

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1178 of 2001

Sawant, aged about 42 years, S/o Shri Sevuak Sahu, Agriculturist, R/o Village Betar, P.S. and Tahsil Bemetara, District Durg, Chhattisgarh

---- Appellant

versus

The State of Chhattisgarh

--- Respondent

For Appellant	:	Shri P.K.C.Tiwari, Sr. Advocate with Shri Shashi Bhushan, Advocate
For State/Respondent	:	Shri U.K.S. Chandel, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

3.1.2018

1. The instant is an appeal against the judgment dated 28.11.2001 passed in Sessions Trial No.333 of 1999 by the 2nd Additional Sessions Judge (FTC), Bemetara convicting and sentencing the accused/Appellant as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 307 of the Indian Penal Code	Rigorous Imprisonment for 4 years and fine of Rs.3,000/- with default stipulation

2. Facts of the case, in brief, are that on 4.5.1999 in the midnight at about 12 O'clock, Sunhar (PW1) lodged a named First Information Report (Ex.P14) against the Appellant alleging that due to a previous enmity regarding a land, on 3.5.1999 at about 10:30 p.m., when he was sleeping near the pump-house, the Appellant, who was his brother, came with a Tangiya and assaulted him due to which he sustained grievous injuries near his eyes. Sunhar (PW1) was medically examined by Dr. P.K. Bajpai (PW10) immediately thereafter. His report is Ex.P12 in which he found incised wound measuring 6x3x4” with right maxilla bone cut down with all the structure and muscles passing and lower eyelids also cut down

extending from upper part of right side of nose to upper part of ear, bleeding present. He opined that the injury was caused by a sharp cutting object and if immediate treatment had not been given to the injured, his death would have been possible. During investigation, on the basis of memorandum statement (Ex.P5) of the Appellant, a Tangiya was seized from him vide Ex.P6. The said Tangiya was examined by Dr. P.K. Bajpai (PW10), who, vide his report (Ex.P13), opined that the injury suffered by the injured could be caused by the said Tangiya. Vide Ex.P8, plain and blood stained soil, two slippers, one torch, one blanket spread over a cot and one *kathari* (a bedding) were seized. All these articles were stained with blood. All the seized articles were sent to the Forensic Science Laboratory for chemical examination. FSL Report is Ex.P10 which states that blood stains were present on all the articles except the plain soil. Statements of witnesses under Section 161 of the Code of Criminal Procedure were recorded. On completion of the investigation, a charge-sheet was filed against the Appellant for offence punishable under Section 307 of the Indian Penal Code. Charge was framed against him under Section 307 of the Indian Penal Code.

3. In support of its case, the prosecution examined as many as 11 witnesses. Statement of the Appellant was recorded under Section 313 of the Code of Criminal Procedure in which he denied the guilt. 1 witness has been examined in his defence.
4. After trial, the Trial Court convicted and sentenced the Appellant as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Senior Counsel appearing for the Appellant argued that

there are material contradictions and omissions in the evidence of the prosecution witnesses. The time of alleged incident was a dark night and the time being a dark night, visibility was not possible. Therefore, it is suspicious that Complainant Sunhar would have identified the Appellant. It is further argued that even if the entire evidence is taken as it is, the offence under Section 307 of the Indian Penal Code is not made out and instead thereof, offence under Section 308 or Section 324 of the Indian Penal Code is made out. It is also prayed that the Appellant has already undergone about 4 months, the matter is pending since 1999 and no purpose would be served to send back the Appellant to jail. Therefore, he may be sentenced with the period already undergone by him. Learned Senior Counsel placed reliance on a judgment passed by a Single Bench of this Court on **7.10.2016 in Criminal Appeal No.80 of 1995 [Anand Tambe v. State of M.P. (now Chhattisgarh)]**.

6. Per contra, Learned Counsel appearing for the State, supporting the impugned judgment, opposed the arguments advanced on behalf of the Appellant.
7. I have heard Learned Counsel appearing for the parties and perused the record with due care.
8. It is not disputed in this case that both the Appellant and Complainant Sunhar (PW1) are real brothers. Sunhar (PW1) has stated that on the date of incident at about 10:00 p.m., when he was sleeping in his field, he was assaulted by the Appellant and as soon as he woke-up, he saw that a Tangiya was stuck near his right eye. The Appellant took out the Tangiya and ran away from there. On being shouted by him, Anand and Bharat reached there.

He told them about the assault given to him by the Appellant. He has categorically stated that where he was sleeping, an electric bulb was enlightened and in the light of the said bulb he had identified the Appellant. Though this fact is not mentioned in his case diary statement (Ex.D1) yet he denied the suggestion put before him that there was darkness at the place of occurrence and therefore, he could not identify the assailant.

