

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.926 of 2001**

1. Ramlal, son of Shudharan, aged about 62 years, **(dead and abated)**
2. Ramesh son of Ramlal, aged about 27 years,
Both are R/o. Pandarvahi, Police Station Kanker, Distt. Kanker (CG)

---- Appellants**Versus**

The State of Chhattisgarh

---- Respondent

 For the appellants : Shri RN Jha, Advocate
 For the Respondent/State: Shri Ishwar Jaiswal, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment on Board****21.10.2019**

1. The appeal is preferred against judgment dated 24.9.2001 passed by Second Additional Sessions Judge (FTC), Kanker (CG) in Session Trial No.342/1998 wherein the said Court convicted appellant Ramesh for the commission of offence under Sections 307 read with Section 34 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for five years and to pay fine of Rs.3000/-, with default stipulations.
2. In the present case name of the victim is Bukhauram. As per the prosecution case, both sides were involved in selling of illegal wine and when police officers enquired against Bukhauram, the appellant and other accused persons stopped him on the date of incident at about 8.00 pm and assaulted him by sword and club.

The matter was reported and investigated and after completion of the trial, the appellant has been convicted and sentenced as mentioned above.

3. Learned counsel for the appellant submits as under:-

(i) Injury found on the body of Bukhauram is simple in nature as per the medical report, therefore, offence under Section 307 IPC is not made out.

(ii) Statement of the witnesses is contradictory in nature and the same is not sufficient for recording conviction against the appellant.

(iii) The trial Court has not evaluated the entire evidence in its true perspective and the same is liable to be sustained.

4. On the other hand, learned counsel for the State supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshaling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. To substantiate the charges, the prosecution has examined as many as eight witnesses. From the statement of Bukhauram (PW-1), Mohan (PW-2) and Chandralal (PW-5) it is established that the appellant assaulted Bukhauram by sword. Dr. Vijay Shukla (PW-6) who examined the victim on 22.6.1998 noticed incised wound in different parts of his body and recorded finding that the injuries were caused by hard and sharp object.

6. The only question for consideration before this Court is whether the offence committed by the appellant falls within the

mischievous of Section 307 IPC. From the statement of Dr. Vijay Shukla (PW-6) (in para 8) the injury can be healed within seven days. He further deposed that injuries can be categorised as simple in nature (in para 10). From the statement of this witness, it is clear that the injuries were not grievous in nature and may be healed within seven days.

7. In order to sustain the offence under Section 307 IPC, it has to be established by the prosecution that there is likelihood of death of the victim. In the present case, from the statement of medical expert it is clear that injuries were simple in nature, therefore, there is complete absence of intention to kill the victim which is a necessary ingredient for commission of offence under Section 307 IPC. The intention can be gauged from the nature of injury, but in the present case the injuries are not befitting the offence in question. Therefore, offence under Section 307 IPC is not established against the appellant.

8. Causing simple injury by sharp object comes under the category of commission of offence under Section 324 IPC. In the present case, act of the appellant falls under the category of commission of offence under Section 324 IPC, therefore, conviction of the appellant under Section 307 IPC is altered to Section 324 IPC.

9. Heard sentence part for commission of offence under Section 324 IPC. The appellant has suffered jail term from 23.6.1998 to 07.8.1998 and after passing of judgment and conviction he has suffered jail sentence from 24.9.2001 to

10.01.2002 of 15 days, thereby he has suffered the total jail sentence of more than five months. Considering the facts and circumstances of the case, this court is of the opinion that ends of justice would be met if the appellant is sentenced to the jail term of period already undergone by him. Accordingly, his sentence is reduced to the period already undergone by him. However, fine sentence imposed by the trial Court shall remain intact.

10. With this modification, the appeal is allowed in part.

**Sd/-
(Ram Prasanna Sharma)
JUDGE**