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**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE HIRDESH
ON THE 29th OF NOVEMBER, 2023
CRIMINAL APPEAL No. 11857 of 2022**

BETWEEN:-

**SUKLU S/O JUGRU KORKU, AGED ABOUT 29 YEARS,
OCCUPATION: LABOUR, R/O BODI. P.S. BETUL,
DISTRICT BETUL (MADHYA PRADESH)**

.....APPELLANT

(BY SHRI PRAKASH GUPTA - ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH THROUGH P.S.
BETUL, DISTRICT BETUL (MADHYA PRADESH)**

.....RESPONDENT

(BY MS.C.K.PAL - PANEL LAWYER)

This appeal coming on for admission this day, the court passed the following:

ORDER

Record of the court below is received.

Heard on I.A.No.8784/2023, which is an application for condonation of delay in filing the appeal. As per office note, there is delay of 65 days. For the reasons stated in the application, the same is allowed. Delay is condoned. I.A.No.8784/2023 is allowed.

2. Also heard on admission. The appeal is admitted for hearing. With consent of learned counsel for the parties, the matter is heard finally.

3. This criminal appeal under section 374(2) of Cr.P.C. has been filed by the appellant being crestfallen by the judgment of conviction dated 10.8.2022

passed by the Second Additional Sessions Judge, Betul in S.T.No.400223/2014 whereby appellant-Suklu has been convicted for offence under section 307 of the Indian Penal Code and sentenced to undergo R.I. for 05 years and fine of Rs.1000/- with default stipulations.

4. Brief facts of the case are that on 01.3.2014 the complainant-Sunil Chouhan (PW.6) has lodged a report against the appellant and two others, namely, Chunnilal and Shanker @ Bhalla stating that due to previous enmity appellant alongwith two others came to the house of complainant searching him. The mother of complainant, namely, Samoti Bai (PW-8) was present there, therefore, appellant started abusing her, and later on gave an axe blow causing several injuries resulting in her hospitalization. Accordingly, Crime No.254/2014 was registered for offence under section 307/34 of IPC at the Police Station, Betul. Thereafter, the Police party followed due procedure, arrested the accused and conducted investigation. On completion of investigation charge-sheet has been filed against the appellant under section 307 of IPC in the Court of Magistrate. Thereafter, the case was committed to the Court of Session. The trial Court framed charge against the appellant for offence under section 307 of IPC.

5. The appellant abjured his guilt and pleaded innocence as also his false implication and prayed for trial.

6. The prosecution examined nine (09) witnesses. No witness has been adduced by the appellant in his defence.

7. The trial Court on appreciation of evidence on record and considering the arguments advanced by the parties pronounced the impugned judgment dated 10.8.2022 by convicting and sentencing the appellant, as has been indicated hereinabove.

8. Learned counsel for the appellant submitted that the trial Court has committed grave legal error in convicting the appellant. He further submitted that trial Court has ignored independent witnesses, namely, PW.1 (Kanhaiya), PW.2 (Lallu), PW.3 (Bhangulal) & PW.4 (Bisso Bai) who have not supported the prosecution story and specifically denied the same. He further submitted that trial Court has ignored the statement of complainant-Sunil who specifically stated that there was previous dispute between the parties. He also contended that injured-Samoti Bai specifically did not state anything against the appellant. There are omissions and contradictions in her deposition. He also submitted that out of 05 years of jail sentence, the appellant has already undergone about 04 years of sentence and further prayed that looking to the nature of dispute, the sentence of appellant be reduced to the period already undergone.

9. On the other hand learned counsel for the State has opposed the contentions and prayed for dismissal of appeal. It is submitted that appellant assaulted injured lady and caused multiple injured and hence, he is not entitled for the reliefs claimed by him from this Court.

10. In the backdrop of arguments advanced by the parties, the point of consideration before this Court is whether the finding of the trial Court in convicting and sentencing the appellant under section 307 of IPC is erroneous in the eye of law?

11. At the outset, statement of injured-Samoti Bai (PW.8) is required to be analyzed. She deposed eight years ago the appellant came to her house alongwith accused-Chunnilal (absconded) with axe and when she started going to house of Kotwar of Village then in front of Chunni's house the appellant assaulted her by an axe on head, ear and left chest, above shoulder and

stomach. During her deposition before the trial Court this witness has drawn attention of the Court to the scars caused by said assault. The statement of this injured-witness has not been controverted in the cross-examination. The complainant-Sunil (PW.6) lodged report and narrated the prosecution story in the same manner. He stated that appellant assault his mother-Samoti Bai (PW.8). Kanhaiya (PW.1) also stated that Jagadish told him that appellant assaulted his wife (PW.8-Samoti Bai). Then he went and saw injuries on the body of injured-Samoti Bai (PW.8). Thereafter, he called Ambulance and took injured-Samoti Bai (PW.8) for treatment. The witnesses, namely, Lallu (PW.2) and Somma (PW.6A) impliedly supported the evidence of Sunil (PW.6) and Samoti Bai (PW.8) and they saw injuries on the body of injured immediately after the incident. Dr.Ranjeet Singh Parihar (PW.5) found following injuries on the person of the injured, when he examined her:-

- "(i) Stab wound below the 12th rib of stomach of injured sizing 1 cm x 3 cm x 6 cm;*
- (ii) Stab wound on the right side of chest of injured sizing 4 cm x 2 cm;*
- (iii) Stab wound on the clevical bone of chest on right side of injured sizing 3 cm x 2 cm x 3 cm; and*
- (iv) Lacerated wound above right ear of the injured sizing 10 cm x 3 cm x 3 cm."*

He further deposed that injuries caused to the injured (PW.8) is dangerous to life.

12. Learned counsel for the appellant submitted that no independent witness has supported the prosecutory story. It is only vindicated by the relatives witnesses. He further submitted that witnesses, namely,

PW.1(Kanhaiya), PW.2 (Lallu) & PW.6A (Somma) are hearsay witnesses. It is true that they are hearsay witnesses, but they saw injury on the body of PW-8 (Smt.Samoti Bai) just after the incident. In this regard it should be kept in mind that injured-Samoti Bai (PW.8) is grievously injured and, therefore, her statements have special status in law.

13. On this aspect, law laid down by Hon'ble the Apex Court rendered in ***Bhajan Singh alias Harbhajan Singh & others Vs. State of Haryana*** [AIR (2011) SC 2552] is made to mention here under:-

“Thus, the testimony of an injured witness is accorded a Special status in law. Such a witness comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant [s] in order to falsely implicate someone. Convincing evidence is required to discredit an injured witness”

14. It is also contended that there are many omissions and inconsistency in the statements of these witnesses. With regard to this aspect, another case law of Hon'ble the Apex Court, rendered in ***Balkrishnan and others vs. State of Tamil Nadu*** [2018 Law Suit (SC) 247] is worth referring, wherein it is held as under:-

“[7] We have considered the specific grounds on which the evidence of the aforesaid two witnesses have been sought to be assailed. On such consideration, we find that the inconsistencies and contradictions do not affect the core of their testimonies. The said witnesses have without any ambiguity implicated the accused for the injuries caused leading to the death of Chelladurai and also the injuries caused to PW-1 and PW-2.”

15. Learned counsel for the appellant, vehemently, contended that all the witnesses are relatives witnesses, therefore, their testimonies cannot be relied on in view of relatedness. Virtually, it is now well settled that a relative witness

cannot be said to be an interested as merely by virtue of being a relatives of the victim. In this context, the following proposition held by Hon'ble Supreme Court, in *Laltu Ghos v. State of West-Bengal*, [AIR (2019) SC 1058], is relevant to quote here-

".....This Court has elucidated the difference between 'interested' and 'related' witnesses in a plethora of cases, stating that a witness may be called interested only when he or she derives some benefit from the result of a litigation, which in the context of a criminal case would mean that the witness has a direct or indirect interest in seeing the accused punished due to prior enmity or other reasons, and thus has a motive to falsely implicate the accused....."

16. Actually, in many of the criminal cases, it is often that the offence is witnessed by closed relatives of the victim, whose presence on the spot of the incident would be natural. The evidence of such witnesses cannot automatically be discarded by leveling them as interested witnesses.

17. Learned counsel for the appellant submitted that act of the appellant was not covered within the offence under section 307 of the Indian Penal Code. But, on perusal of expert evidence it was found that injuries caused by the appellant were dangerous to life. On perusing the nature of injuries caused on the injured-PW.8 (Samoti Bai) and the medical examination report it is found that injuries were inflicted on stomach, head, chest and other parties of body. The injuries were caused by the appellant by hard and sharp object being fatal for life. The intention of the appellant has to be unearthed from the circumstances, like nature of weapon used, part of body whereon the injury was caused and nature of injury inflicted by the appellant/accused. In this regard, following ratio of the Apex Court rendered in the *State of M.P. Vs. Kashiram*, (2009) 4 SCC 26, it is pertinent to refer here:-

"[9] To justify a conviction under this Section, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be concluded from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The Section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this Section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the Section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof."

1 8 . In the present case, the accused/appellant alongwith an axe reached the place the injured was going and thereafter during altercation gave axe blow on the body of Samoti Bai (PW.8), by which she received injuries on stomach, chest and near left ear. In this regard, it is worth referring to the decision in the case of **Surendra Singh Vs. State**, 2021 Law Suit (SC) 772 wherein it has been adumbrated as under:-

"20. It is by now a lucid dictum that for the purpose of constituting an offence under Section 307 IPC, there are two ingredients that a Court must consider, first, whether there was any intention or knowledge on the part of accused to cause death of the victim, and, second, such intent or knowledge was followed by some overt actus rea in execution thereof, irrespective of the consequential result as to whether or not any injury is inflicted upon the victim."

19. In the case at hand, the accused/appellant attacked with an axe on the stomach, chest and other parties of the injured and according to the statement of Doctor Ranjeet Singh Parihar (PW.5) the injuries were dangerous to life. So, having regard to the nature of weapon, nature of injury on the vital organ, the intensity of blow and evidence of Doctor Ranjeet Singh Parihar (PW.5) this Court is of the considered opinion that appellant/accused person has inflicted injury on the injured with the intention to caused her death.

20. On the basis of preceding discussions in entirety and for the reasons assigned hereinabove, act of the accused/appellant comes within the purview of section 307 of IPC. Thus, the prosecution has successfully proved its case beyond reasonable doubt that accused-Suklu has assaulted the injured-Samoti Bai with intention to cause her death. Accordingly the accused person is liable to be convicted for the offence of attempt to murder, punishable under section 307 of IPC. So in view of aforesaid evidence in entirety, the findings of the trial Court regarding conviction of appellant u/s 307 of IPC does not warrant interference.

21. Now, coming on the part of punishment/sentence of appellant. He is involved in causing grievous injuries which are dangerous to life of PW.8-Samoti Bai, who was a lady of 40 years by an axe. Therefore, punishment of R.I. 05 years cannot be ascertained to be harsh. The punishment by the trial Court is kind enough. It has passed the impugned judgment rightly and not committed any error, either on facts or law point.

22. Hence, finding regarding conviction and sentence of appellant is hereby affirmed. Resultantly, the appeal stands dismissed.

23. Let a copy of this judgment be sent to the concerned trial Court alongwith its original record for its record.

**(HIRDESH)
JUDGE**

RM

