

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Appeal No. 494 of 2004**

Bihari Lal S/o Tulsaram, Aged about 42 years R/o Village Bhotha, Police Station Bagbahara, Distt. Mahasamund (C.G.)

**----Appellant****Versus**

State of Chhattisgarh, through Station house Officer, Police Station Bagbahara, Distt. Mahasamund (C.G.).

**---- Respondent**


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| For Appellants | : | Mr. Y.C. Sharma, Advocate |
| For Respondent | : | Ms. Seema Dixit, PL       |

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**Hon'ble Shri Justice Arvind Singh Chandel****Judgment on Board****17/01/2020**

1. This appeal has been preferred under Section 374 (2) of Cr.P.C against the judgment dated 30/04/2004 passed in Sessions Case No. 06/2004 by the Second Additional Sessions Judge, Mahasamund, whereby the Appellant has been convicted under Section 307 of the IPC and sentenced to undergo RI for 5 years and to pay fine of Rs. 2000/- with default stipulation.
2. Facts of the case are that prior to one month of the date of incident, daughter of the Appellant died due to some illness. Thereafter, his mother also got ill. On 23/11/2003, the Appellant doubting that Paras Ram (henceforth 'the Injured') had used some black magic and killed his daughter and made his mother ill, had gone to his house and assaulted him by a Tangiya, which caused injuries to him. The matter was reported by Tijau Ram (PW1) vide Ex.P-1. The Injured was medically examined by Dr. C.S. Mishra (PW7). His report is Ex.P-10. He found following

injuries on the body of the Injured:-

- i. *One incised wound on the right temporal region of the face, size 5X3 cm, deep to bone. One piece of bone after broken got stick with the skin;*
- ii. *One incised wound on right shoulder at upper and inner side, size 5 X1 cm, deep;*
- iii. *One incised wound on right shoulder at behind and front side, size 5 X1 cm, deep;*
- iv. *One incised wound behind the right hand, size 5X1 cm, deep to the bone;*
- v. *One incised wound behind the left hand , size 5X2 cm, deep to the bone;*
- vi. *One incised wound on the left temporal region of the face, size 5X1 cm, deep to bone; and*
- vii. *Abrasion on the left hand at front and behind side.*

The Injured was further medically examined by Dr. A.S. Dau (PW10). According to this witness, third, fourth and fifth metacarpal bones were cut and the extension of third, fourth and fifth fingers was also cut. He further opined that humerus bone was fractured which was operated by him on 23/11/2003.

3. During course of investigation on the basis of memorandum statement vide Ex.P-2 of the Appellant, an axe has been seized from his possession vide Ex.P-3. Statement of the Complainant as well as other witnesses were recorded under Section 161 of the Cr.P.C. After completion of investigation, a charge-sheet has been filed. Trial Court framed the charges. As many as 11 witnesses have 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. No defence witness has been examined.

4. After completion of trial, the trial Court has 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 without there being any reliable evidence available on record. He further submits that no independent witness has been examined in this case. There is nothing on record on the basis of which it can be said that there was previous enmity between the parties. He further submits that if the entire case of the prosecution is taken as it is, yet offence under Section 307 of the IPC is not made out against the Appellant and only offence under Section 324 of the IPC should be made against 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. With regard to the incident, Injured Paras Ram (PW3) in his Court statement has deposed that on the date of incident, he had gone to his field and at about 11 am, he was returning from there. On the way, the Appellant came there and saying to kill him today. The Appellant assaulted him by a Tangiya on his chest, shoulder, arms, wrist of right hand, cheek and ear. He went to his house in injured condition and got unconscious there. During cross-examination in para 9, he deposed that he told to his wife that the Appellant assaulted him by a Tangiya. His

above statement is duly corroborated by Baiti Bai (PW4). She also deposed that her husband came to her house in injured condition and fallen down. Her husband also told that the Appellant has assaulted him, then she informed this matter to his son-in-law and called him. She further deposed that the villagers told her that Appellant had assaulted the Complainant, then he had gone to the house of the son-in-law of the Injured. Tejau Ram (PW1) also deposed that after getting information, he had gone to the village and saw the Complainant in injured condition. He made report vide Ex.P-1. As per the statement of Ashok (PW5), the Injured was taken to the hospital by a vehicle. In hospital, Dr. C.S. Mishra (PW-7) examined him and found total 7 injuries. His report is Ex.P-10. The injured was further medically examined by Dr. A.S. Dau (PW10). He opined that third, fourth and fifth metacarpal bone was cut and the extension of third, fourth and fifth finger was cut. He further opined that humerus bone was fracture which was operated by him on 23/11/2003. Sub Inspector S.R. Pathare (PW8) recorded the FIR (Ex.P-1). Ayodhya Prasad (PW9) is the Investigating Officer, who investigated the matter. During investigation, he recorded memorandum statement of the Appellant vide Ex.P-2 and on that basis, he recovered an axe vide Ex.P-3 from the Appellant. He also seized blood stained soil and normal soil from the spot vide Ex.P-4 & P-5. Manohar (PW2) is a witness of said memorandum and seizure. He duly corroborated the statement of Ayodhya Prasad (PW-9). Uday Ram (PW9) is a Parwari who prepared the spot map vide Ex.P-8.

9. On minute examination of above evidence, it is clear that at the time of incident when the Injured was returning from field, on the way, the

Appellant came there and assaulted him by an axe, due to which he sustained total seven injuries on his body. The Injured has remained firm during his cross-examination and his statement is dully corroborated by Baiti Bai (PW4). From the medical report also, it is clear that total seven injures were sustained by the Injured, out of which injury No. 1 was on temporal region and injury nos. 2 & 3 were on shoulder. These injures were bone deep. Apart from this, injury no. 4 was behind right arm, and injury no. 5 was on behind left arm. These injures were also boned deep. Moreover, as per opinion of Dr. A.S. Dau (PW10), third, fourth and fifth metacarpal bone was cut and the extension of third, fourth and fifth finger was cut. Humorous bone was fractured. Looking to the injuries sustained by the Injured and the weapon used in the assault along with the force used, it is established that there was clear intention of the Appellant to kill the Injured. And for the shake of argument, if it is admitted that there was no intention of the Appellant to kill him, yet it is established that the Appellant was well within the knowledge that the injury caused by him will cause death to the Injured, therefore, the arguments advanced by the counsel that offence under Section 307 of the IPC is not made out and offence under Section 324 of the IPC shall be made, has no substance.

10. Considering the above facts, I do not find any merit in this appeal.
11. Accordingly, the appeal is dismissed.

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