

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.778 of 2017**

Anil Ekka, son of Kapil Ekka, aged about 19 years, R/o Ghutura Para, Police Station Ambikapur, District Surguja, Permanent Address Amgaon, Police Station- Gandhi Nagar, District Surguja, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh Through Station House Officer, Police Station Ambikapur, District Surguja, Chhattisgarh

---- Respondent

For Appellant	:	Ms. Meenu Banerjee, Advocate
For State/Respondent	:	Mr. K.K. Dewangan, Dy. G.A.

Hon'ble Shri Justice Arvind Singh Chandel**Judgment on Board****30.7.2019**

1. This appeal has been preferred against the judgment dated 01/04/2015 passed by the 2nd Additional Sessions Judge, Surguja at Ambikapur in S.T. No. 103/2014, whereby the Appellant has been convicted under Section 307 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for 05 years and to pay fine of Rs.500/- with default stipulation.
2. As per the prosecution story, on 09/08/2014 at around 1:00-2:00 A.M., the accused/appellant tried to open the door of the house of Sohra Ram (PW-2), on which wife of Sohra Ram, namely, Naori Uraon (PW-1) made alarm as a result of which, the accused/appellant ran away. It

is further alleged that on the next day, i.e., 10/08/2014 at around 3:00 P.M., when the accused/appellant came near the house of Sohra Ram, he asked the accused/appellant why was he trying to open the door of his house last night. Due to the dispute, a quarrel took place between them and the accused/appellant assaulted Sohra Ram with the help of a club. Sohra Ram sustained injuries on his head and other parts of his body. He was taken to Government Hospital, Ambikapur. Thereafter, F.I.R. (Ex. P-4) was lodged by Naori Uraon (PW-1), wife of the injured. Injured Sohra Ram was medically examined by Dr. Vinod Kumar Singh (PW-7). During the course of investigation, one club was seized from the spot. Statements of witnesses were recorded under Section 161 of the Cr.P.C. After completion of the investigation, a charge-sheet was filed. The Trial Court framed charge against the accused/appellant for offence punishable under Section 307 of the I.P.C. To prove the guilt of the accused/appellant, the prosecution examined as many as 7 witnesses. No defence witness has been examined. Statement of the appellant under Section 313 of the Cr.P.C. was recorded in which he pleaded innocence and false implication.

3. After trial, the Trial Court convicted the appellant under Section 307 of the Indian Penal Code and sentenced him as mentioned in first paragraph of this judgment. Hence, this appeal.
4. A certificate of incarceration sent by the Jail Superintendent, Central Jail, Bilaspur dated 29.7.2019 would mention that the accused/appellant has already undergone and completed the entire sentence imposed upon him by the Trial Court and has already been

released from jail on 4.6.2018.

5. Learned Counsel appearing on behalf of the appellant submits that appellant has been wrongly convicted by the trial Court without there being any clinching evidence available on record. She further submits that injured Sohra Ram sustained only one injury on his head which is not grievous in nature. Treating Doctor Vinod Kumar Singh (PW-7) has not opined the nature of injury and also he has not stated or opined that injury caused to injured Sohra Ram was dangerous for his life. Thus, injury sustained by the injured Sohra Ram is simple in nature. Therefore, the trial Court has wrongly convicted the accused/appellant for the offence punishable under Section 307 of Indian Penal Code.
6. Learned Counsel appearing on behalf of the State/Respondent supports the impugned judgment of conviction and sentence.
7. I have heard learned Counsel appearing for the parties and perused the record of trial Court with due care.
8. As per the statement of injured Sohra Ram (PW-2), on the date of incident around 4:00 PM, a quarrel took place between him and the accused/appellant. At that time, the accused/appellant assaulted Sohra Ram with a club on which he sustained grievous injury on his head. Smt. Naori Uraon (PW-1) and Satendra Singh (PW-3) are the unrebutted witnesses in this case and they have supported the statement of injured Sohra Ram (PW-2). All the above witnesses remained firm during their cross-examination. R.N. Tiwari (PW-5) has also stated that at the time of incident, the accused/appellant had

assaulted Sohra Ram with a club. Thus, from the above, it is well established that injured Sohra Ram was assaulted by the accused/appellant with a club and due to that he sustained grievous injury on his head. As stated by Vinod Kumar Singh (PW-7), in MLC report (Ex. P-16) of injured Sohra Ram, one injury of size 10 cm x 4cm had been sustained in the frontal head region. Two more injuries had been found, one cut injury in upper lip and one incised wound of size 4cm x 3cm had been found in between thumb and first finger of injured Sohra Ram. Vinod Kumar Singh (PW-7) has also admitted the fact that he had not given any opinion regarding nature of injuries and had not stated anything whether injuries sustained were dangerous for life.

9. From the statement of injured Sohra Ram (PW-2) and Naori Uraon (PW-1), who is wife of injured Sohra Ram, it is clear that they have no any previous enmity with the accused/appellant. It is also clear from the statement of Satendra Singh (PW-3) that the accused/appellant and the injured, both had consumed liquor at the time of incident. From the admission made by Naori Uraon (PW-1), it is clear that, at the time of incident, the accused/appellant was not armed with any club. As stated by other witnesses, at the time of incident, a quarrel took place between the accused/appellant and injured Sohra Ram and the accused/appellant took a club from the spot and assaulted Sohra Ram.
10. On a minute examination of the evidence available on record, it is clear that though Sohra Ram was assaulted by the accused/appellant with a club, from the evidence on record it is clear that the accused/appellant had no intention to commit murder of Sohra Ram nor did he cause any

injury to him with intention to commit his murder. Thus, looking to the injuries sustained by injured Sohra Ram, in my considered opinion, the act committed by the accused/appellant falls under Section 324 of the Indian Penal Code. Therefore, the conviction of the appellant is altered from Section 307 of the Indian Penal Code to Section 324 of the Indian Penal Code. Since under Section 324 of the Indian Penal Code the maximum prescribed sentence is 3 years and as stated above the appellant has already been released from jail on 4.6.2018 on completion of the entire sentence imposed upon him by the Trial Court, now no order on sentence needs to be passed.

11. Consequently, the appeal stands disposed of in the aforesaid terms.

**Sd/-
(Arvind Singh Chandel)
Judge**