

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Appeal No. 642 of 2013**

Appu @ Bhuvanlal S/o Dinesh Kumar Sahu Aged About 23 Years
 R/o Karbala Para, Beside Prakash Narayan Psychiatrist, P.S.
 Sarswati Nagar , Raipur C.G.

---- Appellant**Versus**

State of Chhattisgarh S/o Through Station House Officer, Police
 Station Sarswati Nagar , Distt. Raipur C.G.

---- Respondent

For Appellant	:	Smt. Fouzia Mirza, Advocate.
For the Respondent/ State	:	Shri Aditya Sharma, Panel Lawyer.

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

(1) Challenge in this appeal is to the judgment of conviction and order of sentence dated 27.6.2013 passed by the Seventh Additional Sessions Judge, Raipur, Chhattisgarh in Sessions Trial No. 225 of 2011 whereby and whereunder the learned trial Court after holding the Appellant guilty for attempting to take the life of PW-2 Pannalal Sona and also to cause simple injury to PW-4 Chandulal Tandi, convicted him under Section 307 read with Section 34 and Section 323 read with Section 34 of the Indian Penal Code, 1860 (for short 'the IPC') and sentenced him to undergo rigorous imprisonment for 5 years and RI for 6 months also to pay a fine of ₹1,000/- and ₹500/- in default of payment of fine to further undergo R.I. for three months and RI for one month, respectively with a direction that both the substantive jail sentences shall run concurrently.

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

(3) As per case of the prosecution, on 29.6.2011 at about 8:00 pm, when the complainant (PW-2) Pannalal Sona and (PW-4) Chandulal Tandi were talking with each other near Uchhala Talab, Ramkund, the present Appellant and other co-accused persons assaulted them by knife and sharp-edged weapon. The incident was witnessed by other witnesses also. Thereafter, complainant PW-2 lodged the First Information Report. Both the injured witnesses were examined and treated. All the accused persons were arrested. On the disclosure statement of the present Appellant, knife and the sharp-edged instrument were seized through co-accused.

(4) Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code'). The blood-stained articles were sent for chemical analysis to FSL.

(5) After completion of the investigation, charge-sheet was filed before the Judicial Magistrate, First Class, Raipur, who in turn, committed the case to the Court of Seventh Additional Sessions Judge, District Raipur, Chhattisgarh, who received the case on transfer and conducted the trial.

(6) During trial, the Court below framed charges under Sections 294, 506 Part II, 307, 323/ 34 of IPC. The prosecution examined 13 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.

(7) After affording opportunity of hearing to both the parties, learned trial Judge convicted and sentenced the Appellant and other co-accused as aforementioned and all the accused were acquitted under Sections 294, 506 part II of the IPC.

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

(9) Learned counsel appearing on behalf of the Appellant submits that she is not challenging and contesting the appeal on its merits regarding conviction under Sections 307/ 34 and 323/ 34 of the IPC. She is confining her argument to the quantum of sentence only. Learned counsel further submits that the Appellant was in jail since 1.7.2011 thereby he served jail sentence of 4 years, 3 months and 15 days. He is the first offender and was aged about 23 years at the time of the incident. The Appellant is not having any previous criminal antecedents. On account of earlier dispute between the complainant party and the other co-accused persons, the incident was happened. The Appellant be given an opportunity to live peacefully in the village and society without committing any offence in future. Looking to the period of sentence served by the Appellant he could be given an opportunity by sentencing him for the period already undergone.

(10) On the other hand, Learned Counsel for the Respondent/State opposing the submissions advanced on behalf of the Appellant

submitted that the present Appellant alongwith other co-accused assaulted the complainant PW-2 Pannalal Sona and PW-4 Chandulal Tandi by sharp-edged weapon. Looking to the nature of the incident, the trial Court has rightly convicted and sentenced the Appellant for the act committed by him. Hence, the appeal may be dismissed.

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

(12) As the Appellant is not contesting the instant criminal appeal against the conviction imposed upon him under Sections 307/ 34 and 323/ 34 of the IPC and fine sentence imposed by the trial Court on both the counts but only contesting the appeal against the jail sentence imposed upon him, the impugned judgment of conviction and fine sentence on both the counts do not call for any interference.

(13) Even otherwise on perusal of the entire evidence, I do not find any illegality or impropriety committed by the trial Court in passing the impugned judgment of conviction warranting interference. The trial Court awarded substantive jail sentence under Section 323/ 34 of the IPC. The trial Court also sentenced the Appellant under Sections 307/34 and 323/34 IPC to pay fine of ₹1,000/- in default of payment of fine to further undergo R.I. for three months and also to pay fine of ₹500/- in default of payment of fine to further undergo R.I. for one month, respectively. On due consideration, the substantive jail sentence awarded under Section 323/ 34 of the IPC as well as the fine sentence imposed under Sections 307/34 and 323/34 IPC are also affirmed.

(14) So far as the quantum of substantive jail sentence under Section 307/ 34 of the IPC is concerned, the Appellant had served almost major part of the sentence and is languishing in jail since 4 years 3 months and 15 days till today. The Appellant, at the time of commission of offence, was at the age of 23 years. He is the first offender with no criminal antecedents and the Appellant pleaded that he will not commit any offence in future. He prays for an opportunity to live in the village and society peacefully.

(15) On due consideration, I am of the view that with regard to the sentence imposed upon the Appellant under Section 307/34 IPC, the period already undergone by him would meet the ends of justice.

(16) Consequently, the appeal filed by the Appellant is allowed in part. The impugned judgment of conviction against the Appellant in Sessions Trial No. 225 of 2011 dated 27.6.2013 under Sections 307/ 34 and 323/34 of the IPC passed by the trial Court is hereby affirmed. The substantive jail sentence awarded under Section 323/ 34 of the IPC as well as fine sentence imposed on both the counts are also hereby affirmed. However, the substantive jail sentence of RI for 5 years awarded under Section 307/ 34 of IPC is hereby reduced and instead the Appellant is now sentenced to the period already undergone by him.

(17) The Appellant be released forthwith after realization of the fine amount as awarded by the trial Court and affirmed by this Court, and if not required in any other case. If he has not deposited the fine amount,

he shall undergo the jail sentence as per the default clause mentioned in the impugned judgment, till realization of the fine amount/ serving of the default sentence.

(18) In view of above, the appeal is partly allowed.

Sd/-

(Chandra Bhushan Bajpai)
JUDGE

Nimmi