

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 629 of 2018**

- Jagsai, S/o Ramdhan, aged about 45 Years, R/o Nawapara Satipara, Police Station Premnagar, District Surajpur, Chhattisgarh.

----Appellant**Versus**

- State of Chhattisgarh, Through the Station House Officer, Police Station Premnagar, District Surajpur, Chhattisgarh.

---- Respondent

For Appellant	Shri Qamrul Aziz, Advocate.
For State	Shri C.B. Kesharwani, Panel Lawyer.

Hon'ble Shri Justice Gautam Chourdiya
Order on Board

22/11/2021

1. In this appeal filed under Section 374(2) Cr.P.C., the appellant has challenged the legality, validity and propriety of the judgment of conviction and order of sentence dated 27.03.2018 passed by the 2nd Additional Sessions Judge, District Surajpur, C.G. in S.T. No.81/2017 whereby and whereunder the appellant stands convicted and sentenced as under:-

Conviction	Sentence
Under Section 307 of Indian Penal Code	Rigorous Imprisonment for five years and fine of Rs.50/-, in default of payment of fine amount to undergo additional rigorous imprisonment for three months.

2. Case of the prosecution in brief is that on 03.10.2017 at about 3-5 pm while victim was returning to her home after completing her

official duty, on the way when she reached near the field of Heero Bai, at that time appellant came there with intention to commit her murder and assaulted upon the victim by axe, as a result of which victim sustained various injuries on her body, became unconscious and fell down on the spot and appellant fled from there. Thereafter, people who were present there called the ambulance and sent the victim to hospital for treatment. Subsequently, FIR Ex.P-1 was lodged by PW-1 Lalman Gond. The incident was witnessed by PW-5 Chhake Lal, PW-7 Ram Singh and other witnesses. Injured person was sent for medical examination who was examined by PW-10 Dr. Vivek Tiwari vide Ex.P-12. The injuries sustained by the injured person are as under:-

1. Lacerated wound on forehead size 3 cm x 2 cm x 2 cm.
2. Lacerated wound at parietal area size 2 cm x 1.5 cm x 2 cm.
3. Lacerated wound at lateral to right eye size 3 cm x 2 cm x 1 cm.

According to the Doctor, the injuries were caused by hard and blunt object. Referred to District Hospital, Surajpur, C.G.

PW-12 Dr. J. Ekka did the CT Scan of victim and found fractures on the person of the injured vide Ex.P-21 as under:-

1. There is evidence of displaced fracture involving the lateral wall of the left orbit, as well as the frontal bone in the anterior wall of the anterior cranial fossa. Overlying soft tissue contusions are seen. Moderate surgical emphysema is also noted.
3. During investigation, as per Ex.P-2 blood stained *saari* of the victim was seized. Spot Map was prepared vide Ex.P-3. One axe, plain and blood stained soil were seized from the place of occurrence vide Ex.P-7. The seized items were sent for chemical examination. Spot

Map was prepared by the Investigating Officer vide Ex.P-8. Accused/appellant was arrested on 03.10.2017 vide Ex.P-22. After recording statements of the witnesses, charge sheet was filed against the accused/appellant under Section 307 of IPC.

4. The trial Court framed charge under Section 307 of IPC against the accused person which was denied by him and he prayed for trial. The prosecution examined 15 witnesses in support of its case i.e. PW-1 Lalman, PW-2 Suryakanta, PW-3 Amrit Singh, PW-4 Shambu Singh, PW-5 Chhake Lal, PW-6 Sahakram, PW-7 Ram Singh, PW-8 Victim, PW-9 Amel Singh, PW-10 Dr. Vivek Tiwari, PW-11 Indrapal Singh, PW-12 Dr. J. Ekka, PW-13 Rakesh Singh, PW-14 V.N. Bhardwaj and PW-15 Mukesh Kumar Yadav. Statement of the accused/appellant was recorded under Section 313 of Cr.P.C. in which he denied the incriminating circumstances appearing against him in the prosecution case, pleaded innocence and false implication. However, no defence witness was examined by him.
5. The trial Court after hearing counsel for the parties and considering the material available on record, convicted and sentenced the accused/appellant as mentioned above.
6. Learned counsel for the appellant submits that due to previous enmity with the victim, the appellant has been falsely implicated in this case. Looking to the statements of PW-8 Injured and other witnesses, the prosecution has failed to prove its case beyond all reasonable doubt. No independent witness has supported the prosecution case. He also submits that no such nature of injury was found endangering the life of the victim. The trial Court only on

the basis of conjectures and surmises has held the appellant guilty and therefore, the impugned judgment is liable to be set aside and the appellant be acquitted of the charge levelled against him.

7. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction and sentence of the accused/appellant are strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.
8. Heard learned counsel for the parties and perused the material available on record.
9. PW-8 Victim/Injured has stated in paras 2 to 5 of her deposition that on 03.10.2017 at about 3-5 pm while she was returning to her home after completing her official duty, on the way when she reached near mango tree, at that time appellant came there with intention to commit her murder and assaulted upon her by axe 5-6 times, as a result of which she sustained various injuries on her body, became unconscious and fell down on the spot and appellant fled from there. After the incident, her children and other people of village came there and took her to the hospital for treatment from where she was referred to Government Hospital, Ambikapur. She has also stated that while assaulting, appellant was saying that he would kill her. In cross-examination, she has stated that there was no quarrel or animosity between the appellant and the prosecutrix.
10. PW-1 Lalman has stated in his deposition that after hearing the hue and cry of the victim, he went to the spot and saw that the victim was in injured condition. Thereafter, he with the help of other people took

the victim to hospital. He has also stated that children of the victim told him that appellant assaulted upon their mother by axe. Then, he went to the police station and lodged the FIR Ex.P-1 against the appellant. On the basis of FIR, police went to the spot and seized the axe.

11. PW-2 Suryakanta is the daughter of the victim. She has stated in her deposition that her brother (PW-3 Amrit Singh) told him about the incident that the appellant was assaulting her mother by axe and thereafter she went to the spot, saw her mother lying unconscious with injuries over her right eye and head and one axe was also lying there.
12. PW-3 Amrit Singh, son of the victim, has stated upon hearing the cries of his mother, he went towards the spot and saw the appellant assaulting her with axe. He states that on being called by him, his sister PW-2 Suryakanta also came there.
13. PW-4 Shambu Singh, PW-6 Sahekram and PW-7 Ram Singh have stated in their depositions that after the incident they went to the spot and saw the victim in injured condition. They have also stated that children of the victim told them that appellant assaulted the victim by axe. Thereafter, family members of the victim took her to the hospital for treatment.
14. PW-9 Amel Singh, husband of the victim, states that after regaining consciousness his wife-victim informed him in the hospital that it is the appellant who assaulted her with axe on her head.
15. PW-10 Dr. Vivek Tiwari medically examined the injured vide Ex.P-.12 and noticed certain injuries as mentioned in the preceding paragraph. He has duly proved the said injury reports. He also examined the

seized articles and opined that the injuries suffered by the victim could be caused by seized axe.

16. PW-12 Dr. J. Ekka also proved the injury report, CT Scan report, Bed Head Tickets & fractures on the body of the victim.
17. PW-14 V.N. Bhardwaj, the Investigating Officer, has duly supported the prosecution case.
18. PW-5 Chhake Lal has not supported the prosecution case.
19. There is no reason to disbelieve the evidence of injured/victim and other supporting witnesses i.e. PW-1 Lalman, PW-2 Suryakanta, PW-3 Amrit Singh and PW-9 Amel Singh. They have specifically stated that on the date of incident accused/appellant assaulted upon the victim by axe, as a result of which she sustained grievous injuries. The evidence of victim and other witnesses are fully supported by the medical evidence in the form of MLC of injured person and the evidence of PW-10 Dr. Vivek Tiwari and PW-7 Dr. J. Ekka, who have duly proved that the injuries found on the body of victim were dangerous to her life.
20. Thus considering the unrebutted evidence of the injured/victim which is duly supported by the evidence of other supporting witnesses i.e. PW-1 Lalman, PW-2 Suryakanta, PW-3 Amrit Singh and PW-9 Amel Singh and the medical evidence, promptly lodged FIR, that there is no major contradictions or omissions in the statements of the witnesses affecting their creditability, no any evidence was adduced by the defence for false implication of the appellant, this Court is of the opinion that the trial Court has rightly convicted and sentenced the

appellant for the offence under Section 307 of Indian Penal Code and as such no interference is called for by this Court.

21. In the result, the appeal being without any substance is liable to be dismissed and is, accordingly, dismissed.

22. As per report dated 22.11.2021 submitted by Jail Superintendent, Central Jail Ambikapur, Surguja, C.G., the appellant has been released from jail on 20.06.2021 after getting benefit of remission. Therefore, there is no need to pass any further order regarding his arrest/surrender etc.

Sd/-
Gautam Chourdiya
Judge

Akhilesh