victim (PW/3) was grievous in nature. He has stated that the wound in the abdomen, though not inflicted on the intestines, but the foreskin in the abdomen was cut, therefore, he had suggested it to be an injury of a grievous in nature.

10. In the instant case, evidence on record would reveal that on 07.11.1997 at about 9.00 pm, injured Harendra Prasad (PW/3) went to the house of appellant to get his money back which was borrowed by the appellant. When injured asked the appellant to return the money, the appellant came out of his house hurling abuses and inflicted injury over his abdomen by iron spatula, as a result of which injured Harendra Prasad (PW/3) fell down. Thereafter, injured was first taken to Police Station, Sheorinarayan, from where he was taken to Civil

Dispensary, Sheorinarayan, and then to District Hospital, Bilaspur. Injured Harendra Prasad (PW/3) has categorically stated that it is the appellant who caused injury to him over his abdomen by iron spatula. Evidence of this witness gets corroboration from the promptly lodged FIR (Ex.P/6) naming the appellant to be the perpetrator of crime and also medical evidence MLC (Ex.P/5), X-ray report (Ex.P/8) and report (Ex.P/9) of Surgical Specialist (PW/9) in which injury on abdomen of the injured was noticed and according to Dr. R.S. Prabhakar (PW/6), who first examined the injured (PW/3), the same was caused by sharp object. In these circumstances, the complicity of accused/appellant in crime in question stands proved beyond reasonable doubt.

11. Now the question to be considered by this Court is whether the act of the appellant makes him liable to be convicted under Section 307 IPC.

12. Injured Harendra Prasad (PW/3) was first examined by Dr. R.S. Prabhakar (PW/6) who noticed injury in the size of 0.5 x 0.3 cm in epigastric region but depth of which could not be stated. This doctor did not say anything about nature of injury and referred the injured (PW/3) to the District Hospital, Bilaspur, where Dr. D.R. Patle (PW/9), Surgical Specialist, examined the injured and gave his report (Ex.P/9) opining that the injury sustained by the injured was grievous in nature. This witness has categorically stated that the wound in the

abdomen, though not inflicted on the intestines, but the foreskin in the abdomen was cut, therefore, he had suggested it to be an injury of a grievous in nature. This witness has not stated in his evidence that the injury sustained by the injured was fatal to life. That apart, the prosecution has not brought any such material in this regard which could establish the fact that the injury sustained by the injured/victim was fatal to life.

13. Thus, looking to the facts and circumstances of case, the nature and number of injury coupled with the medical evidence and further considering the fact that there is nothing on record to suggest that the appellant wanted to cause some other injuries and injury sustained by the injured was fatal to life, it would not be safe to hold that the appellant caused injury to the injured in an attempt to commit his murder. However, the nature and number of injury caused and the weapon used for causing such injury, it can safely be said that the accused/appellant had caused grievous injury to the deceased with dangerous weapon iron spatula making him liable to be convicted under Section 326 IPC.

13. As regards the sentence, considering the fact that the appellant has already remained in jail for a period of about six months and the incident had taken place in the year 1997 i.e. about 23 years have elapsed since then, this Court is of the considered opinion that it will be in the interest of justice to sentence him to the period already undergone by him.

14. Accordingly, the appeal is partly allowed. Conviction of the appellant under Section 307 IPC is altered to Section 326 IPC and is sentenced to the period already undergone by him. Appellant be released forthwith, if not required in any other case.

Sd/-

(Rajani Dubey)
Judge

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