9. Vijay (PW2) is the son of injured Complainant Sunhar. He has stated that when he reached the spot, he saw that an injury was present near the eye of his father. On being asked, his father told him that the injury was caused by the Appellant by a Tangiya.
10. Shabana (PW3) is the wife of Complainant Sunhar. She has stated that when she reached the spot, she saw the injury near the eye of his husband. On being asked, her husband told her that the Appellant assaulted him with a Tangiya.
11. Anand (PW4) has stated that the field of Complainant Sunhar is situated adjacent to his house. In the night, he heard sound of rattle. On this, he, Lalit, Bharat and Shiv went to the place of occurrence and there they saw the Complainant in injured condition. On being asked, the Complainant told them that someone had assaulted him and ran away. This witness has been declared hostile. He has not further supported the case of the prosecution.
12. Kotwar Mehtarudas (PW5) has deposed that at about 11:00 p.m., Vijay, son of the Complainant came and told him that someone had assaulted his father. He went to the spot where he saw Complainant Sunhar in injured condition. A cut injury was present near the eye of Sunhar. They had taken him to the hospital.

Sunhar had not told them anything about the assault given to him.
He has been declared hostile.

13. Badriprasad (PW7) has stated that torch, plain and blood stained soil and clothes lying on the cot were seized in his presence.
14. Lalbahadur (PW8) has stated that at about 9:00 – 10:00 p.m. when he reached the spot he saw the Complainant in injured condition. He has further stated that Complainant Sunhar told him that his brother (the Appellant) assaulted him.
15. Assistant Sub-Inspector Murli Manohar Yadu (PW9) is the witness who partly investigated the offence in question. He recorded memorandum statement (Ex.P5) of the Appellant and based on which he made seizure of a Tangiya vide Ex.P6. He also made seizures vide Ex.P8.
16. Dr. P.K. Bajpai (PW10) examined Complainant Sunhar on 4.5.1999. His report is Ex.P12 in which he found incised wound measuring 6x3x4” with right maxilla bone cut down with all the structure and muscles passing and lower eyelids also cut down extending from upper part of right side of nose to upper part of ear, bleeding present. He opined that the injury was caused by a sharp cutting object and if immediate treatment had not been given to the injured, his death would have been possible. He has further stated that on 7.5.1999, he examined the seized article Tangiya and opined that the injury sustained by the Complainant could be caused by the said Tangiya.
17. Sub-Inspector M.K. Singh (PW11) is the witness who partly investigated the alleged offence.
18. A minute scrutiny of the evidence available on record reveals that

both the Appellant and the Complainant are real brothers. Between them, some earlier dispute regarding a land was existing. It also reveals that the Complainant sustained the above-stated injury, which is duly corroborated by Dr. P.K. Bajpai (PW10), Vijay (PW2), Shabana (PW3) and Anand (PW4). They have also stated that they had seen the Complainant in injured condition. According to the Complainant, the Appellant had assaulted him. In his cross-examination, he has remained firm. His evidence is supported by Lalbahadur (PW8), who immediately reached the spot after the incident and he has stated that at the same time the Complainant had told him that the Appellant had assaulted him. From the above evidence, it is proved that the Appellant had caused the above stated injury to the Complainant. From the evidence on record, it is also clear that the Complainant had sustained only one above-stated injury.

- 19.** Considering the facts and circumstances of the case and the evidence available on record, particularly, the medical evidence and the fact that only one injury was caused to the Complainant by the Appellant, I am of the opinion that the act of the Appellant falls under Section 308 of the Indian Penal Code and offence alleged under Section 307 of the Indian Penal Code is not made out. Thus, the conviction imposed upon the Appellant is altered from Section 307 of the Indian Penal Code to Section 308 of the Indian Penal Code.
- 20.** So far as sentence part is concerned, Learned Senior Counsel appearing for the Appellant has argued that the incident took place in the year 1999, the matter is pending for about 18 years, the Complainant and the Appellant are real brothers, the incident took

place due to some land dispute, the Appellant has remained in jail for about 4 months and he has no criminal antecedent, therefore, he may be sentenced with the period already undergone by him.

- 21.** From perusal of the record, it appears that the Appellant has suffered jail sentence for about 4 months. The offence was committed in the year 1999. The *lis* is pending for about 18 years. The Complainant and the Appellant are real brothers. The Appellant has no known criminal antecedent. Therefore, in view of the above, I do not feel it appropriate to send back the Appellant to jail. Hence, the Appellant is sentenced with the period already undergone by him. The amount of fine is enhanced from Rs.3,000/- to Rs.10,000/- payable within a period of two months from the date of receipt of a copy of this judgment. In default of payment, the Appellant shall be liable to undergo simple imprisonment for 6 months. If any amount has already been paid towards fine, the same shall be adjusted in the amount of fine imposed/enhanced today.
- 22.** Consequently, the appeal is allowed in part to the extent indicated above.
- 23.** Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge