

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 90 of 2011**

- Pravin Tamrakar, aged about 35 years, S/o Late Madho Prasad Tamrakar, Gram Merchant, Village – Pendarwani, P.S. Gandai, District – Rajnandgaon, Chhattisgarh

---- Appellant

Versus

- State of Chhattisgarh Through District Magistrate, Rajnandgaon, Chhattisgarh.

---- Respondent

ACQA No. 83 of 2011

- Smt. Dharamsila, W/o Late Shri Radheshyam Tamrakar, aged about 71 years, R/o Gandai, Pandariya, Police Station Gandai, District – Rajnandgaon, Chhattisgarh

---- Appellant

Versus

1. Praveen Tamrakar, S/o Late Shri Madho Prasad Tamrakar, Occupation – Business, R/o Village – Pendarwani, P.S. Gandai, District – Rajnandgaon, Chhattisgarh
2. State of Chhattisgarh Through Station House Officer, Police Station Gandai, District - Rajnandgaon, Chhattisgarh.

---- Respondents

For Appellant in **CRA No.90/2011** : Mr. Pragalbha Sharma, Advocate
and counsel for respondent No.1 in
ACQA No.83/2011

For Appellant in **ACQA No. 83/2011** : No one appears

For State/respondent : Mr. Ravish Verma, G.A.

D.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Smt. Justice Vimla Singh Kapoor****Order on Board****Per Manindra Mohan Shrivastava, J.****06.09.2021**

The aforesaid two appeals arise out of a common judgment of conviction and sentence whereby and where under the appellant Praveen Tamrakar, though, acquitted of charges of commission of offence under Section 307 IPC, but convicted under Section 323 IPC.

The appellant filed an appeal against the conviction under Section 323 IPC. The victim Dharamsila Tamrakar, who had suffered injury is dissatisfied with the conviction part also, preferred an appeal in so far as acquittal of the appellant – Praveen Tamrakar from charges of commission of offence under Section 307 IPC is concerned. Both the appeals were ordered to be listed analogously.

2. According to the prosecution case, while work of clubbing in the field was going with the help of a tractor on 27.07.2008 in Village – Pendarwani, the appellant came there and having seen the lady Smt. Dharamsila, who is his aunt, engaged in the work of clubbing in the agricultural field, arrived there and by giving a challenge to his cattle and interest over the land. This led to a dispute and it is said that the appellant assaulted her with the help of *lathi*. Further case of the prosecution is that at this stage, the other victim Kunjlu also came to spot and when he resisted, he was also assaulted by the appellant. Both Dharamsila (PW-5) and Kunjlu Patel (PW-9) had sustained grievous injuries and their medical examination was conducted. Apart from other simple injuries in other parts of the body, one injury was found in the head of Dharamsila and so also on the head of Kunjlu. This lead to lodging of FIR against the appellant for alleged commission of offence under Section 307 IPC on the allegation that the appellant gave *lathi* blow on the head of the victim Dharamsila and Kunjlu, actuated by intention to cause death. Accused Praveen Tamrakar was tried. The evidence of the Doctor and the injury report, as proved before the Court were that the injuries were simple in nature, there was no fracture and not even any bone deep injury. Taking into consideration the nature of injuries being simple and the

background of the incident the learned trial Court acquitted the accused Praveen Tamrakar from the charges of commission of offence under Section 307 IPC. However, considering that simple injuries were sustained by Dharamsila and Kunjlu, the appellant was convicted under Section 323 IPC and sentenced for the period already undergone by him i.e. from 28.07.2008 to 06.08.2008 along with fine of Rs.1,000/- and default sentence of two months.

3. Though, there is no representation on behalf of the appellant Smt. Dharamsila, learned State counsel was heard who has placed before the Court relevant evidence of Smt. Dharamsila (PW-5) and Kunjlu (PW-9) the injured persons, and also the MLC reports regarding injuries found on the body of the two injured persons and the evidence of the doctor. Learned State counsel would submit that though the injuries on the head of these two persons were found to be simple in nature as there was no fracture, yet the appellant – Praveen Tamrakar picked up a *lathi* and gave assault on the head of Dharamsila and Kunjlu, this by itself, proves that there was intention to cause death. He would submit that the evidence of PW-5 and PW-9, the two injured witnesses shows that when Dharamsila was engaged in working in the agricultural field, the appellant came in and he was annoyed because Dharamsila was showing her authority as the owner of the land, which was against the claim of the appellant, therefore, a strong motive was also there. Weapon like club was chosen and a sensitive part of the body like head was chosen for assault, therefore, in such cases, even if injury was found to be simple, a case of commission of offence under Section 307 IPC was made out, though

it was open for the trial Court to impose a lesser sentence commensurate with the nature of injury.

On the other hand, learned counsel for accused – Praveen Tamrakar would argue that the learned trial Court has taken into consideration the entire circumstances, nature of injury, the background in which the incident took place and has come to the conclusion that offence under Section 307 IPC is not made out. He would submit that in order to make out a case of commission of offence under Section 307 IPC, much more injury ought to be proved. He would submit that had the accused carried intention to cause death, nothing prevented him from giving forceful blow on the head of his aunt and repeated assault on her even after she fell down, but it is not there. This aspect has been taken into consideration of the learned trial Court to acquit the accused from charges of commission of offence under Section 307 IPC and as the view is a possible and plausible, no interference against the judgment of acquittal is made by this Court.

4. We have heard learned counsel for the parties and perused the records as also the judgment of the Court below.

5. After going through the impugned judgment we find that one of the most prominent reason to acquit the accused from charges of commission of offence under Section 307 IPC, is that injury were found to be simple in nature. In this regard, we have looked into the evidence of doctors, Dr. Ashish Sharma (PW-6), Dr. K. Thakur (PW-7) and Dr. Ramkrishan Bhattachary (PW-8). We find that no fracture injury was found on the head of the lady/appellant - Smt. Dharamsila.

There is nothing in the evidence or in the medical examination to show that the assault was with great force that resulted in bone deep injury or much of laceration resulting in tearing of skin tissues and excessive bleeding. Though, the injuries said to have been caused on the head, apart from it being a singular one, it was not with much of force. The evidence of the doctor is clear that the injuries are simple in nature and had there been fracture, it would have taken a serious shape and then this would have turned differently.

6. In addition to that, the learned Court below seems to be impressed also from the background in which the incident had taken place, that the victim - Dharamsila was clubbing in the field and at that time, the accused came in finding that the complainant was engaged in clubbing on the land, which was claimed by the accused, this led to dispute. In any case, we find that the accused though gave one blow with small force on the head, he did not choose to repeat the assault on the head on his aunt, but gave assault on other parts of the body. All the injuries were found to be simple in nature.

7. The assault on other injured Kunjlu (PW-9) is said to have been made only when he intervened. This is what Kunjlu (PW-9) himself has stated in the Court that when he sought to rescue Smt. Dharamsila, the accused got enraged as to why he had intervened and then he has also given a blow. Here also the injury was simple in nature. In the aforesaid background, the view taken by the learned trial Court that conviction ought not to be order under Section 307 IPC, in our considered opinion, cannot be said to be so perverse and patently illegal as to warrant interference against the judgment of acquittal. The scope of interference against the judgment of acquittal,

as is well settled is limited and once the finding recorded by the trial Court is found to be possible and plausible, not suffering from any patent illegality or perversity or causing miscarriage of justice, interference would not be warranted.

8. As far as conviction of the accused under Section 323 IPC is concerned, there is hardly any scope for argument in view of the evidence of victim Dharamsila (PW-5) and Kunjlu (PW-9). They have reliably stated regarding the appellant having come to the agricultural field and assaulted them. They are injured witnesses. What they have stated is clearly corroborated from medical evidence. The medical evidence proves presence of simple injuries on the body of Dharamsila and Kunjlu. In any case, we find that the learned trial Court has taken liberal view also on the sentencing aspect and has imposed jail sentence for the period undergone by the accused i.e. for about 10 days. At this stage of time, when the incident had taken place way back in the year 2008, we do not find any good reason for interference with the conviction and sentence of the appellant – Praveen Tamrakar. Therefore, this appeal also does not merit acceptance.

9. In the result, both the appeals **CRA No.90/2011** and **ACQA No.83/2011** are **dismissed**.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge