

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 885 of 2002**

Jagannath Rawat S/o Bhagtu Rawat, aged about 36 years,
Occupation: Labour, Residing at Village-Birsingpali, Tahsil-Saraipali,
District-Mahasamund (C.G.)

---- Appellant

Versus

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

---- Respondent

For Appellant	:	Smt. Indira Tripathi, Advocate
For State/Respondent	:	Smt. Smriti Shrivastava, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

09.03.2020

1. This appeal has been preferred against the judgment dated 19.07.2002 passed in S.T. No.449/2001 by the learned Ist Additional Sessions Judge, Mahasamund (C.G.) wherein, the Appellant has been convicted under Section 307 of IPC and sentenced to undergo RI for 07 years and to pay fine of Rs.3,000/- respectively with default stipulations.
2. According to the case of prosecution, on the eve of Hareli Festival, on 20.07.2001 at around 03:00 P.M. complainant Nar Singh (PW-01) was sitting along with Sarpanch Jaggu near the Hallar Mill, at that juncture the Appellant came on the spot and abused the Sarpanch Jaggu with the allegations that the Sarpanch had given wrong decision, then the Sarpanch tried to restrain the Appellant, meanwhile the complainant Nar Singh also tried to restrain the Appellant. It is alleged that the Appellant with the means of one Spade assaulted the complainant due to which he became

unconscious. Thereafter, the Appellant ran away from the spot. F.I.R. Exhibit P-1 was lodged by the son of Nar Singh. The statements of Nar Singh as well as other witnesses were recorded under Section 161 of Cr. P.C. After completion of investigation, charge-sheet was filed by the police. To robe the Appellant, prosecution examined as many as total 07 witnesses. In the statement recorded under Section 313 of Cr.P.C, Appellant abjured the guilt and pleaded his innocence and false implication in the matter. No defence witness was examined. After completion of trial, Trial Court convicted the Appellant and sentenced him as mentioned in Para 01 of this judgment. Hence, this appeal.

3. It is submitted by counsel for the Appellant that the Trial Court has wrongly convicted the Appellant without there being sufficient evidence available against him on record. He submits that from the statement of complainant, it is well established that there was no previous enmity between the Appellant and the complainant. The Appellant assaulted the complainant only on the ground that during quarrel he had intervened in the matter between Appellant and the Sarpanch Jaggu. From the evidence available on record, it is established that after the incident the Appellant ran away from the spot. From the above, it is established that the Appellant had no intention to commit murder of the complainant. It is further submitted by the counsel that the complainant sustained only two injuries on his body, first injury was on the right parietal region of the head of the Appellant and the second injury was in the right elbow. Dr. Amritlal Rohad (PW-06) opined that both the injuries are grievous in nature, but he admitted the fact he had only given his opinion on the basis of x-ray plates. He also admitted that there was no report annexed with the x-ray plates. Thus, it is submitted by the counsel that there is no evidence available on record which

shows that x-ray plates is related to complainant Nar Singh, therefore, nature of the injuries sustained by the complainant are grievous nature is not established. It is submitted by the counsel that considering the entire material evidence available on record, the act committed by the Appellant falls within the category of Section 324 of IPC only. Thus, considering the entire material evidence available on record, the crime committed by the Appellant false within the category of Section 324 of IPC.

4. On the contrary, learned State Counsel opposed the prayer and supported the impugned judgment.
5. I have heard learned counsel appearing on behalf of the parties and perused the record minutely.
6. PW-01, Nar Singh, in his court statement deposed that on the date of incident, when he was sitting with Sarpanch Jaggu, at that time, the Appellant was abusing him and the Sarpanch Jaggu. He warned him, but the Appellant with the help of spade assaulted him in his mouth from which his two teeth were broken. He further deposed that there was no previous enmity between him and the Appellant but there was some enmity between the Sarpanch and the Appellant, due to which he assaulted him because he was sitting with the Sarpanch Jaggu. During his cross examination, he deposed that the Appellant ran away from with spot along with the Spade. PW-03, Jaggu Ram corroborated the statements of complainant and categorically stated that initially quarrel took place between him and the Appellant, at that time, when complainant tried to stop them, the Appellant assaulted Nar Singh with the help of Spade. PW-06, Dr. Amritlal Rohad examined the complainant Nar Singh on 20.07.2001, his report his Exhibit P-05. As reported by this witness he found two injuries on the complainant, first injury

was at right parietal region of complainant's head measuring 3 x 1 x 1 cms and the second injury was in his right elbow in which swelling had occurred, from which it seems that the bone is dislocated. According to this witness, he had advised to do x-ray of both the injuries. He further deposed that on 04.09.2001, after seeing the x-ray plates, he found that both the injuries are grievous in nature but this witness admitted that he had only given his opinion about the injury after seeing the x-ray plates, but from where the x-ray plates have been obtained, he doesn't know and there were no report attached with the x-ray plates.

7. On minute examination of above evidence, it makes clear that the complainant Nar Singh (PW-01) was assaulted by the Appellant with the help of Spade. From the admissions made by complainant PW-01, it is also clear that Appellant had no previous enmity with him. Virtually, from the evidence, it appears that during quarrel between the Appellant and Sarpanch Jaggu when complainant tried to stop the quarrel, at that time he was assaulted by the Appellant. From the admissions, it is also established that, after the incident, Appellant himself ran away from the spot. Looking to the above it cannot be said that the Appellant had any intention to commit the murder of the complainant therefore, in my considered opinion, the conviction of the Appellant under Section 307 of IPC is not sustainable. As discussed earlier, the complainant sustained two injuries on his body. Though, according to Dr. Amritlal Rohad (PW-06) both the injuries are grievous in nature, but he had given his opinion only after seeing the x-ray plates and he also admitted that there was no any report annexed with the said x-ray plates and was not aware of the fact that from where the said x-ray was obtained. There is no material evidence available on record which shows that the said x-ray plates relates to the complainant Nar

Singh, therefore, there is no material available on record, on the basis of which it can be said that the injuries sustained by the complainant are grievous in nature. Considering the facts and circumstances of the case, evidence adduced by the prosecution and further considering the fact that the injuries were caused by Spade, the act committed by the Appellant falls within Section 324 of IPC. Thus, the conviction of the Appellant under Section 307 of IPC is altered to Section 324 of IPC.

8. With regard to the sentence, looking to the fact that the Appellant has already undergone 01 month during trial and 03 months during the pendency of this appeal, he is facing the *lis* since 2001 and there is no criminal antecedent against him, I am of the view that the ends of justice would be met if, the jail sentence awarded to him is reduced to the period already undergone by him.
9. Consequently, the appeal is partly allowed. The conviction of the Appellant under Section 307 of IPC is altered to Section 324 of IPC and he is sentenced to the period already undergone by him.
10. 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