

**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Appeal No.596 of 2005**

Ishwar Sahu, S/o Chabi Ram Sahu, aged about 30 years, R/o Village Baronda, P.S Rajim, Distt. Raipur (CG).

**---- Appellant**

**Versus**

State of Chhattisgarh, through Police Station, Rajim, Distt. Raipur (CG).

**---- Respondent**

---

For Appellant  
For respondent/State

Shri B.D. Badgaiya, Advocate.  
Shri Vinod Tekam, Panel Lawyer.

---

**Hon'ble Shri Justice P. Sam Koshy**

**Judgment on Board**

**11.11.2017**

1. The appellant stands convicted for the offence punishable under Section 307 IPC and have been sentenced to undergo RI for 5 years with fine of Rs.500/- on two counts on account of assault made on Bisahat and Madhuri, with default stipulation, vide judgment dated 02.05.2005 passed by the Sessions Judge, Raipur, in Sessions Trial No.325/2004.
2. As per prosecution story, at around 11 AM in the morning the present appellant is said to have assaulted Bisahat, PW-5 and Madhuri, PW-6 with Spade near his residence causing grievous injuries. The matter was reported with Police Station, Rajim, District Raipur and the matter was put to trial before the Sessions Court at Raipur.
3. There were 10 witnesses examined on behalf of the prosecution side whereas, no witness were examined on behalf of defence. After

completion of trial, the court below vide the impugned judgment, finding the appellant to be guilty of having committed the offence, convicted and sentenced him as mentioned in paragraph 1 of this judgment.

4. Learned counsel for the appellant assailing the impugned judgment of conviction submits that the case may not be made under Section 307 IPC as there was no intention on the part of the appellant to assault PW-5 and PW-6. It is only due to the situation which arose and because of boundary dispute that the two had, the incident occurred. He further submits that it is a case where there is only one injury sustained by both the injured persons i.e. PW-5 and PW-6 which further shows that the appellant never had any intention to kill them. He further submits that it is a case where PW-5, Bisahat and PW-6, Madhuri have stated before the court that they were hospitalized only for a couple of days whereas, as per police document both the injured remained in hospital for about 10 days.
5. He has further stated that the intention of not killing to PW-5 and PW-6 is also established from the attack which was made by the Spade and not by any weapon of assault. Further, even if the case of the prosecution is accepted in its entirety, at best it could be a case under Section 324 IPC and for which the appellant has already remained in custody for about more than one year and four months. Therefore, the impugned judgment may be modified to the extent of conviction be converted to one under Section 324 IPC and the sentence be reduced to the period already undergone.
6. The State counsel however opposing the appeal submits that it is a

case where the statements of PW-5 and PW-6 are sufficient proof led by the prosecution. Further, the case of the prosecution also stands established on the statement of PW-7, Toran, an eyewitness to the incident. He further submits that both the injured persons had received grievous injuries on the head which itself would show that attack was on the vital part of the body. Therefore, the conviction has been rightly made under Section 307 IPC and thus prayed for rejection of the appeal.

7. If we look into the evidence which have come on record particularly on the part of PW-5, PW-6 and PW-7, it clearly reflects that there was long standing boundary dispute between the two families and that on the date of incident also it appears that there was some boundary dispute arose between the two and in the heat of passion, the appellant has assaulted PW-5 and PW-6. Document would also show that both the injured persons had received only one injury each. The article used for the assault was a Spade which is an agriculture equipment and not a weapon of assault in the ordinary course. There seems to be some discrepancy with regard to period of hospitalization that the two had undergone.
8. Looking to the entire factual matrix of the case, this court is of the opinion that it is a fit case where the offence under Section 307 IPC for which the appellant is convicted deserves to be converted to one under Section 326 IPC. It is ordered accordingly that the appellant is acquitted of the charge under Section 307 IPC, but at the same time, he stands convicted for the offence under Section 326 IPC.

9. So far as sentence is concerned, considering the fact that it is an appeal of the year, 2005 and the appellant had already been released on bail on 07.11.2005 i.e. almost 12 years back, the period of sentence is reduced to the period already undergone by the appellant i.e. for about one year and four months.
10. The appeal stands allowed in part.

**Sd/-**  
(P.Sam Koshy)  
**Judge**

inder