

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1330 of 2014**

Santosh S/o Aviyan @ Tulsiram Deshlahre Aged About 30 Years Caste - Satnami, R/o Village - Pendri, P.S. Lalbag, Rajnandgaon, Presently Supela, Near Nayatan Kirana Stores, Camp - 1, Bhilai, Revenue And Civil District Durg C.G., Chhattisgarh.

---- Appellant**Versus**

State Of Chhattisgarh S/o Through, Police Station Lalbag, District Rajnandgaon C.G., Chhattisgarh.

---- Respondent

For Appellant	:	Shri Manoj Kumar Sinha, Advocate.
For Respondent/ State	:	Ms. M. Asha, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgment on Board****30/06/2018**

(1) Challenge in this appeal is to the judgment of conviction and order of sentence dated 27.9.2014 passed by Learned Second Additional Sessions Judge, District Rajnandgaon, Chhattisgarh in Sessions Trial No. 90 of 2013 whereby and whereunder the learned Additional Sessions Judge after holding the Appellant guilty for the offence under Section 307 of the IPC, sentenced him to undergo rigorous imprisonment for 7 years and to pay fine of ₹200/-, in default of payment of fine, to further undergo additional rigorous imprisonment for two months.

(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. 13.10.2013 at about 11:30 am, the appellant approached complainant – Rajkumar Joshi and abused him with filthy words. When the complainant objected, the appellant by using a sharp edged sword, assaulted the complainant and injured him on his head. In the fight, other injuries were also caused to the complainant. The complainant was taken to the hospital where he lodged unnumbered FIR Ex. P/1.

(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.

(5) During trial, the Court below framed the charge under Section 307 IPC. Prosecution examined 11 witnesses to prove the guilt of the Appellant. No witness was examined in defence. Statement of the Appellant was recorded under Section 313 of the Code wherein the Appellant denied the circumstances appearing against him and pleaded innocence and false implication in the crime in question.

(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 no case is made out for conviction of the appellant under Section 307 of the IPC. The injuries that were caused to the complainant are simple in nature and there had been only one injury caused by hard and sharp object. None of the injuries caused to the complainant could be termed as grievous in nature. Hence, at the most, the finding that could have been given, would be under Section 324 of the IPC. Hence, it is prayed that the appeal be allowed by modifying the finding of conviction and also the appellant is in jail since 13.10.2013 continuously because of which, he may be sentenced for the period of sentence already undergone by him.

(9) Per contra, learned counsel for the Respondent/ State opposed the prayer and submission. He further submitted that the nature of injury is immaterial in case the intention is clearly made out that the appellant intends to kill the complainant and the evidence of the prosecution clearly shows that this appellant assaulted the complainant with intention to cause his death. Hence, no ground is made out 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) The main and injured witness is Rajkumar Joshi (PW-1). He stated that on the date of incident he had some quarrel with the appellant

because of which the appellant got enraged and brought a sword with which he assaulted on his head. Thereafter, the appellant also caused injury of teeth bite on his hand twice. The persons present there intervened and then he was brought to the hospital. The police personnel arrived there and he gave the information, which was recorded as unnumbered FIR (Ex.P/1). In cross-examination, his statement has remained unrebutted. Durgaram Lehre (PW-2) has not supported the prosecution case. Ramavtar Sahu (PW-3) and Dwarika Tandon (PW-4) have stated that they arrived after the incident had taken place and they have denied about witnessing the incident. Hence, they have been declared hostile by the prosecution.

(12) Mevalal Sahu (PW-5) is hearsay and hostile witness. Hence, there is no other independent witness to support the statement of the injured witness – Rajkumar Joshi (PW-1). The statement of Rajkumar Joshi (PW-1) is supported by the statement of ASI, Bhayyalal Patel (PW-6) who has recorded unnumbered FIR of Rajkumar Joshi (PW-1) and secondly, his statement is supported by Dr. Anil Mahakalkar (PW-10) who has immediately examined the complainant and found injury of one incised wound on right parietal region on his head of size 6 x 1 cm which was muscle deep alongwith other three abrasions, one swelling and one lacerated wound. He reported that the injury of incised wound was caused by some hard and sharp object and all the injuries are simple in nature (Ex. P/14). No such report is given by him that the injuries caused to the complainant were fatal in nature or were sufficient to cause death in ordinary course of nature. Statement of the witnesses that have been discussed herein-above, is the only evidence present in this case

and on that basis, the finding has to be arrived whether it was a case of attempt to murder.

(13) Statement of Rajkumar Joshi (PW-1) can be believed looking to the support of ASI, Bhaiyyalal Patel (PW-6) and the corroboration from the evidence of Dr. Anil Mahakalkar (PW-10). In his statement he has not stated that the appellant had intended to cause his death or had acted in such a manner to cause him such an injury so that his death may occur. He has simply stated that during the quarrel the appellant got enraged and then got a sword and assaulted causing injuries to him. Hence, without there being such statement to make out the intention of the appellant for causing death of the complainant and also for the reason that the injury though caused by hard and sharp object is of simple in nature, it cannot be held that the appellant had intended to cause the death of the complainant. Hence, on this basis, the finding recorded by the trial Court that the appellant had intended to cause death of the complainant is totally erroneous and it cannot be sustained. At the most, the appellant can be held guilty for causing simple hurt by use of hard and sharp object which is covered under Section 324 of the IPC.

(14) After due consideration of all the material present on record before the trial Court and on the basis of the finding herein-above, this appeal is allowed in part. For the purpose of modifying the judgment of conviction and sentence passed by the trial Court the same is hereby set aside, and instead the appellant is convicted under Section 324 of the IPC. Looking to the period of detention already undergone by him in jail, he is

sentenced with imprisonment for the period of detention already undergone by him in jail.

(15) The appeal is partly allowed.

Sd/-

(Rajendra Chandra Singh Samant)
JUDGE

Nimmi