

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1096 of 2018**

- Hariram Nagesiya S/o Bugalram, aged about 35 years, Caste Nagesiya, Occupation – Agriculture, R/o Village Karra, Patipara, P.S. Darima, District Surguja (C.G.)

---- Appellant

Versus

- State of Chhattisgarh, through the Station House Officer, Police Station Darima, District Surguja (C.G.) (C.G.)

---- Respondent/State

For Appellant : Shri Manoj Kumar Jaiswal, Advocate
 For Respondent/State : Ms. Deepti Shukla, Panel Lawyer

Hon'ble Shri Justice Gautam Chourdiya, J
Judgment on Board

12.11.2021

1. This appeal arises out of the judgment of conviction and order of sentence dated 15.10.2014 passed by 2nd Additional Sessions Judge, Ambikapur, District Surguja (C.G.) in Criminal Sessions Case No. (C.N.) 681/2013 (Criminal Sessions Case No. 282/2013), whereby the appellant stands convicted and sentenced as under:-

<u>Conviction</u>	<u>Sentence</u>
Under Section 307 of IPC	R.I. for seven years and pay a fine of Rs.500/-, in default of payment to further undergo R.I. for six months

2. Facts of the case in brief are that on 19.06.2013 Durjan Das and his son Paatar were in their house, at about 05:00 appellant Hariram Nagesiya came near their house, abused Durjan Das and his son filthily and threatened to kill them. On this Paatar Das asked the appellant as to why he is abusing them, then the appellant went from there. At about 08:00 pm when Durjan

Das came out of his house for urination, at that time the appellant came there by abusing him filthily and with an intent to commit murder of Durjan Das, the appellant assaulted Durjan Das by means of axe as a result of which Durjan Das fell down and received grievous injury over his head. After assaulting Durjan Das by axe, the appellant fled from there. The incident was witnessed by Dhanki Bai, Phoolkunwar, Jagarnath, Rambilas, Indra & Nand Kumar. F.I.R. (Ex.-P/11) was lodged by Paatar Das at about 02:00 am in the night on 20.08.2013 which was registered under Sections 294, 506B & 307 of IPC against the appellant under Crime No. 62/13 in Police Station Darima, Surguja.

3. Victim/injured Durjan Das was sent for medical examination to District Hospital, Ambikapur vide Ex.-P/13. Victim was medically examined by PW-11 Dr. Rajesh Bajagvali who gave his MLC report vide Ex.-P/6 and found following injuries on the body of victim Durjan Das:-

- i. Sharp edged wound in size of 3.5 cm x 4 cm over left side of forehead which was caused by sharp & hard object;
- ii. Bleeding through left side of nostril, at the time time examination he was unconcious, his pulse rate 68/minute, breath rate 24/minute and his blood pressure was 140/80 MMHG.

Dr. Rajesh Bajagvali (PW-11) stated in his report that the injury was caused within 4-6 hours from the examination of injured/victim.

4. During investigation, blood stained soil & plain soil were seized from the place of occurrence i.e. verandah of house of the victim vide Ex.-P/1 in presence of witnesses namely Nand Kumar (PW-4) & Indra Pratap Singh (PW-5); weapon of offence i.e. axe used by the appellant was seized from Paatar Das (PW-1) vide Ex.-P/4. Spot map was prepared by Inspector B.S. Kerketta (PW-14) vide Ex.-P/12. *Nazrinaksha* was prepared by Patwari Rajendra Kumar(PW-8) vide Ex.-P/5. On 20.06.2013 the appellant/accused was arrested by the police vide arrest memo Ex.-P/14. Bed-head-tickets of

the victim were seized vide Ex.-P/9.

5. After recording the statements of the witnesses and completion of the investigation, charge-sheet was filed against the appellant/accused under Sections 294, 506B & 307 of IPC. While framing the charges, 2nd Additional Sessions Judge, Ambikapur, District Surguja framed the charges against the appellant/accused under Sections 294, 506 (Part-II) & 307 of IPC which were denied by him and he prayed for trial.
6. So as to hold the appellant/accused guilty, the prosecution examined 11 witnesses namely PW-1 Paatar Das, PW-2 Dhan Kunwar, PW-3 Phoolkunwar, PW-4 Nand Kumar Singh, PW-5 Indra Pratap Singh, PW-6 Rambilas, PW-7 Sadharan, PW-8 Rajendra Kumar, PW-9 Jagarnath, PW-10 Ramvraksh, PW-11 Dr. Rajesh Bhajagvali, PW-12 Dr. F.H. Firdosh, PW-13 Anil Nagesh & PW-14 B.S. Kerketta in support of its case. Statement of appellant was also recorded under Section 313 Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. Appellant examined two witnesses namely Masihdaan Minj as DW-1 and Birbal Ram as DW-2 in his defence.
7. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment while acquitting the appellant of the charges under Sections 294 & 506 (Part-II), convicted and sentenced him as mentioned in para-1 of this judgment, hence this appeal.
8. Learned counsel for the appellant submitted that the appellant has been falsely implicated in this case by the complainant. He submits that as per defence witnesses, victim Durjan Das fell down on the stone, sustained injury on his head and the appellant has not committed any crime. The trial Court has not properly appreciated the overall evidence available on record and the prosecution has failed to prove its case beyond all reasonable doubt

and as such, the trial Court has committed grave error and illegality by recording conviction of the appellant under Section 307 of IPC.

9. On the other hand, learned counsel for the State supporting the impugned judgment submitted that the trial Court considering the overall evidence available on record has rightly convicted and sentenced the appellant/accused by the impugned judgment which calls for no interference by this Court.
10. Heard learned counsel for the respective parties and perused the material available on record including the impugned judgment.
11. In present case, due to death of victim- Durjan Das, he has not been examined before the trial Court, but on the face of evidence of eyewitnesses namely PW-1 - Paatar Das (son), PW-2 – Dhan Kunwar (daughter-in-law) and PW-3 - Phoolkunwar (wife) of victim Durjan Das, it is evident that all have stated that accused/appellant assaulted the victim by means of axe as a result of which victim sustained injury on his head. F.I.R. (Ex.-P/11) was lodged by Paatar Das (PW-1) on the same day in the night at about 02:00 am and that fact is also mentioned in the Ex.-P/11. All three witnesses i.e. PW-1, PW-2 & PW-3 also remained firm in their cross-examination.
12. As per evidence of PW-11 Dr. Rajesh Bhajagvali, he found injury on the head of victim Durjan Das and has duly proved Ex.-P/6. PW-11 stated that on 10.07.2013 Asstt. Sub-Inspector S.R. Sahu asked him about the nature of head injury of the victim whether it is dangerous to life or not, and he gave his opinion that the injury sustained on the head of the victim is dangerous to his life, if not treated in time vide Ex.P/8.
13. PW-14 B.S. Kerketta, Inspector, has also supported the prosecution case as narrated by the eyewitnesses.
14. It is true that the independent witness Rambilas (PW-6) has not supported

the prosecution case and has turned hostile.

15. PW-4 Nand Kumar and PW-5 Indra Pratap are witnesses of seizure (Ex.-P/1) of blood stained and plain soil; PW-7 Sadharan is the witnesses of seizure (Ex.-P/4) of axe, they have not supported the prosecution case and have been declared hostile by the prosecution. PW-8 Rajendra Kumar is the Patwari who prepared the *Nazrinaksha* vide Ex.-P/5 and has duly proved the same.

16. DW-1 Masihdaan Minj and DW -2 Birbal Ram both have stated that when accused/appellant assaulted victim Durjan Das, they were not present at the actual time of incident and they have not supported the defence of the accused/appellant.

17. Thus, in the totality of facts and circumstances of the case, the evidence of Paatar Das (PW-1), Dhan Kunwar (PW-2) and Phoolkunwar (PW-3), duly corroborated by the medical evidence in the form of MLC (Ex.-P/6) & query report (Ex.-P/8) as also corroborated by promptly lodged named F.I.R. (Ex.-P/11), it stands proved beyond all reasonable doubt that it is the accused/appellant who assaulted over the head of victim Durjan Das with intent to commit his murder by means of axe. The injuries sustained by the victim being on his head, it was definitely dangerous to life in the ordinary course of nature as has been opined by PW-11 Dr. Rajesh Bhajagvali, therefore, the offence under Section 307 of IPC is duly made out against the appellant. Being so, conviction of the appellant under Section 307 of IPC and the sentence awarded by the trial Court appear to be just and proper warranting no interference by this Court.

18. Consequently, the appeal being devoid of substance deserves to be and is hereby dismissed.

19. In the present case, as per report/P.U.D. dated 22.06.2020 received from Office of Jail Superintendent, Central Jail Ambikapur, District Surguja (C.G.),

accused/appellant Hariram Nagesiya S/o Bugalram had already been released on 28.06.2019 from jail after extending benefit of remission. therefore, there is no requirement of passing any order regarding his arrest, surrender etc. by this Court.

Sd/-

(Gautam Chourdiya)
Judge

vatti