

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 811 of 2002**

- Sheetleshwar, S/o Firatram Sahu, Aged About 20 years, R/o Mudapar (Kudhoor), P.S. Pamgarh, District- Janjgir-Champa, (C.G.).

---- Appellant**Versus**

- The State of Chhattisgarh through S.H.O., P.S. Pamgarh, District- Janjgir-Champa, (C.G.).

---- Respondent

For Appellant - Ms. Mamta Jaiswal, Advocate.
For Respondent - Mr. Anurag Verma, P.L.

Hon'bel Smt. Justice Rajani Dubey
Judgment on Board

27/09/2021

01. This appeal arises out of the judgment of conviction and order of sentence dated 24.07.2002 passed by Special Judge, Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 Bilaspur (C.G.), in Special Case No.75/2001 whereby, the trial court has acquitted the appellant of the charge under Section 3 (2)(V) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 and convicted him as under:-

S.No.	Conviction	Sentence
1.	Under Section 307 of IPC	Rigorous Imprisonment for 4 years and to pay fine of Rs. 500/- (in default Simple Imprisonment for two months)
2.	Under Section 25 of Arms Act	Rigorous Imprisonment for 1 year and to pay fine of Rs. 200/- (in default Simple Imprisonment for one month)

02. Brief facts of the case are that, on 10.03.2001, at about 1-2.00 O' Clock, some quarrel took place between Jeevanlal Yadav and Sheetleshwar Sahu, in between, Gendram Suryawanshi reached there and Sheetleshwar Sahu fell down and suffered head injury. He went home and came with Lakshesh, thereatened and started abusing. Gendram Suryawanshi was standing near the house of Jeevanlal Yadav. At that time, Sheetleshwar Sahu (appellant) gave knife blows on the back of Gendram Suryawanshi. Rajesh also assaulted Gendram Suryawanshi with club. Thereafter, Gendram Suryawanshi was brought to the Primary Health Centre, Pamgarh from where he was referred to District Hospital, Bilaspur. FIR (Ex.P/1) was lodged against the appellant under Section 307 of IPC. Injured Gendram Suryawanshi (PW-4) was medically examined by Dr. D.C. Chaudhary (PW-5) who opined that the injuries sustained by him were grievous in nature and fatal to life. After investigation, charge-sheet was filed against the appellant under Section 307 of IPC and Sections 25, 27 of Arms Act.

03. So as to hold the accused/appellant guilty, the prosecution has examined as many as 11 witnesses. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the charges levelled against him in the prosecution case & pleaded his innocence and false implication in the case.

04. 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.

05. Learned counsel for the appellant submits that the learned trial

court has committed grave error in the facts and law in convicting and sentencing the accused/ appellant. He further submits that the learned trial court erred in holding that the appellant is guilty of having committed offence punishable under Section 307 of IPC and Sections 25, 27 of Arms Act. It is submitted that there were contradictions in the statement of the prosecution witness Leelaram. Prosecution story was not fully supported by the medical evidence on record. It is submitted that nature of injury could have been ascertained by surgical specialist only, but was not called by the prosecution as a witness. The trial court has erred in not giving due emphasis to the fact that the appellant was also charged for the offence punishable under Section 25, 27 of Arms Act. It is submitted that the trial court itself has concluded that the appellant was not guilty for the said offence. Even cross-examination of Dr. D.C. Chaudhary (PW-5) does not support the impugned judgment of conviction and sentence U/s 307 of IPC, therefore, the offence punishable under Section 307 of IPC & Section 25, 27 of Arms Act is not at all made out against the appellant. Prosecution has failed to prove its case beyond reasonable doubt. He further submits that the learned trial court has not appreciated the evidence on record in its proper perspective, which has resulted in a great miscarriage of justice. Even if the entire prosecution case is taken as it is, at best the offence under Section 326 IPC is made out against the accused/appellant. Appellant has remained in jail for about 5 Months & 12 days.

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

07. I have heard learned counsel for the parties and perused the

material available on record.

08. Gendram Suryawanshi (PW-4) has stated that on the date of incident, appellant gave knife blows on his back. Lakhesh also assaulted him with club, as a result of which, he sustained injuries on his back and blood was oozing out.

09. Dr. D.C. Chaudhary (PW-5) has treated the injured and opined that the injuries sustained by him were grievous in nature and fatal to life.

10. The only question which arises for consideration by this Court is as to what offence has been committed by the accused/appellant.

11. Dr. D.C. Chaudhary (PW-5) admitted in para 10 of his cross-examination that,

“यह कहना गलत है कि चोट साधारण प्रकृति की थी। चोट की गंभीरता के बारे में सर्जिकल स्पेशलिस्ट ही राय दे सकते हैं।”

He has stated in para 8 of his examination-in-chief that he referred the patient to District Hospital, Bilaspur (C.G.).

12. Prosecution did not examine any surgical specialist or the treating doctor, therefore, it is not proved that the injuries sustained by him are fatal to life.

13. Considering the nature and extent of injuries caused by appellant to Gendram Suryawanshi (PW-4), he is liable to be convicted under Section 326 IPC instead of Section 307/34 IPC and section 25, 27 of Arms Act. From the evidence of prosecution witnesses and injury reports of injured, it is evident that though the injuries caused by accused/appellant were grievous in nature but the prosecution has

utterly failed to prove that the accused/appellant was having any prior intention to inflict the injuries which ultimately could have been fatal to the life of injured and thus, considering the act of accused/appellant, he is liable to be convicted under Section 326 IPC instead of Section 307/34 IPC and section 25, 27 of Arms Act.

14. Next question which arises for consideration by this Court is as to what would be the appropriate sentence to be imposed upon the accused/appellant.

15. Appellant has already remained in jail for about 5 Months & 12 days, the incident is said to have taken place in the year 2001 i.e. 20 years back, no useful purpose would be served in again sending him to jail, this Court is of the opinion that, in the peculiar facts and circumstances of the case, ends of justice would be served if the sentence is reduced to the period already undergone by him.

16. Accordingly, accused/appellant is convicted under Section 326 of IPC instead of Section 307/34 of IPC and section 25, 27 of Arms Act and sentenced to the period already undergone by him. The appellant is reported to be on bail. His bail bonds shall stand discharged.

17. The criminal appeal is thus allowed in part.

Sd/-
(Rajani Dubey)
JUDGE