

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.250 of 2001**

Chandra @ Devidayal S/o Bandha, aged about 21 years, occupation Driver,
R/o Village Charpa, Shivpur, Police Chowki, Charpa Thana Baikunthpur,
District Korea.

---- Appellant

Versus

State of Chhattisgarh, through the Police Chowki, Charpa, Thana
Baikunthpur, District Korea (CG).

---- Respondent

For Appellant
For respondent/State

Shri Shobhit Kosta, Advocate.
Shri Vinod Tekam, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy**Judgment on Board****14/02/2017**

1. The appellant stands convicted for the offence under Section 307 IPC and have been sentenced to undergo RI for 5 years with default stipulations by the 1st Additional Sessions Judge, Baikunthpur, District Korea, in Sessions Trial No.56 of 2000.
2. The case of the prosecution in brief is that, an FIR, Ex.P/5 was lodged by PW-1, Kalyan, brother in law of injured victim alleging that present appellant and his father have assaulted Raju, PW-10. It is alleged that on the date of incident i.e. on 02.10.1999 the victim PW-10 was going to the field for answering nature's call. Enroute, he found the appellant sitting in their field and on seeing the victim, the appellant is said to have assaulted him from the back with an Axe on account of which the victim is said to have sustained injuries.

3. After the FIR was lodged at Police Station outpost Charpa under police Station Baikunthpur, District Korea, the matter was put to trial against the appellant and his father Bandhan.
4. The prosecution, in all, has examined as many as 13 witnesses and there was no witness examined on behalf of the defence.
5. After conclusion of trial, the court below found the appellant to be guilty of having committed the offence and accordingly convicted him for the offence under Section 307 IPC and sentenced him for the period as enumerated in the first paragraph of this judgment. At the same time, the trial court found that the prosecution has not been able to prove the case against Bandhan, father of the appellant, and acquitted him from all the charges levelled against him. It is this judgment of conviction of the appellant which is under challenge in the present appeal.
6. Learned counsel appearing for the appellant submits that the prosecution has not been able to lead proper evidence to prove its case beyond all reasonable doubts. According to the appellant, it is a case where there are no eyewitness to the incident by which the commission of offence by the appellant could have been proved beyond all reasonable doubts. It was also the contention of the appellant that the nature of the injuries itself shows that the conviction of the appellant for the offence under Section 307 IPC was not proper. The appellant should have been convicted for a lessor offence. It was further contended that the nature of the attack and the circumstances and the evidence which have come on record by itself would establish

the fact that the appellant never had any intention for killing the injured victim. Neither is there any material to substantiate that there were ingredients for making out an offence under Section 307 IPC. It was further argued that the nature of the injuries was also simple in nature and that the appellant did not undergo treatment for a long period which itself shows that the injuries were simple in nature.

7. It is further alleged that it is an incident that took place at about 7 pm in the evening and that too in an open field where it was dark, and therefore there was no possibility of victim to have been seen the appellant committing the crime. Therefore, the benefit of doubt should have been given to the appellant and prayed for the interference with the judgment impugned.
8. Per contra, learned counsel for the State opposing the appeal submits that it is a case where the prosecution has infact led sufficient evidence to establish the commission of offence by the appellant. In addition to the statement of PW-1, Kalyan, the complainant, he further referred to the statements of PW-10, Victim Raju, PW-13, Dr. D.K. Chikanjuri and PW-9, Bai Kunwar, wife of the victim, to show that the case of the prosecution has been established from their evidences. Therefore, there is no scope of interference. It is also submitted that it is a case where the court below has itself considered the case of the appellant sympathetically while awarding the sentence of only 5 years.
9. Having heard the rival contentions put forth on either side and on perusal of records it would be relevant at this juncture to refer to

deposition of PW-10, Raju, injured victim. In his statement he has very categorically narrated the incident of being assaulted by the appellant. He has also submitted that there was a brief altercation that took place immediately before the assault was made which itself establishes the case of the prosecution beyond all reasonable doubts. The statement of PW-1, Kalyan, stands corroborated by the statement of PW-9, Bai Kunwar, who is wife of the injured victim. As per statement of PW-9, she had come out of the house for some work when she found the victim PW-10, her husband lying on the ground having received injury on the head and the appellant standing near the spot. The appellant was having wooden stump in his hand. On seeing PW-9, the appellant is said to have ran away from the spot. According to PW-9, the motive behind the assault was that the appellant's family member i.e. his father, co-accused in this case, and his brother are accused in a case under Section 376 IPC and in which the victim in this case was a witness and they had been pressurizing the victim, PW-10 for changing his statement before the court.

10. At this juncture, it would be relevant to refer statement of PW-13 Dr. D.K. Chikanjuri, who had treated the victim. In his cross examination para 8, he has categorically stated that the injury was cut injury and that no fracture was found. He opined that only if proper treatment would not have been given in time, the injury could have been fatal. Thus, from the evidence which have been discussed in the preceding paragraph what is clearly reflected from the deposition is the fact that incident has been proved by the prosecution by leading cogent and

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sufficient evidence of the incident to have been occurred and that it was the appellant alone who had assaulted the victim. Thus, the occurrence of the incident and the offence to have been committed by the appellant stands fully established and proved beyond reasonable doubt.

11. Now whether the offence made by the appellant would fall within the ambit of Section 307 IPC or not, if we look into the statement of PW-13, the Doctor, it clearly reflects that the assault was made at the back side of the head on the bottom area close to the neck and the injury sustained was only a cut injury. There was no fracture caused. The evidence also does not reveal that the victim had to undergo prolonged treatment nor was there any sort of complications found as a result of the said injury. Further, from the evidence, it also reflects that there was only one injury which has been sustained by the victim and as such it is very difficult to state that the present appellant had any intention of killing the victim. Nor does it reflect that the present appellant intended to cause any such injury with which the victim would have died. In the absence of any such evidence, this court is of the opinion that offence under Section 307 IPC against the appellant is not made out and that it is a case which at best could be brought within the ambit of Section 324 IPC.

12. Accordingly, the appeal stands partly allowed. The conviction of the appellant under Section 307 IPC is set aside. However, he is convicted for the offence under Section 324 IPC. Considering the fact that the appellant at the relevant point of time was a young boy of 21

years of age and the incident having been occurred about 17-18 years ago and conviction also being around 17 years ago, in addition, the appellant was on bail for the last 17 years, this court is of the opinion that ends of justice would meet if the sentence is reduced to the period already undergone by the appellant which in the instant case is about 7 months time. It is ordered accordingly.

13. Accordingly, the appeal is partly allowed to the above extent. The appellant is on bail. The bail bond of the Appellant shall remain in operation for a period of six months from today in view of provisions contained in Section 437-A Cr.P.C.

Sd/-
P.Sam Koshy
Judge