

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1058 of 2012****Judgment Reserved on 22/11/2019****Judgment delivered on 07/01/2020**

Panna Lal Pando S/o Bodra Pando, aged about 30 years R/o Village Rajouli, Pandopara, Police Station Sonhat, Distt. Korea (C.G.).

--- Appellant**Versus**

State of Chhattisgarh through Police Station Sonhat, Distt. Korea (C.G.)

---- Respondent

For Appellant	:	Mr. Ravindra Sharma, Advocate
For Respondent	:	Mr. Anand Verma, Dy. Govt. Advocate

Hon'ble Shri Justice Arvind Singh Chandel

CAV Judgment

1. This appeal is directed against the judgment dated 06/10/2012 passed in S.T. No. 19/2011 by the Sessions Judge, Korea (C.G.), whereby the Appellant has been convicted under Section 307 of the IPC and sentenced to undergo RI for 10 years and to pay fine of Rs. 1,000/- with default stipulation.
2. Facts of the case are that on 28/01/2007 at about 5 pm, Injured Tejula (PW8) (henceforth 'the Injured') was cutting wood and collecting them. The Appellant came there from behind and assaulted him by a Tangiya. The Tangiya remained stuck in his back. The Injured turned and saw that the Appellant was removing his Tangiya. The incident was witnessed by Vijay (PW9) son of the Injured. One Mandal, younger brother of the Injured

informed about the incident to ward Panchayat Bhuneshwar Prasad (PW7). He reached to the spot and saw that the Injured was in conscious condition. The Injured was taken to the hospital and the matter was reported by Bhuneshwar Prasad (PW7) vide Ex.P-1. The Injured was admitted in District hospital on 28/01/2007 and was discharged on 01/03/2007. He was medically examined by Dr. O.P. Kashyap (PW11). He found one cut injury beneath his shoulder on back side, size 10X8X6 cm, which was continuously bleeding. The Injured was in critical condition. He gave opinion that the injury was caused by hard and sharp object, which was dangerous to life. The injury was caused within 8 hours. Thereafter, Statement of the Injured and 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. To prove the guilt of the Appellant, the prosecution has examined as many as 14 witnesses. No defence witness has 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.

3. After trial, the trial Court has convicted and sentenced the Appellant as mentioned in the first paragraph of this judgment. Hence, this appeal.
4. Learned counsel appearing on behalf of the Appellant has submitted that the Trial Court has wrongly convicted the Appellant without there being any evidence available on record. He further submits that from the statement of the Complainant and other witnesses, it is established that there was no enmity between the Injured and the Appellant and after the incident, the Appellant fled away from the spot, therefore, it is not established that the

Appellant was having intention to kill the Injured or he is having knowledge that the said injury would cause death to the Injured. Therefore, offence under Section 307 of the IPC should not be made and only offence under Section 324 of the IPC can be made.

5. Learned counsel appearing on behalf of the State opposes the same and submits that though there was no previous enmity between the Injured and the Appellant, the injury has been caused by a Tangiya, the size of injury is 10X8X6 cm deep and the Injured was hospitalized from 28/01/2007 to 01/03/2007. Moreover, as per the opinion of the doctor, the Injured was in critical condition. Thus, it is well established that the said injury would cause death to the Injured was well within the knowledge of the Appellant, therefore, offence under Section 307 of the IPC is duly proved.
6. I have heard learned counsel for the parties and perused the record minutely.
7. Tejunal (PW8) in his court statement has deposed that on the date of incident at about 6 pm, when he was cutting wood, the Appellant came from behind and assaulted him by a Tangiya. The Tangiya remained stuck in his back. When the Appellant was removing the Tangiya, then he asked whey he assaulted him. In the meantime, his son came and the Appellant fled away from the spot. This witness has admitted that he has no dispute with the Appellant and any of his family members. Vijay (PW9), son of the Injured also supported the above statement of the Injured and deposed that on hearing the cry of his father, he reached to the spot and saw that the Appellant was removing the Tangiya which got stuck in back of the Injured. Thereafter, the Appellant fled away from the spot. This witness has

also admitted that there was no enmity between his father and the Appellant.

8. Dr. O.P. Kashyap (PW11) is a witness who examined the Injured on 28/01/2007. He has deposed that at the time of examination, the condition of the Injured was critical. The size of injury was 10X8X6 cm deep, which was caused by hard and sharp object. The injury was dangerous to life.
9. On minute examination of above evidence, it is clear that Tejulal (PW8) has categorically stated that the Appellant had assaulted him by a Tangiya from behind and then fled away from the spot. Vijay (PW9), son of the Injured has seen the Appellant fleeing away from the spot. Both the witnesses have remained firm during their cross-examination and their statement was not duly rebutted. Thus, it is clear that the Appellant had assaulted the Injured. From the statement of Dr. O.P. Kashyap (PW1), it is also established that the Injured sustained only one injury, but the size of the injury was 10X8X6 cm which was caused by a Tangiya on back side of the Injured. As per his opinion, the injury was dangerous to live and the Injured was in critical condition. Though, the Appellant was not having any previous dispute and he himself fled away from the spot, the weapon used in assault, the force used in assault and the part of body chosen by the Appellant itself shows that he was well within the knowledge that the injury would cause death to the Injured. Therefore, offence under Section 307 of the IPC is duly proved against the Appellant and it is not established that he was not having any intention to kill the Injured. Thus, the trial Court has rightly convicted and sentenced the Appellant under Section 307 of the IPC which requires no interference.

10. Accordingly, the Appeal is dismissed.
11. Records of the court below along with the copy of this judgment be sent back forthwith for necessary compliance and action.

Sd/-
(Arvind Singh Chandel)
Judge

Rahul