

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1576 of 2019

- Pyarelal Khare S/o Late Bhoklo Khare Aged About 65 Years R/o. Sukli P.S. Janjgir District Janjgir Champa Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh Through Police Station Janjgir District Janjgir Champa Chhattisgarh

---- Respondent

For Appellant	:Mr. Pravin Kumar Tulsyan, Advocate.
For State/Respondent	:Mr. H.S. Ahluwalia, Dy. A.G.

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

06.07.2021

1. With the consent of both the parties, the matter is heard finally through video conferencing.
2. This appeal has been preferred against the judgment dated 26.09.2019, passed in Special Sessions Case No. 41/2018 by the learned Upper Sessions Judge(FTC), Janjgir, Distt. Janjgir Champa(C.G.) wherein, the Appellant has been convicted for the offence punishable under Sections 354 & 307 of the IPC and sentenced to undergo RI for 2 years and to pay fine of Rs. 500/- and RI for 5 years and to pay fine of Rs. 500/- respectively, with default stipulations.

3. In this case, victim (PW-1) is a widow lady. According to the case of prosecution, the Appellant is the distant relative of the victim. It has been alleged that on 28.02.2018 at about 1 PM, the Appellant entered in house of the victim and by saying that 'this house is mine, why you living here', abused and assaulted her with the help of knife, due to which she sustained injuries on his stomach and chest. On the basis of above, the matter was reported by Gajadhar Khare (PW-2). Later on, statements of victim and witnesses recorded under Section 161 of the Cr.P.C. After completion of investigation, charge-sheet was filed by the Police. Trial Court framed the charges against the Appellant. To robe the Appellant in the crime-in-question, the prosecution has examined as many as 11 witnesses. In the statement of the Appellant recorded under Section 313 of Cr.P.C, he has pleaded his innocence and false implication in the matter, however, no defence witness was examined by the Appellant. After completion of trial, Trial Court convicted and sentenced the Appellant as mentioned in Para 02 of this judgment. Hence, this appeal.
4. Learned Counsel appearing for the Appellant submits that the prosecution agency has failed to prove the guilt of the Appellant beyond all reasonable doubts. He further submits that there are material contradictions and omissions occurred in the deposition of prosecution witnesses. The Counsel further submits that there is nothing on record on the basis of which offence under Section 354 of the IPC can be proved

against the Appellant, in spite of that he has been convicted for the said offence. There was also no intention of the Appellant to kill the deceased, therefore, conviction under Section 307 of the IPC is also false within the ambit of Section 326 of the IPC. Hence, his conviction is not sustainable.

5. On the contrary, learned State Counsel opposed the appeal and supported the impugned judgment.
6. I have heard learned counsel appearing on behalf of the parties and perused the record minutely. I have also gone through the statements of the witnesses minutely.
7. The Appellant is the distant relative of victim (PW-1). In her Court statement victim (PW-1) deposed that at the time of incident, the Appellant was entered in her courtyard of the house, caught hold her hands, scuffled with her and when she fell down on floor, the Appellant assaulted her three times with the help of knife. Thereafter, the victim ran away, the Appellant followed her less with knife. On way, she met with one Gangu and told him about the incident and thereafter she went to the house of Govind where Ishwar and Gangu taken her to District Hospital. Gajadhar Khare (PW-2) corroborated the statement of victim (PW-1) and deposed that after the incident, he met with the victim in the District Hospital where she has been hospitalized, the victim told him that due to some land dispute with the Appellant, he assaulted her on his

stomach and hand with the help of knife. He further deposed that FIR has been lodged by him vide (Ex. P-1). Fulwa (PW-4) daughter of the victim and Deviprasad (PW-5) also supported the statement of the victim.

8. Dr. Harishchand Shrivastava (PW-7) examined the victim, his report is (Ex. P-8). According to the medical report of the victim, she sustained four injuries stabbed with knife on her body, one was in her left hand and other three were on her chest and stomach. According to information given by the Doctor, the injuries were dangerous for life of the victim.
9. The victim has fully supported the case of prosecution and deposed according to the case of prosecution. Her statement is duly corroborated by Gajadhar Khare (PW-2), Fulwa (PW-3) & Deviprasad (PW-5). The medical evidence also corroborated the statement of the victim. On perusal of entire evidence available on record, it is well established that the Appellant has assaulted the victim with knife and the victim sustained four injuries on her body wherein three injuries were on her vital part.
10. Looking to the above statements of the above witnesses and material available on record, in my considered view, the Trial Court has rightly convicted the Appellant for the offence punishable under Section 307 of the IPC.
11. With regard to offence under Section 354 of the IPC, victim

(PW-1) in her Court statement deposed that the Appellant caught her for outrage her modesty, but this fact has not been mentioned in the FIR vide (Ex. P-1). It appears that she developed her statement in this regard. Therefore, the statement of the victim in this regard is suspicious. Thus, the offence under Section 354 of the IPC is not proved beyond reasonable doubt. Hence, the Appellant is acquitted from the offence punishable under Section 354 of the IPC.

12. Consequently, the Appeal is partly allowed. The conviction of the Appellant under Section 307 of the IPC is affirmed and with regard to the sentence part, considering the fact that the Appellant is in jail since 02.03.2018 and has undergone about 3 years 4 months out of 5 years of jail sentence and he has no criminal antecedent. Looking to the above facts, the conviction of the Appellant under Section 307 of the IPC is reduced from 5 years to 4 years and the fine sentence is affirmed.

13. Records of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge