

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.626 of 2012**

- Santram Dhruwa, S/o. Latelram Dhruwa, Aged about 39 years,
R/o. Ghorbhatti, Police Station Kharora, District Raipur (CG)

---- Appellant

Versus

- State Of Chhattisgarh Through: P.S. Kharora, District Raipur
(CG)

---- Respondent

For appellant	: Shri Praveen Dhurandhar, Advocate.
For Respondent	: Ms. Pushpa Dwivedi, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Judgment****10/07/2015**

Challenge in this appeal is to the judgment of conviction and order of sentence dated 05.7.2012 passed by Seventh Additional Sessions Judge, Raipur in Session Case No.214/2011 whereby and whereunder the learned trial judge after holding the appellant guilty for attempt to take life of complainant Santosh Kumar Sahu (PW-1) convicted him under Section 307 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for seven years and to pay fine of Rs.1,000/-, in default of payment of fine, to further undergo RI for six months.

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

3. As per the case of the prosecution, on 29.8.2011 at about 8.00 am, complainant Santosh Sahu (PW-1) was cleaning his motor cycle, the appellant came there and on account of previous enmity, assaulted

the complainant on his head and thereafter assaulted twice on his left arm and right foot and knee. The complainant shouted for help. The witnesses reached to the spot, the appellant left the spot, the complainant was admitted in the hospital. Investigating Officer Meeluram Kanwar (PW-9) reached to the hospital and recorded unnumbered First Information Report which was subsequently registered as Crime No.277/11 under Section 307 of the IPC. The IO started investigation. During investigation, he prepared spot map (Ex-P/2) and seized blood stained clothes from the complainant and also made prayer for medical examination of the complainant. Dr. Ayaz Ahammad Siddique (PW-7) examined the complainant and noticed on lacerated wound of 4" x ½" x scalp deep on left parietal occipital region. One contusion of 2 ½" x 2" on right arm, one contusion 2.5" x 1.5" over left feet. All the injuries were caused by hard and blunt object, he referred the complainant for further treatment. He gave his report (Ex-P/9A).

4. Statement of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code'). The appellant was arrested vide Ex-P/13. At the instance of the appellant, iron crowbar and his blood stained shirt were seized vide Ex-P/6. After necessary investigation, charge sheet was filed before Judicial Magistrate First Class, Raipur who in turn committed the case to the Court of sessions. The learned Additional Session Judge received the case on transfer and conducted the trial. The appellant was charged for the offence under Section 307 of the IPC, which was denied by the appellant.

5. In order to prove the guilt of the appellant, the prosecution examined 12 witnesses. Statement of the accused appellant was recorded under Section 313 of the Code wherein he denied the circumstances appearing against him, pleaded innocence and false implication in crime in question.

6. After affording opportunity of hearing to the parties, learned trial Court convicted and sentenced the appellant as aforementioned.

7. I have heard learned counsel for the parties and perused the record of the trial Court.

8. Learned counsel for the appellant submits that as instructed, the he is not contesting the judgment on its merits. He is confining his argument only on the point of quantum of sentence. As submitted, there was previous enmity and other inimical facts between the appellant and the complainant. The appellant is the first offender, the incident is about 5 years old, both the parties reside in the same village, the appellant is facing the post effect of the incident. He further submits that the appellant has served the major part of the sentence for three years ten months and twelve days as he was sentenced for RI for seven years with fine sentences. The appellant has already deposited the fine amount. During the trial, both of them filed application for compounding the offence as both of them entered into a compromise. But the prayer made in this behalf and the application was dismissed by the trial Court as the matter could not be compounded under Section 307 of the IPC, but the fact remain that at subsequent stage, the complainant agreed and prayed for accepting compromise. This fact may be taken into consideration. He further submits that the appellant will not commit any offence in future, hence, he may be given an

opportunity and may be sentenced for the period already undergone by him.

9. Per contra, learned counsel for the State/respondent opposed the arguments advanced on behalf of the appellant and submitted that the trial Court after due consideration looking to the act committed by the appellant duly convicted him which requires no interference, hence, the appeal may be dismissed.

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

11. The appellant is not contesting this appeal on its merits regarding holding him guilty under Section 307 of the IPC. Learned counsel for the appellant limits his arguments on the point of quantum of sentence only. Even on perusal of the entire evidence, I do not find any illegality or infirmity in the judgment passed by the trial Court.

12. So far as the quantum of sentences are concerned, the appellant and the complainant are residing in the same village, they are of the similar age group, the complainant was unarmed and the appellant was armed, but the appellant assaulted once over the head, further two assaults were made on the leg which goes to show that though he was in a position to inflict more assaults, he only assaulted once on the vital part of the body. During trial both the parties entered into a compromise and jointly prayed for compounding the offence, but the prayer was dismissed as there is no provision for compounding the offence, but the fact that the complainant wants to settle this dispute by way of compromise may be seen while considering the sentence. No any complications were reported by the doctor though injuries were grievous in nature. No any fact reported regarding the status of the

complainant as indoor patient. Even the complainant has not said whether he was admitted in the hospital or not. On the other hand he had admitted in para 8 of his cross examination that he was not admitted in the hospital and every day he used to visit the hospital from his house. The appellant has already served major part of the sentence as he is in jail for three years, ten months and twelve days.

13. While considering the entire facts and circumstances, in view of this Court the period already undergone by him would serve the purpose with regard to the offence committed by him. An opportunity would be appropriate for the appellant so that he may live in the society without committing any other offence.

14. Consequently, the appeal is allowed in part. Conviction of the appellant under Section 307 of the IPC are hereby affirmed. Fine sentence passed by the trial Court is also affirmed. However, sentence passed by the trial Court is altered and he is sentenced for the period already undergone by him. The appellant is in jail since 29.8.2011. He be set at liberty forthwith if not required in any other case.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE