

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 785 of 2013

- Indra Kumar Yadav s/o. Bharosa Yadav aged about 25 years, r/o. Village Sandi, Post Office Bhansol, Tahsil and PS Arang, Civil and Revenue District Raipur (CG).

---- Appellant

Versus

- State of Chhattisgarh, Through SHO, PS Arang, Civil and Revenue District Raipur (CG).

---- Respondent

For Appellant	:	Mr. Janak Ram Verma, Advocate.
For Respondent/State	:	Mr. Ramakant Pandey, PL.

Judgment on Board

19-5-2017

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 11-7-2013 passed by the IVth Additional Sessions Judge, Raipur in Session trial No.64 of 2013 whereby the trial Court, after holding the appellant guilty for commission of offence, convicted the appellant under Section 307 of IPC and sentenced him to undergo R.I. for ten years and to pay fine of Rs. 500/-, in default of payment of fine to undergo additional S.I. for five days.
2. The case of the prosecution, in brief, is that on 23-12-2012 at about 8 – 9 pm when injured Neelkanth was standing at shop, appellant and others came there and deliberated certain conversation that grass-land which was in their possession was got vacated by the villagers. In that very land certain paddy and straw were being kept by others and the appellant objected to it and stated that he will set it on fire. Having said

so, injured Neelkant gave match box to him and said he may set it on fire. On such altercation the appellant became enraged and tried to assault by club to Neelkant which was intervened by Vishnu Sahu, who caught hold of club, thereafter Neelkant was removed from the place of incident. After certain time, again appellant came back and assaulted Neelkant from behind on his head by way of wooden door frame plank whereby he sustained grievous injury and fell down on the spot. Inured Neelkant was taken to the hospital and was admitted. Thereafter, first information report was lodged on the basis of which a case was registered under Sections 294, 506 and 307 of the IPC against the appellant.

3. First information report was lodged vide Ex.P/7 on 23-11-2012, MLC was conducted vide Ex.P/9 and subsequently medical report of Shri Blaji Super Specialty Hospital, Raipur was proved vide Ex.P/17, map of the spot was prepared vide Ex.P/5 and part of wooden door frame by which assault was made was seized vide Ex.P/2 on the basis of memorandum Ex.P/1.
4. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short, 'the Code'). After completion of investigation, charge sheet was filed against the appellant and charges under Sections 294 and 506 and 307 of the IPC were framed.
5. In order to bring home the guilt of the accused/appellant, the prosecution on their behalf examined three eye-witnesses

namely Thanu Ram (PW/1), Ramanand Dhiwar (PW/2) and Nand Kumar Sahu (PW/4). Injured Neelkant could not be examined which is evident from the order sheet dated 16-5-2013 of the trial Court wherein it was found that the injured was incapable to depose because he was unable to understand anything and was in semi conscious, he was brought to the Court in a wheel chair. In this case, Dr. N.L. Bhu Arya was examined as PW/6 and Dr. Anindo Roy was examined as PW/8. Initially Dr. N.L. Bhu Arya examined the victim and subsequently Dr. Anindo Roy (PW/8) treated the victim.

6. The accused was examined under Section 313 of the Code, in which no explanation was given by him. During trial the appellant abjured guilt and claimed to be tried. The appellant on his behalf examined D/1 Parvati Yadav DW/2 Chunnu Sahu and DW/3 Aaju Nirmalkar.
7. Upon consideration of evidence, learned Additional Sessions Judge, Raipur, after providing opportunity of hearing to the parties and after evaluating the entire evidence held that prosecution has established the guilt of the accused beyond reasonable doubt and while acquitting the appellant under Sections 294 and 506 Part-II, convicted him under Section 307 of the IPC and sentenced him to undergo RI for seven years and to pay fine of Rs.500/-, with default clause. Feeling aggrieved and dissatisfied with the said judgment of conviction

and order of sentence passed by the trial Court, the appellant has preferred the instant appeal.

8. Mr. Janak Ram Verma, learned counsel appearing for the appellant would submit that the case would not fall under Section 307 of the IPC as there was no premeditation on the part of the accused/appellant to cause hurt to the victim, and it was out of sudden provocation over some dispute arising between the accused and the victim where the appellant in a heat of passion gave only one blow on his head which led to the present incident. The counsel referred to the statements of PW/1 Thanu Ram, PW/2 Ramanand Dhiwar and PW/4 Nand Kumar Rao who have categorically stated that on a trivial issue of keeping paddy and straw in a particular place, the dispute arose between the two, therefore, conviction cannot be sustained under Section 307 of the IPC. He would further submit that the order sheet of the court below reflects that injured could not be examined by the prosecution and therefore its case becomes doubtful. According to the counsel for the appellant, even the statement of the doctor is not conclusive and therefore the conviction of the accused under section 307 IPC is not sustainable in the eye of law. He placed reliance on **(2008) 10 SCC 218 in the matter of Balmiki Singh Vs Ramchandra Singh and others, (2004) 9 SCC 27 in the matter of R. Prakash vs. State of Karnataka and (2009) 4 SCC 57 in the matter of Ramdas Vs. State of Madhya Pradesh** and would submit that in the instant case there was only single blow was made on the head of the

injured, therefore, intention can be gathered and present case would not fall within the ambit of Section 307 of the IPC. He would further submit that the trial Court while convicting and sentencing the appellant under Section 307 of the IPC has not considered the relevant aspects of the case and thereby committed illegality. It is further submitted that the appellant is in jail since 25-12-2012 whereby he has already served jail sentence more than 4 1/2 years therefore, he may be acquitted of the charge.

9. On the other hand, learned State counsel opposes the appeal and would submit that the judgment of conviction and order of sentence passed by the trial Court are well merited which does not call for any interference.
10. I have heard learned counsel for both the parties and perused the judgment impugned including the record of court below and statements of the witnesses.
11. In order to appreciate the arguments advanced on behalf of the parties, I have examined the evidence adduced on behalf of the prosecution.
12. In the present case, on 23-12-2012 first information report (Ex/P/7) was lodged which was made by Nand Kumar Rao (PW/4). FIR purports that on the date of incident when the injured Neelkanth was standing in front of the shop, at that time, present appellant came there and stated that earlier he was removed from the part of land wherein he had made

encroachment, it being the Government grass land on the objection of villagers. However, after his removal some others were keeping paddy and straw etc and being enraged by that he stated that he would put it on fire. Thereafter, on such issue, certain altercation took place in between the injured Neelkant and the appellant. At that time the appellant tried to give a blow on the head of injured Neelkant by way of club which was intervened by Vishnu Sahu, club was caught hold and subsequently Neelkant was removed from the place. Subsequently, again the appellant came back from behind and assaulted Neelkant on his head by way of wooden door frame. In effect thereto, he fell down.

13. The statement as was made in court by Nand Kumar Rao (PW/4) is also similar. Initially appellant and injured had an altercation which was intervened by them and thereafter they were separated and appellant went back to his house. Subsequently when injured Neelkant was standing in front of the shop and was talking by mobile phone, at that time the appellant holding a part of wooden door frame came from behind the injured and assaulted him on his head by it whereby blood started oozing and he fell down. Subsequently he was taken to hospital wherein Doctor examined him and considering the nature of injury he referred the injured to Raipur. Thereafter injured Neelkant was admitted at Shri Balaji Super Specialty Hospital, Raipur. The FIR was proved vide Ex.P/7 and also map of place vide Ex.P/8 which was made by Patwari. This witness has also proved the memorandum

statement of accused vide Ex.P/1 as also seizure of wooden door frame vide Ex.P/2.

14. The said statement of Nand Kumar Rao (PW/4) is corroborated by the evidence of other eye-witness namely PW/1 Thanu Ram. He also narrated the same fact. Initially some dispute took place in between the accused and injured Neelkant which was intervened and both the appellant and injured were pacified. Subsequently accused came back with wooden plank of door frame and assaulted on the head of Neelkant.

15. Likewise, the statement of PW/2 Ramanand Dhwar has also stated that initially dispute took place in between injured and accused that uncle Kartik Ram kept the paddy and straw in the land from which accused was evicted and landed into dispute which was pacified. Subsequently again the appellant came back and assaulted. Cross examination of this witness discloses the fact that such assault was made to Neelkant by the appellant.

16. Dr. N..L. Bhu Arya (PW/6) has stated that on 23-12-2012 at about 10.15 am injured was brought to the Primary Health Centre at Aarang and he was in semi conscious condition. Report was given vide Ex.P/9 which reflects that lacerated wound of 3 ½ x 1 ½ cm was on the head of injured and he was in semi consciousness and was in severe irritable condition and he was advised to better treatment at Raipur. This witness further proved the query report in respect of the

wooden plank of door frame which was seized from the appellant on the basis of memorandum statement (Ex.P/1) and seizure (Ex.P/2). According to his report and query, Doctor opined that such injury could have been sustained by such wooden plank.

17. Dr. Anindo Roy (PW/8) who subsequently examined injured has stated that when injured Neelkant was admitted to hospital on 23-12-2012, at that time he was in unconscious condition. After examining the CT-scan it was found that there was fracture in right temporal bone and also blood was clotted in the head which was operated, he gained his conscious slowly and on 16-2-2013 he was discharged. It is further stated that at the time of discharge the patient was in conscious stage, but he was unable to eat, drink, speak, walk or to perform any work. It is further stated that the injury was grievous and because of that he could have lost his life. All the documents of treatment have been proved vide Ex.P/17. The said treatment is further corroborated by the observation made by the trial Court in its order dated 16-5-2013 wherein it shows that when the injured Neelkant was produced in Court on a wheel chair, when his name was asked, he could not tell even his name, he was identified by his brother and was shown to be in unconscious stage. On a question being asked to him, no reaction or effect was noticed on him and it was ultimately felt by the Court that injured was not able to give any evidence. Therefore, the statement of the Doctor Anindo would show that the injury caused to Neelkant, the condition of

injured became that of the vegetative state. He was neither able to walk nor talk or understand and even able to eat or drink. The statement of the eye-witnesses PW/1 Thanu Ram, PW/2 Ramanand Dhiwar and PW/4 Nand Kumar Rao clearly established that the injury was caused by the appellant.

18. Now the question remains to be seen in this case is as to whether the incident took place all of a sudden or heat of passion or with cool mind. The statements of the eye-witnesses would suggest that initially quarrel took place in between injured and appellant which was intervened by the persons and the matter was pacified and the appellant went back to his house. It was stated by them that again the appellant came back holding a part of wooden door frame, while injured Neelkant was standing in front of shop and was talking by mobile phone, he assaulted him on his head from back side. Therefore, the time which was spent in between going back to the house and coming with preparation taking a wooden plank suggest the fact that it was not out of sudden provocation or at heat of moment. The witnesses have categorically established that initially the dispute was pacified, but subsequently the incident happened thereby time gap in between the two incidents does not suggest the sudden fight in the heat of passion. The fact that the appellant came back from his house holding a part of wooden door frame would suggest that he prepared himself to cause blow and the blow which was directly made on the head and not the other part of the body. Consequently, the act of the appellant speaks a lot

that he had intention to cause grievous injury to the victim to cause death which has even been defined by the Doctor Anindo Roy (PW/8).

19. Therefore, taking the vegetative stage of affair of the injured and over all view of the situation, the nature of offence committed by the appellant, the injured has to pass through the vegetative stage of rest of his life cannot be ignored. The case laws which are relied on by the appellant do not help him for the reason that the facts involved in those cases are different because in this case preparation has been established by the witnesses and the blow which was caused on the head of injured Neelkanth goes to show the mental preparation of the appellant. Therefore, motive in this case appears to be present.

20. Considering all the facts and circumstances of the case and on close scrutiny of the evidence and medical report, I am of the considered opinion that the trial Court while convicting and sentencing the appellant under Section 307 of the IPC, has not committed any illegality or infirmity warranting any interference by this Court.

21. Accordingly, the appeal being devoid of merit is liable to be and is hereby dismissed.

Sd/-

(Goutam Bhaduri)

Judge