

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 53 of 2013**

Anand Bahadur S/o Jeth Singh Gond @ Rannu Singh Aged About 28 Years R/o Dakshinpara, Kotadol, Thana-Kotadol, Distt.-Koriya, C.G., Chhattisgarh.

---- Appellant**Versus**

State Of Chhattisgarh Through P.S. Kotadol, Distt.-Kanker, C.G., Chhattisgarh.

---- Respondent

For Appellant	:	Shri Parag Kotecha, Advocate.
For Respondent/ State	:	Shri Rahul Tamaskar, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgment on Board****14/09/2018**

Heard.

(1) Challenge in this appeal is to the judgment of conviction and order of sentence dated 21.12.2012 passed by Learned Second Additional Sessions Judge, Manendragarh, District Koriya, Chhattisgarh in Sessions Case No. 126 of 2011 whereby and whereunder the learned Second Additional Sessions Judge after holding the appellant guilty for the offences under Sections 458, 307 and 324 of the Indian Penal Code, sentenced him to undergo rigorous imprisonment for 10 years, 10 years and 3 years and to pay fine of Rs.1,000/-, Rs.1,000/- and Rs.500/-, in default of payment of fine, to further undergo additional rigorous imprisonment for 4 months, 4 months and 2 months, respectively.

(2) Conviction is impugned on the ground that without there being any iota of evidence, the trial Court has convicted and sentenced the appellant as aforementioned and thereby committed illegality.

(3) As per case of the prosecution, in brief, on the date of incident i.e. 11.9.2011 at about 12:00 am in the midnight, the appellant committed the offence of lurking house trespass with preparation to cause hurt and then assaulted Hirmitiya Bai (PW-1) with a spade on her head and shoulder and injured her seriously. The complainant was immediately hospitalized and she herself lodged FIR Ex. P/3.

(4) Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code'). The investigation was carried out and on completion of the same, the charge-sheet was filed before the concerned Court. The appellant was charged for the offences under Sections 458, 307 and 324 of the IPC. He denied the charges and prayed for trial.

(5) In order to prove the guilt of the appellant, the prosecution examined 15 witnesses. Statement of the appellant was recorded under Section 313 of the Cr.P.C. in which he denied all the incriminating evidence against him, pleaded innocence and false implication in the crime in question. No witness was examined in defense.

(6) After affording opportunity of hearing to both the parties, learned trial Judge convicted and sentenced the appellant as aforementioned.

(7) I have heard learned counsel for the parties, perused the judgment impugned and records of the Court below.

(8) Learned counsel appearing on behalf of the appellant submits that the conviction against the appellant is without the support of evidence beyond reasonable doubt, hence, it is bad in law. In the alternative, it is prayed that the appellant is in jail since 23.9.2011 and almost 7 years in detention is going to be completed, hence, if this Court is not inclined to allow this appeal and acquit the appellant, in that case the sentence of imprisonment imposed upon the appellant be reduced and relaxed in the interests of justice.

(9) Per contra, learned counsel for the respondent/ State opposed the prayer and submission. He further submitted that the prosecution has proved its case beyond reasonable doubt. Hence, there is no scope for interference in the impugned judgment.

(10) In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the prosecution.

(11) Victim – Hirmitiya Bai (PW-1) has stated that on the date and time of incident when she was sleeping, the appellant forced his entry into her house and then assaulted her causing injuries on her head, elbow of the left hand and left shoulder. She went unconscious at the time of incident and she was taken to the police station where she lodged FIR and then she was taken to the hospital. On account of some discrepancy in her

statement, she has been declared hostile and cross-examined by the prosecution which is of no consequence. In cross-examination, her statement has remained unrebutted. In cross-examination, this witness has been confronted with his previous statement Ex. D/2. The omission made before the Court is of no consequence and not material.

(12) Dr. Mahesh Singh (PW-13) had examined the victim on 11.9.2011 and found one incised wound on the upper part of the head with bone deep, size 3 x 1 cm, another incised wound on the upper side of the first injury which was bone deep, size 4 x 1 cm, one abrasion on left forearm, size 4 ½ x ½ cm and swelling on right shoulder size 4 x 4 cm vide his report Ex. P/10. He opined that the first and second injuries were caused by some sharp object and rest of the injuries were caused by blunt object. He advised for x-ray examination of the victim. The finding recorded by this witness regarding the injuries of the victim has not been challenged in his cross-examination.

(13) Dr. Rameshwar Sharma (PW-9) has treated the victim vide his report Ex. P/5 and stated that the skull bone was depressed which was treated accordingly and then the victim was referred to medical college for further treatment. In cross-examination, he admitted that there is no report of radiologist regarding any fracture.

(14) After scrutinizing the evidence of the main witnesses in this case, it appears that there is clear, cogent, un-contradicted and unrebutted evidence available on record to show that the appellant was the person

who had assaulted the injured person. Although the witnesses had not given any statement regarding the weapon of assault but the evidence clearly shows that the assault was made and Hirmitiya Bai (PW-1) sustained injuries.

(14) Dr. Mahesh Singh (PW-13) has further stated that in case the victim was not brought to the hospital immediately she may have died because of the injuries caused to her. This appears to be a general opinion. Although otherwise, it appears that the time of assault which the appellant has selected and the weapon of assault which must be some sharp-edged and heavy weapon, goes to show that the appellant had intended to cause death of the victim. Hence, after due consideration of the evidence on record, it appears that the trial Court has committed no error in holding the appellant guilty under Section 307 of the IPC.

(15) Considered the alternative prayer made by the appellant for reduction of the sentence of imprisonment imposed upon him. First of all, this appellant does not have any criminal antecedents, and secondly since the date of arrest he has never been released on bail and he is continuously in jail and the period of detention which he has undergone is going to complete 7 years in a few days of this month. Hence, after due consideration, I am of the opinion that the period of sentence the appellant has already undergone is sufficient punishment and serves the purpose. In view of the above findings, this appeal is allowed in part. The conviction part of the impugned judgment is upheld. The sentence part with respect to sentence under Section 324 of the IPC is upheld

whereas, the sentence passed under Sections 458 and 307 of the IPC is set aside and instead the appellant is sentenced with period of detention already undergone by him in jail for both the offences. The fine sentence awarded by the trial Court is also modified and reduced. Now, the appellant shall pay fine of Rs.500/- only and in default of payment of the fine, he shall further undergo additional RI for two months.

(16) Accordingly, the appeal is partly allowed.

Sd/-

(Rajendra Chandra Singh Samant)
JUDGE