

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No.422 of 2014**

Girdhari Lal Sahu, S/o. Mahettar Sahu, aged about 45 years, R/o. Village Tarashiv PS Nevra, Civil and Revenue District Baloda Bazar (CG)

---- Appellant

Versus

State Of Chhattisgarh Through PS Nevra, Civil and Revenue District Nevra C.G.

---- Respondent

Shri Santosh Sahu, counsel for the appellant.
Shri Aditya Sharma, Panel Lawyer for the State.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Judgment****16/10/2015**

Challenge in this appeal is to the judgment of conviction and order of sentence dated 29.01.2014 passed by Fourth Additional Sessions Judge, Raipur in Session Trial No.238/13 whereby and whereunder the trial Judge after holding the appellant guilty for attempting to take life of complainant Bihari Lal Sahu (PW-1), convicted him under Section 307 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for five years and to pay fine of Rs.500/-, in default of payment of fine, to further undergo simple imprisonment for three 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 17.8.2013 when complainant Biharilal Sahu was watching film in the mobile phone, the appellant came there, picked up hammer which was kept in the welding

shop of the complainant, assaulted the complainant on his head and chest on account of earlier dispute. The incident was witnessed by many people. Son of the injured complainant was also witnessed the incident. He immediately took the injured to Mission Hospital for treatment and thereafter reached to Police Station Nevra. The Police lodged First Information Report (Ex-P/3) by registering Crime No.226/13 under Section 307 of the IPC against the appellant and started investigation. The injured was sent for treatment and examination. Dr. Satyajeet Jeevanmal (PW-8) noticed one lacerated wound of 6 x 0.5 x 1 cm over the scalp caused by blunt object, appreciated the injury as simple and after X-ray of chest and scalp no any fracture was noticed. The doctor gave his report (Ex-P/9). The appellant was arrested. During investigation, blood stained plaster pieces and plain pieces of plasters were seized from the spot vide Ex-P/8. On the basis of disclosure statement of the appellant, hammer was seized Vide Ex-P/6. The Police prepared seizure memo (Ex-P/7). Spot map (Ex-P/4) was prepared.

4. Statement of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code'). The material so seized and blood stained shirt of the injured were sent for chemical analysis. After completion of investigation, charge sheet was filed before Judicial Magistrate First Class, Tilda, who in turn committed the case to the Court of Sessions Raipur. The learned Additional Sessions Judge received the case on transfer and conducted the trial.

5. The learned trial Court framed charges under Section 307 of the IPC against the appellant. The appellant denied the charges and pleaded for trial. In order to prove the guilt of the appellant, the

prosecution has examined nine witnesses in all. 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 providing opportunity of hearing to the parties, the learned trial Court convicted and sentenced the appellant as aforementioned.

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

8. Learned counsel for the appellant submits that presence of the appellant on the spot and assault by hammer to the complainant are not being assailed. Learned counsel would submit that as per MLC report (Ex-P/9) only one injury was noticed that too on the scalp by blunt object, reported to be simple in nature. No any injury on the chest or other part of the head were seen or reported, which goes to show that only one assault was given by the appellant upon the complainant that too was simple in nature. The appellant was having hammer with him, he would have assaulted with more force and many times as he wish, which goes to show that intention of the appellant was not to take the life of the complainant. Learned counsel would submit that the act of the present appellant at the most squarely falls under the scope of Section 324 of the IPC and not beyond that. He further submits that the appellant is in jail since 18.8.2013 thereby he has served RI for two years and two months. On account of earlier dispute, on sudden provocation and exchange of words, the incident happened. He is the first offender, no any earlier criminal past was recorded against him and even after the incident he has not committed any offence and it is pleaded that he will not commit any offence in future also. The

appellant is a labour by profession earning his livelihood anyhow. He be given opportunity and he may be sentenced accordingly.

9. Per contra, learned counsel for the State opposed the arguments advanced on behalf of the appellant and submitted that the appellant after due preparation took the hammer which was in the shop of the injured and assaulted the complainant when he was watching film in his mobile and thereafter he ran away from the spot. Earlier dispute, as per the allegation, the complainant used to cut electric wire and used to keep the iron material near his wall, which goes to show that the appellant has intention to attempt to take the life of the complainant, therefore, the trial Court rightly sentenced the appellant for RI for five years for the act committed by him. 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 before the trial Court. On close scrutiny of the entire facts goes to show that the doctor noticed only one injury on the body of the injured vide MLC report (Ex-P/9). The lacerated wound was of 6 x 0.5 x 1 cm over the scalp caused by blunt object, the doctor assessed the injury as simple, and no any injury was noticed in any part of the body, there was no fracture on scalp or on chest, no any material was adduced to show that for how many days the complainant was admitted in the hospital which goes to show that injured was not admitted in the hospital and he was discharged after initial treatment. Looking to the nature of injury no any further appreciation can be made for the nature of injury as it was simple.

11. So far as intention of the appellant was concerned, injured and the appellant are real brothers and are residing in the same vicinity, there was some dispute between them as aforementioned. As per facts of the case, the appellant picked up hammer from the shop of his brother i.e. injured and assaulted him once only. The injury was simple in nature. He had not attempted assault for more than once. Upon entire appreciation goes to show that the appellant wanted to teach a lesson for the earlier dispute to his younger brother, the injured. The matter in question is not covered under the ingredients as required under Section 307 of the IPC.

12. In considered view of this Court, the incident whatever committed cannot be held that it was with a purpose to attempt to take the life the injured. Conviction under Section 307 of the IPC thereby is not sustainable under the eye of law. The trial Court committed error in convicting the appellant under Section 307 of the IPC. The present case falls under the category of Section 324 of the IPC for the act committed by the appellant.

13. So far as the quantum of substantive jail sentences are concerned, as the appellant served the sentence for about two years and two months, in the considered view of this Court, same would sufficient and would meet the ends of justice for the act committed by the appellant.

14. Consequently, the appeal is allowed in part. Conviction of the appellant under Section 307 of the IPC is hereby set aside and instead he is convicted under Section 324 of the IPC and sentenced to undergo RI for the period already undergone by him along with fine sentence of Rs.500/-. In case of default for depositing the fine amount, the

appellant be awarded with default sentence of simple imprisonment for three months.

15. The authorities are directed to set the appellant on liberty forthwith after realizing the fine amount of Rs.500/-. In case the fine amount is not deposited, he be served with default sentence as ordered till the realization of the fine.

16. Appeal allowed in part.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE