

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 46 of 2021

- Rakesh Gupta, Aged about 25 years, S/o- Ramkeshwar Gupta, R/o- Village Shardapur, Police Station – Chalgali, District – Balrampur-Ramanujganj (C.G.)

---- Appellant/Accused

Versus

- State of Chhattisgarh, Through : Station House Officer – Balrampur, District Balrampur-Ramanujganj (C.G.)

---- Respondent

For Appellant/Accused	:	Shri Hariom Rai, Advocate
For Respondent/State	:	Shri Dinesh Kumar Tiwari, Deputy Government Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

10.03.2021

1. This appeal arises out of the judgment of conviction and order of sentence dated 26.11.2020 passed by the Special Judge (SC/ST Act), District Balrampur-Ramanujganj (C.G.) in Special Sessions (Atrocities) Case No. 30/2019, whereby, appellant Rakesh Gupta stands convicted and sentenced as under:-

<u>Conviction:</u>	<u>Sentences:</u>
Under Section 307 of the Indian Penal Code, 1860 (hereinafter referred to as the 'IPC')	Rigorous imprisonment for two years and pay a fine of Rs. 500/- and in default of payment to further undergo imprisonment for seven days

2. Case of the prosecution, in brief, is that on 30.05.2019 at about 01:00 hours complainant/injured Ramdev (PW-2), resident of Village Shardapur, lodged the *Dehatinalishi* in Police Station Chalgali, Camp Wadrafnagar, District Balrampur stating that he was doing the work of farming and also exorcised the evil spirits (*Jhadphoonk*). He stated that on calling of Ramkeshwar Gupta (father of appellant), as mental condition of his son (appellant) was

not good and became mad, the complainant went to Ramkeshwar's home and treated the appellant through exorcism on account of which he was cured to some extent. Complainant further stated that on 29.05.2019 at about 08:30 pm, he was again called by Dinesh Gupta (PW-8, elder brother of appellant) for treating the appellant, then he went to the house of the appellant, at that time Dinesh and his mother Devlatiya (PW-3) were sitting. When complainant was exorcising, the appellant came with *tangiya* (Axe), gave two blows of *tangiya* to him (complainant) as a result of which he sustained injuries on his back side of head and again the appellant assaulted him which he stopped by his hands. Thereafter, the complainant went out from the house of the appellant, he fell down and the blood was oozing out from his head and hands. The incident was narrated by the complainant to his wife Remal (PW-1), father-in-law Raj Prasad, nephew Manish, Mohan Singh, Mustaq (PW-5) and Indramani (PW-4) and others. Dinesh Gupta (PW-8) and family members of the complainant took the complainant to Wadrafnagar, Hospital for treatment where the complainant was examined by Dr. Shashank Gupta (PW-10) and he gave MLC report (Ex.-P/17). As per MLC report (Ex.-P/17), Doctor found following injuries on the body of complainant Ramdev:

- i. Sharp cut injury was present on occipital region and was also cut skull bone on same place. Size 06 cm x 01 cm x 03 cm longitudinal on position;
- ii. Sharp cut injury was present on lower occipital region and was also cut on skull bone on same place. Size 05 cm x 01 cm x 03 cm, transverse on position;
- iii. Lacerated wound was present on right side middle finger of right hand. Size 02 cm x 02 cm x 01 cm &
- iv. Lacerated wound was present on left side middle finger of left hand. Size 02 cm x 01 cm x 02 cm

Doctor PW-10 stated that the above injuries were caused by hard and sharp object and opinion regarding nature of injuries could be given by Radiologist after CT Scan of head and he advised for CT Scan and X-ray of

skull. PW-10 stated that duration of injuries sustained by the complainant was 02-05 hours from commencement of examination.

3. Complainant Ramdev was admitted in Raghunath Medical College Hospital from 30.05.2019 to 01.06.2019 vide Ex.-P/10 and thereafter he was admitted in D.K.S. Super Specialty Hospital, Raipur from 03.06.2019 to 06.06.2019 vide Ex.-P/11.
4. Accused/appellant was arrested on 01.06.2019 vide Ex.-P/12. During investigation, one gray coloured full-pant of complainant Ramdev stained with blood which he was wearing at the time of incident and his caste-certificate were seized by the police vide Ex.-P/2 & Ex-P/3. Blood stained soil, plain soil & *tangiya* stained with blood were seized from the place of occurrence i.e. house of Ramkeshwar Gupta vide Ex.-P/4 & vide Ex.-P/5. Spot map was prepared vide Ex.-P/6. Seized articles were sent for chemical examination to Regional Forensic Science Laboratory, Ambikapur, Surguja (C.G.).
5. After completion of investigation, the charge-sheet was filed against the accused/appellant Section 307 IPC & Section 3(2) (v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the 'Special Act') and while framing the charges, the Special Judge framed the charges against the appellant under Section 307 of IPC & Section 3(2) (v) of the Special Act.
6. So as to hold the accused/appellant guilty, the prosecution, in all has examined as many as 10 witnesses namely PW-1 Smt. Remal, PW-2 Ramdev, PW-3 Devlatiya, PW-4 Indramani Pandey, PW-5 Mohammad Mustaq, PW-6 Mohan Singh, PW-7 Raj Prasad, PW-8 Dinesh Gupta, PW-9 N.L. Dhritlahre and PW-10 Dr. Shashank Gupta. Statement of the 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. The appellant examined one defence

witness namely Ramkeshwar Gupta as DW-1 in his support.

7. After appreciation of the evidence available on record, the Special Judge (SC/ST Act), District Balrampur-Ramanujganj (C.G.) convicted and sentenced the accused/appellant as mentioned above in para-1 of this judgment. However, the appellant was acquitted of the charge levelled against him under Section 3 (2) (v) of the Special Act, hence the instant jail appeal.
8. Learned counsel for the appellant submit that the appellant was suffering from some mental ailment and there was no previous enmity of the appellant with the complainant. He submits that due to some mental problem of the appellant, the complainant was treating him through exorcism and he assaulted the complainant by means of *tagiya*, therefore, the act committed by the appellant does not come under the aforementioned Section of IPC as there was no any intention of the appellant to cause such injury to appellant, nor any intention to kill the complainant or attempt to murder him. He further submits that looking to the injuries sustained by the complainant, the conviction of appellant under Section 307 of IPC is not sustainable because the prosecution has failed to prove the basic ingredients for attracting offence under Section 307 of IPC. He also submits that the appellant has assaulted complainant Ramdev by *tangiya*, even if the entire prosecution is taken as it is, the appellant cannot be held guilty under Section 307 IPC and at best, he can be convicted under Section 324 or Section 326 of IPC. In support of his contention reliance has been placed on the decisions of the coordinate benches of this Court in the matters of ***Wasim Khan and another Vs. State of Chhattisgarh, ILR 2019 Chhattisgarh 141*** and ***Sita Ram Vs. State of Chhattisgarh, passed in Criminal Appeal No. 690 of 2007 dated 12/11/2009.***

Lastly, learned counsel for the appellant submit that if this Court finally comes to the conclusion that the appellant has rightly been convicted by the

trial Court for offence under Section 307 of IPC, considering the fact that the appellant is the first offender aged about 25 years at the time of incident, the incident took place on 29.05.2019, sentence imposed upon appellant was two years of R.I. with default sentence and the appellant remained in jail for about one year & nine months, he has no criminal antecedent, he may be given the benefit of Probation of Offender Act, and sentenced to the period already undergone by him.

9. On the other hand, counsel for the Respondent/State supports the judgment impugned. It has been argued by the State counsel that it is true that the bed-head-tickets of the complainant were not proved by the prosecution, but looking to the MLC report (Ex.-P/17), two sharp cut injuries on the skull and two lacerated wounds on the hands of complainant were found by Dr. Shashank Gupta (PW-10), therefore, the conviction of the appellant is in accordance with law and there is no infirmity in the same.
10. Heard the counsel for the respective parties and perused the evidence on record.
11. It is not disputed by learned counsel for the parties that the complainant was examined by PW-10 Dr. Shashank Gupta who found total four injuries i.e. two sharp cut injuries on the occipital region and also cut skull bone on the same place and two lacerated wounds on fingers of the complainant vide MLC Ex.-P/17 and there is no opinion given by PW-10 regarding nature of the injuries. But, looking to Ex.-P/17, sharp cut injuries found on occipital region and to some extent skull bones were cut, therefore, the injuries found on head of the complainant were grievous in nature, the same were sufficient to cause death in natural course of the complainant. It is true that there is no any opinion given by PW-10 that the injuries sustained by the complainant were sufficient to cause his death.
12. It is also not in dispute that the *Dehatinalishi* (Ex.-P/1) was lodged by complainant Ramdev (PW-2). It is true that on the date of incident, for some

mental illness of the appellant, PW-2 was treating the appellant through exorcism and at that time the appellant picked up *tangiya* and assaulted PW-2 and that fact is duly proved by PW-2.

13. Looking to the facts and circumstances of the case, the fact that PW-2 Ramdev stated that on the date of incident the mental condition of the appellant was not good and while PW-2 was exorcising in the house of Dinesh Gupta (PW-8), the appellant was in another room and the appellant came with *tangiya* and assaulted him by the said *tangiya*. If this Court look into the evidence of PW-2, the mental condition of the appellant was not good and on the date of incident, there was no intention of the appellant to kill the complainant, nor with premeditated mind the act was committed by the appellant.

14. PW-2 Ramdev (complainant/injured) has also supported the MLC report (Ex.-P/17) which is also duly proved by Dr. Shashank Gupta (PW-10) and PW-3 Devlatiya, mother of the accused, also admitted that the mental condition of her son (appellant) is not good and on the date of incident, PW-2 was treating her son by exorcism. PW-4 Indramani Pandey and PW-5 Mohammad Mustaq also stated this fact that the mental condition of the appellant was not good, but PW-4 and PW-5 have not seen the appellant assaulting the complainant by *tagiya*. PW-4 stated that he has seen complainant Ramdev near the house of appellant Rakesh Gupta, at that time blood was oozing from the head of Ramdev.

15. PW-6 Mohan Singh stated that the incident was informed by Anil (son of PW-2) through phone that the appellant assaulted his father. PW-7 Raj Prasad also stated that the incident was informed by Anil through phone. PW-8 Dinesh Gupta, brother of the appellant, only stated that on the date of incident, PW-2 Ramdev was treating the appellant through exorcism.

16. PW-9 N.L. Dhritlahre, Investigating Officer, who prepared spot map (Ex.-P/6) in the presence of witness Devlatiya (PW-3), made seizures vide Ex.-P/2 to

Ex.-P/5 and has duly proved the same.

17. In *Wasim Khan* case (supra), the accused persons allegedly assaulted complainant with hands, fists and caused stab injuries on his abdomen and other parts of body. As per medical report, injuries were sufficient to cause death of complainant. Prosecution witness stated that due to some dispute accused persons assaulted complainant with knife. Manner of occurrence shows stabbing happened in last and not from very beginning indicating absence of intention to cause death. Therefore, conviction of accused persons altered from Section 307 to Section 326 of IPC by the said Court.
18. In the present case, MLC was done by Dr. Shashank Gupta (PW-10) who admitted that he has not mentioned in his examination report (Ex.-P/17) about nature of injuries No. (i) & (ii) sustained by the complainant (PW-2). But, looking to MLC report (Ex.-P/17), injuries no. (i) & (ii) were sufficient to cause death of PW-2 in ordinary course of nature which the appellant voluntarily caused by *tangiya*.
19. In the considered view of this Court, the manner in which offence has been committed by the appellant cannot be said to have been committed in an attempt to commit murder of the complainant. In totality of the facts and circumstances of the case, in light of judgment by coordinate bench of this Court in *Wasim Khan* (supra), the act committed by the appellant makes him liable for conviction under Section 326 of IPC and not Section 307 of IPC as has been done by the trial Court.
20. As regards the sentence, considering the fact that the incident took place around one year & nine months back, the appellant at that time was 25 years old, there is no criminal antecedent of the appellant, he is in jail for last one year & nine months, in the considered view of this Court, ends of justice would be served if the appellant sentenced to the period already undergone by him and directed to pay fine of Rs.500/- with default sentence.
21. Consequently, the appeal is allowed in part. Conviction of the appellant

under Section 307 of IPC awarded by the trial Court is hereby set aside and instead he is convicted under Section 326 of IPC and sentenced to undergo R.I. for the period already undergone by him. The appellant is directed to pay a fine of Rs.500/- in default thereof to undergo imprisonment for seven days. If the fine amount has already been deposited, it shall be adjusted accordingly. The appellant is in jail and therefore, he be set free forthwith if not required in any other case.

Sd/-

(Gautam Chourdiya)
Judge