

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 2266/1999****Reserved on 7-1-2019****Delivered on 31-1-2019**

(Arising out of judgment of conviction and order of sentence dated 13-8-1999 passed by the Addl. Sessions Judge, Mungeli Distt. Bilaspur MP (now CG) in Sessions Trial No. 247/1996)

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Dhirtwa, S/o. Juguru Sahu, aged about 38 years, Resident of Lakhasaar, Thana Lormi, Distt. Bilaspur, MP (now CG)

Appellant

VERSUS

State of Madhya Pradesh (now Chhattisgarh), through Station House Officer Lormi, Distt. Bilaspur

Respondent

 For Appellant : Ms. Amit Kumar Chaki, Adv.
 For Respondent : Shri A.K. Swarnkar, Panel Lawyer.

Hon'ble Shri Justice Sharad Kumar Gupta**CAV JUDGMENT**

1. In this criminal appeal, challenge is levied to the judgment of conviction and order of sentence dated 13-8-1999 passed by the Addl. Sessions Judge, Mungeli Distt. Bilaspur MP (now CG) in Sessions Trial No. 247/1996 whereby and whereunder he convicted the appellant under Section 307 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') and sentenced him to undergo Rigorous Imprisonment for 3 years with a fine of Rs. 1,000/-, in default of payment of fine, to further undergo RI for 3 months.

2. It is admitted by the appellant that he and complainant P.W. 4 Ramji had purchased 40 decimal land jointly from Gajadhar.

3. In brief, prosecution case is that the appellant was inimical to said complainant on account of land dispute. On 27-4-1996 in the

evening, said complainant was going to the house of Pusau Sahu to take dinner. At about 7.30 pm at village Lakhasar appellant caused injury on his head by wooden club from behind. He became unconscious and fell down on the earth. On very day at about 9.20 pm he lodged report in PS Lormi against him. After completion of investigation a charge sheet was filed against him under Section 307 of the IPC. The trial Court framed charge against him under Section 307 of the IPC. He abjured the charge levelled against him and faced trial. To bring home the charge against him, prosecution examined as many as 14 witnesses. The appellant has not examined any witness in his defence. After conclusion of the trial, the trial Court convicted and sentenced the appellant as aforesaid.

4. Being aggrieved, the appellant has preferred this criminal appeal.

5. Mr. Amit Kumar Chaki, counsel for appellant submits that trial Court has not appreciated the evidence in proper perspective. Thus, the conviction and sentence of the appellant are bad in eyes of law. Hence, appellant may be acquitted of the aforesaid charge. In alternate, he submits that even if the prosecution case is accepted as it is, even then, at the most the appellant may be convicted for offence under Section 325, IPC.

6. Mr. Swarnkar, Panel Lawyer appearing for the State argued that the aforesaid conviction and sentence are based on the sufficient evidence available on record. Thus, no interference is called for.

7. As per alleged MLC report Ex. P-1 P.W. 1 Dr. D. Laj had examined said complainant and found following injuries on his

person :

1.	One incised wound 5" long on the top of vertex on occipital region	Size 5" x ½" x 1/2"
2.	One lacerated wound over left side of occipital region behind injury No. 1	Size 2"x1/2"x1/2"
3.	Contusion over left hand posterior aspect	Size 3" x 2"
4.	Lacerated wound over left index finger	Size 1/2" x 1/2" x 1/2"
5.	Contusion over left scapular region of back	Size 4" x 1"
6.	Contusion over left scapular region of back	Size 2" x 1"
7.	Contusion over right suprascapular	Size 3" x 1"
8.	Abrasion over back on mid line	Size 1/2" x 1/2"

8. As per Ex. P-1 P.W. 1 Dr. D. Laj opined that there was suspected fracture in the skull, bones of left hand, and index finger, injuries No. 1 to 7 may be caused by hard and blunt object. Injury No. 8 may be caused due to friction with hard object.

9. There is no such evidence on record on strength of which it can be said that Ex. P-1 is not believable. Thus this Court believes on Ex. P-1.

10. As per the alleged X-ray report Ex. P-10, P.W. 10 Dr. S. Chatterji after examination of the X-ray of skull, wrist of left hand, left palm of said complainant, opined that no bony injury was found on skull, fractures were present on PP of left index base of 5th metacarpal, on PP of left little finger.

11. There is no such evidence on record on strength of which it can be said that Ex. P-10 is not believable. Thus this Court believes on Ex. P-10.

12. As per the alleged seizure Ex. P-6, P.W. 14 Sub Inspector Jayendra Singh Parihar had seized one Bamboo's stick from the

possession of the appellant.

13. There is no such evidence on record on strength of which it can be said that Ex. P-6 is not believable in that reference. Thus, this Court believes on Ex. P-6 in that reference.

14. As per the RFSL report Ex. P-14, blood stains were found on article D – stick.

15. There is no such evidence on record on strength of which it can be said that Ex. P-14 is not believable in that reference. Thus, this Court believes on Ex. P-14.

16. P.W. 4 complainant Ramji says in para 2 of his statement given on oath that when he was proceeding to take dinner, the appellant came to back side and caused injury on his head by stick, he caught hold club as a result injury was caused on finger of his right hand.

17. As per statement of para 2 and 3 of P.W. 6 Bodhi taken on oath, he came to know that the appellant had caused injuries on body of P.W. 4 Ramji.

18. P.W. 9 Mahettar who is the father of the said complainant says in para 3 of his statement given on oath that said complainant had told him that the appellant had caused injuries by stick.

19. P.W. 6 Bodhi does not say clearly and strongly as to who had intimated him that allegedly appellant had caused injuries on body of said complainant, and prosecution has not examined any person who may say that he had told P.W. 6 Bodhi that appellant had allegedly caused injuries on body of said complainant. Thus, prosecution does not get any help from the aforesaid statement of P.W. 6 Bodhi.

20. In alleged FIR Ex. P-8 it has been mentioned that appellant allegedly had kept enmity with him. He had caused injury on his head by stick. Ex. P-8 has been lodged on very day within 2 hours from the time of incident. In Ex. P-8 distance is mentioned as 4 km away from the spot which appears believable.

21. There is no such evidence on record on strength of which it can be said that Ex. P-8 is concocted or fabricated, or lodged as an afterthought or lodged only on the ground of enmity, without occurring any incident.

22. There is no such evidence on record on strength of which it can be said that P.W. 4 Ramji, P.W. 9 Mahettar, had made aforesaid statements without occurring alleged incident only on the ground of enmity.

23. There is no such evidence on record on strength of which it can be said that aforesaid statements of P.W. 4 Ramji, P.W. 9 Mahettar, are not simple, not natural, not normal. Thus, this Court believes on aforesaid statements of P.W. 4 Ramji and P.W. 9 Mahettar.

24. After appreciation of the evidence discussed herebefore, on the strength of aforesaid statements of P.W. 4 Ramji and P.W. 9 Mahettar, Ex. P-8, Ex. P-1, Ex. P-6, Ex. P-10, Ex. P-14, this Court finds that prosecution has succeeded to prove that appellant had caused aforesaid injuries mentioned in Ex. P-1, fractures were found on left wrist which are mentioned in Ex. P-10, except injury No. 8, by hard and blunt object. It is noticeable that P.W. 1 Dr. D. Laj who initially examined P.W. 4 Ramji had expressed apprehension that there may be fracture on skull, which indicates that the appellant had

applied great force for causing such head injuries.

25. The Hon'ble Supreme Court in **State of Maharashtra v. Balaram Rama Patil**, (AIR 1983 SC 3051) observed that “To justify a conviction under this section it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in this section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.”

26. In **Lachman Singh -v- State of Haryana** (2006(10) SCC 524) Hon'ble Supreme Court has held that in order to justify conviction under Section 307, it is not essential that bodily injury capable of causing death to be inflicted, but it is sufficient if there is present an intention coupled with some overt act in execution thereof.

27. In **Ratan Singh -v- State of M.P.** (2009(12) SCC 585), Hon'ble Supreme Court has held that to justify a conviction under Section 307, IPC, it is not essential that bodily injury capable of causing death should have been inflicted, and circumstances that injury inflicted simple or minor will not rule out application of the section.

28. The Hon'ble Supreme Court in **Fireman Ghulam Mustafa Vs State of Uttaranchal**, (AIR 2015 SC 3101) held that “ to justify a conviction under Sec-307, IPC the court has to see whether the act was done with the intention to commit murder and it would depend upon facts and circumstances of the case – although nature of injuries caused may be of assistance in coming to a finding as to intention of accused, such intention may also be gathered from the circumstances like nature of weapon used, parts of body where injuries were caused, severity of blows given and motive, etc.”

29. From the evidence discussed herebefore, it is noticeable that the appellant has caused head injuries with the intention of causing death or with the intention of causing injuries which were sufficient in the ordinary course of nature to cause death.

30. Thus, aforesaid judicial precedents laid down by Hon'ble Supreme Court are applicable against the appellant.

31. This Court finds that no exception referred to Section 300, IPC is attracted in the case in hand.

32. Considering the entire evidence, this Court finds that the prosecution has succeeded to prove the charge under Section 307 of the IPC against the appellant. Thus, this court holds that the appellant is guilty of the offence punishable under Section 307 of the

IPC.

33. Looking to the above-mentioned facts and circumstances, this Court is not inclined to take a lenient view regarding sentence. The sentence awarded by the trial Court is just and proper and does not call for any interference.

34. After complete and full appreciation of the evidence, this Court finds that the trial Court has not committed any error in convicting and sentencing the appellant as aforesaid.

35. Thus, this Court confirms the impugned judgment of conviction and order of sentence dated 13-8-1999. Hence, the appeal being devoid of merit deserves to be and is hereby dismissed.

36. The appellant is on bail. His bail bonds are canceled. He is directed to immediately surrender before the trial Court to serve the remaining part of sentence. The trial Court is also directed to take the appellant in custody for serving the remaining part of sentence.

Sd/-
(Sharad Kumar Gupta)
Judge