

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Appeal No. 115 of 2013**

Pardeshi Ram Rathiya S/o Mahesh Ram Rathiya, aged about 28 years, R/o village Kothikunda, Chowki Jobi, police station Kharsia, district Raigarh, Chhattisgarh.

---- Appellant**Versus**

State of Chhattisgarh through Station House Officer, police Chowki Jobi, police station : Kharsia, district Raigarh, Chhattisgarh.

---- Respondent

For Appellant	:	Shri Manoj Kumar Jaiswal, Advocate.
For the Respondent/ State	:	Ms. Sangeeta Mishra, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Judgment on Board****20/07/2015**

(1) Challenge in this appeal is to the judgment of conviction and order of sentence dated 7.1.2013 passed by the First Additional Sessions Judge, Raigarh, District Raigarh, Chhattisgarh in Sessions Trial No. 59 of 2012 whereby and whereunder the learned Additional Sessions Judge after holding the Appellant guilty for attempting to take the life of PW-2 Sunaram convicted him under Section 307 of the IPC and sentenced him to undergo rigorous imprisonment for 10 years and to pay fine of ₹500/-, in default of payment of fine, to further undergo additional rigorous imprisonment for one month.

(2) Conviction is impugned on the ground that without there being any iota of evidence, the trial Court has convicted and sentenced the Appellant as aforementioned and thereby committed illegality.

(3) As per case of the prosecution, on 07.01.2012 at about 8:30 pm, Samharu Rathiya (PW-1) reached to the outpost Jobi, police station Kharsia, District Raigarh and he lodged his report that at 6:30 pm, the Appellant assaulted Sunaram (PW-2) over a land dispute and pension twice on vital portion of the body. He had also assaulted over left arm above knee and to other parts of the body. The police after lodging the report registered Crime No. 17 of 2012. During investigation, the injured Sunaram was sent to Civil Hospital, Kharsia. Dr. V.S. Rathiya (PW-5) after examination noticed swelling in the left arm between shoulder and knee, advised for X-Ray also and noticed one lacerated wound 5 x 2 cm muscle deep. He also noticed swelling in the chest and pain over chest and back side. The Doctor opined that the injuries were caused by hard and blunt object. He gave his report (Ex. P/7) and directed for X-Ray and nature of the injury to be given after perusal of the X-Ray report. During treatment he perused the X-Ray report and noticed fracture in the left arm between shoulder and knee and reported the matter vide (Ex. P/7A). He also examined the seized article- wooden plank and opined that injuries noticed in the body of PW-2 could be caused by wooden plank. The police arrested the Appellant vide Ex. P/8. Spot map was prepared vide Ex. P/2. The wooden plank was seized at the instance of Appellant (Ex. P/5) through seizure memorandum (Ex. P/6).

(4) Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code'). After completion of investigation, charge sheet was filed before the Judicial Magistrate First Class, Raigarh on 7.1.2012, who, in turn, committed the

case to the Court of Learned First Additional Session Judge, Raigarh, District Raigarh, who received the case on transfer and conducted the trial.

(5) During trial, the Court below framed the charges under Sections 294, 506 and 307 IPC. Prosecution examined five witnesses to prove the guilt of the Appellant. Statement of the Appellant was recorded under Section 313 of the Code wherein the Appellant denied the circumstances appearing against him and pleaded innocence and false implication in the crime in question.

(6) After affording opportunity of hearing to both the parties, learned trial Judge acquitted the Appellant for the charges under Sections 294 and 506 of the IPC and convicted and sentenced the Appellant as aforementioned.

(7) I have heard Learned counsel for the parties, perused the judgment impugned and records of the Court below.

(8) Learned counsel appearing on behalf of the Appellant submits that he is not contesting the appeal on its merit regarding conviction under Section 307 of the IPC. He is confining his argument for the quantum of punishment only. Learned counsel submits that it was the first offence of the Appellant with no previous criminal history and is languishing in jail for more than three years and six months. The victim is his uncle and on some dispute over immovable property and pension, this incident happened. He had not made any second assault on the head. He assaulted once over the head and that too by a wooden plank after some argument he also gave one blow in the left upper arm. Besides this, no other assault by him was caused to show the conduct of

the Appellant that he will not commit any offence in future. Learned counsel lastly submits that the Appellant be given an opportunity to live peacefully in the village and society and the sentence may appropriately be reduced for the act he has committed.

(9) Per contra, learned counsel for the Respondent/ State opposed the prayer and submission. He further submitted that to pressurize his old aged uncle over the land dispute and pension the Appellant assaulted him. Looking to the act, the Trial Court rightly convicted and sentenced him as aforesaid. Hence, the appeal may be dismissed as it warrants no interference.

(10) In order to appreciate arguments advanced on behalf of the parties, I have perused the evidence adduced by the prosecution.

(11) As the Appellant is not contesting this appeal regarding conviction against him, even otherwise on perusal of the Statement of Sunaram (PW-2) and other medical corroboration, in the considered view of this Court, the trial Court had not committed any illegality and impropriety for convicting the Appellant under Section 307 IPC as there was an assault over vital part of the body i.e. head and also fracture in the left upper arm. Consequently, the judgment passed by the trial Court regarding conviction under Section 307 of the IPC against the Appellant requires no interference. Hence, the same is affirmed.

(12) So far as quantum of sentence is concerned, the Appellant is in jail for last more than three years and six months. He is the first offender and had not further repeated the assault over head or other vital parts of the body. He is not having any previous criminal history with family members or with villagers. He was aged about 28 years on the date of the

incident.

(13) In view of the above, this Court is of the view that the sentence awarded against the Appellant requires interference as looking to the entire facts and circumstances, it is more than appropriate sentence. In the opinion of this Court, sentence for four years rigorous imprisonment would serve the purpose and would be appropriate for his conduct looking to the entire facts and circumstances demonstrated during trial.

(14) Consequently, the appeal filed on behalf of the Appellant is allowed in part. The conviction under Section 307 of the IPC passed by the trial Court is affirmed. Fine sentence passed by the trial Court is also maintained. However, the jail sentence of 10 years rigorous imprisonment awarded to him is modified and instead thereof he is sentenced to rigorous imprisonment for four years.

(15) The Appellant is also entitled for the set off already given in the judgment for the period already served by the Appellant.

(16) The appeal is partly allowed.

Sd/-

(Chandra Bhushan Bajpai)

JUDGE