

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Appeal No. 180 of 2011**

Subhash S/o Lakhmu Bhatra, Occupation – agriculture, R/o village Junawani
Chowki, Bakawand, District Bastar (CG)

---- Appellant**Versus**

State of Chhattisgarh through P.S. Nagarnar, District Bastar (CG)

---- Respondent

For Appellant	:	Shri Akhand Pratap, Advocate
For Respondent/State	:	Smt. Shobha Kashyap, Dy. G.A.

Hon'ble Shri Justice P. Sam Koshy**Judgment On Board****11.11.2017**

Present is a jail appeal assailing the judgment of conviction dated 27.12.2010 passed by the Sessions Judge, Bastar place Jagdalpur (CG) in S. T. No. 128/09 whereby the appellant has been convicted for the offence under Section 307 of IPC and sentenced to undergo RI for four years with fine of Rs.500/-, in default of payment of fine to further undergo RI for one month.

2. The case of the prosecution, in brief, is that the appellant is said to have attacked the complainant Sonmati (PW-1) in the intervening night of 29/30.08.2009 with a Tangia. As a result of the attack, the complainant received two severe injuries on her head. An FIR in this regard was lodged against the appellant for the offence punishable under Section 307 of IPC and he was prosecuted for the same before the trial Court.

3. During the course of trial the prosecution examined as many as 8 witnesses. No witness has been examined on defence side. After

conclusion of trial, the Court below found the appellant guilty for having committed the offence under Section 307 of IPC and sentenced him to undergo RI for four years with fine of Rs.500/- with default stipulation leading to the filing of the present appeal.

4. Challenge to the impugned judgment is on the ground that the prosecution has not been able to establish its case by leading any independent witnesses. It is contended by the counsel for the appellant that considering the evidence come on record, the offence under Section 307 IPC is not made out against the appellant and at best, the present case may fall under Section 335 IPC as from the record it is reflected that the appellant was not in any manner having any intention or ill will against the complainant so as to attack her rather it is on the provocation of the complainant, the appellant had assaulted her. Thus, prayed for setting aside of the judgment.

5. State counsel, on the contrary, referring to the record submits that the case of the prosecution stands established from the material witnesses examined before the Court below and it has also the support of an eye witness. Therefore, the finding of the Court below cannot be held to be bad in law or erroneous and prayed for dismissal of the appeal.

6. Having considered the rival contentions put forth on either side, since the offence levelled against the appellant is under Section 307 of IPC, all that this Court is required to see is whether the case of the prosecution stands proved from the evidence of the complainant or not. The complainant Sonmati (PW-1) in her deposition has stated that the incident occurred when she tried to intervene in the fight that was going on between the appellant and his wife outside their house. In the course of intervention, the appellant is said to have picked up a Tangia and assaulted the complainant as a result of which she received two severe injuries on her

head. This deposition of the complainant PW-1 stands fully corroborated from the cross-examination of Kamla Bai (PW-7), a neighbour of the complainant who in her statement has also proved the case of the prosecution by deposing that she had seen the appellant assaulting the complainant PW-1. In the light of there being an independent witness in support of the case of the prosecution coupled with the statement of the complainant herself, this Court is of the opinion that the entire case of the prosecution stands proved and established beyond reasonable doubts. Further, the appellant has not been able to show any substantive material to take a different view than what has been taken by the Court below. Thus, this Court does not find any infirmity or illegality on the part of the Court below in holding the appellant guilty for the offence punishable under Section 307 of IPC.

7. The appeal thus fails and is accordingly dismissed.

8. The Office report shows that the appellant has been released from jail on completion of his jail sentence on 13.07.2012. Hence, no further order for his surrender etc. is required in the light of the appeal being dismissed.

Sd/-
(P. Sam Koshy)
JUDGE