

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 484 of 2011**

Lilesh @ Buntly Thakur S/o Girdhar Thakur, Aged about 20 years R/o Club Para,
P.S. Mahasamund, District Mahasamund (C.G.)

----Appellant

Versus

State of Chhattisgarh through District Magistrate, Mahasamund, Distt.
Mahasamund (C.G.).

---- Respondent

For Appellant	:	Mr. Manish Sharama, Advocate
For Respondent	:	Mr. Alok Nigam, Govt. Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

20/09/2019

1. This appeal has been preferred under Section 374 (2) of Cr.P.C against the judgment dated 27/06/2011 passed in Sessions Trial No. 57/2010 by the Second Additional Sessions Judge, Mahasamund (C.G.) convicting the Appellant under Section 307 of the Indian Penal Code and sentenced him to undergo RI for 7 years and to pay fine of Rs. 1000/- with default stipulation.
2. Facts of the case are that on 21/06/2010 at about 01:30 pm, Injured Hemant Dewangan (PW7) (henceforth 'the Injured') was standing on a Pan shop near Kachare Chowk. At that time, the Appellant came there and assaulted him by a cricket bat. The injured sustained injuries on his head and became unconscious. The incident was reported by brother of the Injured namely Parmeshwar (PW2) vide Ex.P.-2. The Injured was medically examined by Dr. Lekhram Chandrakar (PW5). His report is

Ex.P.-5. He found one injury on temporal region of the injured size 5 X 1 X 1 cm. The injury was grievous in nature. During course of investigation, on the basis of memorandum statement (Ex.P-3) of the Appellant, one cricket bat has been seized vide Ex.P-4. Statement of the witnesses under Section 161 of the Cr.P.C were recorded. After completion of the investigation, a charge-sheet has been filed against the Appellant. Trial Court framed the charge under Sections 294 and 307 of the IPC.

3. To prove the guilt of the Appellant, the Prosecution has examined as many as 6 prosecution witnesses. No defence witness has been examined. Statement of the Appellant under Section 313 of the Cr.P.C has been recorded wherein he has pleaded his innocence and false implication in the matter.
4. After completion of trial, the trial Court has acquitted the Appellant from the charge framed under Section 294 of the IPC and convicted and sentenced the Appellant as mentioned in paragraph one of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant submits that the Appellant has been wrongly convicted by the trial Court due to previous enmity between the parties. It is further submitted by him that the Injured had only sustained on single injury. Though, Dr. Lekhram Chandrakar (PW5) has opined that the injury was grievous in nature and was dangerous to life, on what basis he opined that the injury was dangerous to life, was not explained by him. In these circumstances, offence under Section 307 of the IPC is not established and for the alleged act committed by the

Appellant he can be guilty for the offence punishable under Section 308 of the IPC or 325 of the IPC. He further submits that the Appellant has already undergone about 3 years during trial, therefore, the jail sentence awarded to the Appellant may be reduced to the period already undergone by him.

6. Per contra, learned Counsel appearing for the State supported the impugned judgment and submits that the sentence awarded by the trial Court is just and proper and requires no interference.
7. I have heard learned Counsel appearing on behalf of the parties and perused the record minutely.
8. Hemant (PW7) has deposed that on the date of incident, he was sitting near a *Pan Thela*. At that time, the Appellant came with a cricket bat and assaulted him from back side due to some previous dispute. He sustained injuries on his head and became unconscious. He further deposed that after 22-25 days, he came in conscious condition in hospital. During his cross-examination, he stated that prior to the incident, he was having some dispute with the Appellant. In para 6 of his cross-examination, he stated that first the Appellant came without bat and after some dispute, he went and came on a motor-cycle with a cricket bat. He denied the suggestion that he has some dispute with the Appellant relating to mobile phone.
9. As per the case of the prosecution, the incident was witnessed by Anil Jain (PW3), Madhav Taksale (PW4) and Bhupendra Chandrakar (PW6). All the above witnesses have supported the statement of Hemant (PW7)

and stated that at the time of incident in front of them, the injured sustained injury on his head. However, Anil Jain (PW3) and Madhav (PW4) admitted the fact that the time of incident, the Appellant told them that due to mobile dispute, he assaulted the Injured. Anil Jain (PW3) further stated that at that time, the Appellant and the Injured were in intoxication condition. Hemant (PW7) also admitted this fact that at the time of incident, he was in intoxication condition. Dr. Lekhram Chandraker (PW5) is a doctor who examined the Injured on 21/06/2010. His report is Ex.P-5. He deposed that on being examination of the Injured, he found one injury on his temporal region size 5 X 1 X 1 cm, which was caused by hard and blunt object. He further deposed that at the time of examination, the Injured was unconscious and was in some intoxication. It has been further stated by this witness that on being examination of X-ray, a fracture was found in his head. As opined by him, the injury was dangerous to life which may cause death. Dr. S.N Madariya (PW9) conducted CT Scan of Injured on 22/06/2010. His report is Ex.P-11. He found that there was blood clotting on both side of brain. Further, there was blood clotting on temporal region of the Injured. Sudhir Singh (PW8) is a witness who recorded FIR (Ex.P-2) and investigated the whole matter. Sushil Kumar Sahu (PW1) is a Patwari who prepared spot map.

10. On minute examination of above evidence, it is clear that the Injured sustained grievous injury on his head. As stated by the Injured, this injury has been caused by the Appellant. The Injured remained firm during his cross-examination. Other witnesses of the incident namely Anil Jain (PW3), Madhav (PW4) and Bhupendra Chandrakar (PW6) also

supported the statement of the Injured (PW7). These witnesses were remained firm during their cross-examination. From the statement of Dr. Lekhram Chandrakar (PW5), MLC report of the Injured (Ex.P-5), X-ray report (Ex.P-6), it is also clear that the Injured sustained only one injury on his temporal region which was of grievous nature. From the entire evidence available on record, it is well established that this injury was caused by the Appellant.

11. Considering the entire evidence, now the only question arises to decide that whether the act of the Appellant falls within the ambit of Section 307 or 308 or 325 of the IPC.
12. In this case, there was only one injury sustained by the Injured on his temporal region, which was of grievous nature. From the evidence, it is established that there was some dispute between the Injured and the Appellant relating to a mobile phone. From the statements of the witnesses, it is also clear that at the time of incident, both the Appellant and the Injured were in intoxication condition. The Appellant used a cricket bat for assaulting the Injured and gave only one blow. In these circumstances, in my considered opinion, it is not established that the injury suffered by the Injured was caused with an intention to commit his murder or the Appellant committed the said act with an awareness that this can cause death to the injured. Hence, in my considered opinion, the offence of the Appellant falls under Section 308 of the IPC not under Section 307 of the IPC. Therefore, the conviction of the Appellant is altered from Section 307 of the IPC to Section 308 of the IPC.
13. It is submitted by the counsel for the Appellant that the Appellant has

already undergone about 3 years. He has no previous antecedent and is facing the *lis* since 9 years. Considering the above facts and circumstances of the case, the Appellant is convicted under Section 308 of the IPC and sentenced to the period already undergone by him. Consequently, the appeal is partly allowed to the extent indicated above.

14. It is reported that the Appellant/accused is on bail. His bail bond is not discharged at this stage and the same shall remain operative for a further period of 6 months in view of the provisions contained in Section 437-A of Cr.P.C.
15. Records of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge