

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO. 1139 OF 2001

Budhram @ Matli, aged about 45 years, S/o Shri Samdu Bhatra, R/o Village Bade Kanhera, P.S. Kondagaon, District Bastar (C.G.)

... Appellant

versus

The State of Chhattisgarh

... Respondent

For Appellant	:	Ms. Nirupama Bajpai, Advocate, under instructions of Mr. Sudhir Bajpai, Advocate.
For Respondent-State	:	Mr. D.R. Minj, Dy. Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

07/10/2017

1. The present is an appeal preferred by the Appellant assailing the judgment of conviction and sentence dated 28.9.2001 passed by the Fourth Additional Sessions Judge, Bastar at Jagdalpur, in Sessions Trial No. 370 of 2000.
2. Vide the impugned judgment, the Appellant has been convicted for the offence punishable under Section 324 of IPC and sentenced to undergo R.I. for 3 years along with fine of Rs.500/- with default stipulation of an additional R.I. for 4 months in the event of payment of fine amount is not made.
3. Brief facts of the case as per the prosecution are that on the night of 23.4.2000 the Appellant is said to have reached the house of the Complainant, Miriram, and called upon him and when the Complainant came out of his house, the Appellant asked him for a bedding with which the Appellant wanted to sleep on the verandah of the house of the Complainant. When the Complainant was about to enter the room for bringing the mattress, the Appellant is said to have assaulted him with an axe (*tangi*) on the back side of his neck from behind and thereafter

immediately fled from the scene of occurrence. The Complainant raised an alarm when his wife Sonmati (PW-4) who was sleeping inside came out and the Complainant is said to have informed his wife and hearing the alarm of the Complainant, his neighbours also arrived at the spot including Shriram (PW-2) and Dhansuram (PW-3). The matter was reported to the Police Station Kondagaon, FIR which of is Exhibit P-1.

4. After conclusion of the trial, the Court below vide the impugned judgment, convicted the Appellant for the offence punishable under Section 324 of IPC and ordered him to undergo the sentence as mentioned in the preceding paragraph.

5. It is this judgement of conviction and sentence which has been assailed by the Appellant in the present appeal.

6. Learned Counsel for the Appellant submits that it is a case where the alleged incident is that of around midnight when it was dark. The assault was made from behind. The Complainant was not able to see the person who had assaulted. The injuries also was not very grievous so as to attract the offence under Section 324 of IPC. There was no eye-witness to the incident. She thus prayed for setting aside of the sentence or for suitably modifying the sentence converting it for a lesser offence.

7. Per contra, learned Counsel for the State opposing the appeal submits that the prosecution in addition to the deposition of the Complainant-Miriram (PW-1) has also examined independent witnesses Shriram (PW-2) and Dhansuram (PW-3) who are the two persons who rushed to the spot upon hearing the alarm. The prosecution case thus stands fully established and proved and the appeal therefore prayed for to be rejected.

8. Having considered the rival contentions put forth on either side and on perusal of the record, if we peruse the deposition of the Complainant-Miriram (PW-1) it clearly reveals that the Complainant had clearly seen the person who had called him and they had a small discussion and thereafter at the instance of the Appellant, the Complainant had reason to go inside the house to bring the mattress when the assault was made and the Appellant thereafter fled from the scene.

9. The statement of the Complainant (PW-1) stands corroborated with the statement of his wife Sonmati (PW-4). In addition, the evidence of the Complainant is corroborated from the evidence of Shriram (PW-2) who has clearly deposed of reaching the spot immediately after the incident and from whose deposition it also reveals that they had witnessed the Appellant being caught on the same night with a knife in his hand.

10. All these evidence if taken into consideration, this Court has no hesitation in reaching to the conclusion that the Appellant has been rightly convicted for the offence under Section 324 of IPC though he was charged for the offence under Section 307 of IPC. Thus, the finding of the Court below does not warrant any interference as there is no infirmity nor is the finding contrary to the evidence on record.

11. The appeal thus fails and is accordingly dismissed.

12. It has been informed that the Appellant has already completed his jail sentence and has been released from jail on 15.8.2002 and as such no steps have to be undertaken.

Sd/-
(P. Sam Koshy)
Judge