

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 108 of 2013**

Pavan S/o Dhusku Nagesiya, R/o village Sahanpur, PS
Sitapur, District Sarguja (CG)

---- Appellant

Versus

State of Chhattisgarh through the District Magistrate Sarguja
(CG)

---- Respondent

For Appellant	:	Smt. Krishna Gupta, Advocate
For Respondent-State	:	Smt. M. Asha, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy**JUDGEMENT ON BOARD****06/01/2018**

The appellant stands convicted for the offence under Section 307 of IPC and sentenced to undergo rigorous imprisonment for seven years with fine of Rs.1,000/-, in default of payment of fine to further undergo RI for 4 months vide judgment dated 30.11.2012 passed by the 1st Additional Sessions Judge, Ambikapur, District Sarguja in Sessions Trial No. 273/2011.

2. The case of the prosecution, against the appellant, in brief, is that the appellant is said to have on 12.04.2011 assaulted PW-1 Narayan Nagesiya who happens to be the uncle of the appellant. The assault was made with a Tangia (axe) on the head of PW-1 as a result of which he sustained two grievous injuries on his head and one injury on his knee. An FIR in this regard was lodged on the same day i.e. 12.04.2011 by the injured PW-1 himself which is Exhibited as P-1. After completion of investigation, the

matter was put to trial before the 1st Additional Sessions Judge, Ambikapur District Sarguja.

3. During the course of trial, the prosecution examined as many as 07 witnesses and there was no witnesses examined on behalf of the defence.

4. The trial Court taking into consideration the evidences which have come on record vide impugned judgment dated 30.11.2012 found the appellant guilty for the offence punishable under Section 307 of IPC and accordingly, convicted and sentenced him under the said section as mentioned in paragraph-1 of this judgment leading to the filing of this appeal.

5. Contention of the counsel for the appellant is that the appellant has been falsely implicated in the instant case as there does not seem to have any motive behind the attack established by the prosecution. She submits that the weapon used in the assault, according to the appellant, was recovered after more than 20 days of the incident which further creates doubt in the prosecution story. In addition, seizure witness PW-5 Maheshram has not supported the case of the prosecution and has turned hostile. Counsel for the appellant further submits that considering the facts and circumstances of the case, the conviction of the appellant under Section 307 of IPC may be set aside or it may be converted under Section 324 or 325 IPC and the sentence part may be reduced to the period already undergone.

6. State counsel, however, opposing the appeal submits that it is a case where the prosecution has been able to prove its case beyond all reasonable doubts and there is no scope of interference with the finding of the trial Court. She submits that the prosecution case stands amply proved from the statement of the injured PW-1. In addition to that, there were eye-witnesses to the incident also whose statement has been recorded and who have

supported the case of the prosecution. The injury part also stood proved from the medical evidence i.e. the evidence of Dr. Rajni Tigga PW-7. In the given facts and circumstances, State counsel prayed for rejection of the appeal.

7. Having heard the contentions put forth on either side and on perusal of the record what is relevant at this juncture to take note is the evidence of PW-1 the injured who is the main witness and lodger of the FIR. The statement of the injured is consistent with the statement that he had given under Section 161 CrPC. He has emphatically named the appellant who happens to be his nephew and to have assaulted him with an axe. He has specifically mentioned that the assault was made on his head on which he had become unconscious. This statement of PW-1 stands fully corroborated by PW-2 Nadhiyaro Bai who was in the field when PW-1 raised an alarm for help and she saw the appellant assaulting PW-1. The statement of PW-1 & PW-2 further gets support from the evidence of PW-3 Minesh Kumar who had also reached the spot on hearing the alarm raised by PW-1 and found the appellant carrying a Tangia in his hand and assaulting PW-1. The statement of injured PW-1 also stands corroborated from the medical evidence of PW-7, Dr. Rajni Tigga who had examined the injured. PW-7 has stated that there were two injuries on the head; one on the fronto parietal area measuring 7 x 2 x 1 ½ cm and the other was on the occipito parietal area measuring 6 x 2 x 1 ½ cm. The statement of all these witness stands further supported from the statement of PW-6 Lalsai Paikra, the Investigating Officer who has investigated upon the case.

8. Given the facts and circumstances of the case, this Court is of the opinion that the finding of the trial Court holding the appellant guilty of the offence under Section 307 of IPC cannot be said to be in any manner bad in

law or contrary to the evidence which has come on record neither can it be said to be perverse finding. The case of the prosecution has been fully established. Considering the nature of injury caused and the weapon used in the assault, this Court is of the opinion that the appellant has been rightly convicted for the offence under Section 307 of IPC and sentenced to undergo RI for 7 years by the Court below.

9. As a result, this Court does not find any strong case made out by the appellant calling for an interference with the finding given by the Court below. Thus, affirming the impugned judgment of conviction and sentence, the present appeal stands dismissed.

10. It has been informed by the State counsel that after completion of entire jail sentence, the appellant has been released from jail. Hence, no further step needs to be taken on the dismissal of this appeal.

Sd/-

(P. Sam Koshy)
JUDGE