

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 190 of 2020

- Deepak Nag, S/o Sadanand Nag, Aged About 22 Years R/o Behind Ayyappa Mandir, Chigdupara Bacheli, Police Station Bacheli, District Dantewada Chhattisgarh.

---- Appellant

Versus

- State of Chhattisgarh Through Police Station Bacheli, District Dantewada Chhattisgarh.

---- Respondent

For Appellant	:	Shri P.R. Patankar, Advocate.
For State/Respondent	:	Shri Ravish Verma, G.A. and Shri Rajendra Tripathi, P.L.

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

01/12/2021

1. This appeal has been preferred against the impugned judgment dated 16/01/2020 passed in S.T. No.16/2019 by the Sessions Judge, South Bastar, Dantewada, (C.G.) wherein appellant has been convicted and sentenced as under :

<u>Conviction</u>	<u>Sentence</u>
U/s 307 of the I.P.C.	R.I. for 10 years and fine of Rs.2,000/- with default stipulations.

2. Facts of the case, in brief, are that on 16.11.2018 at about 12:15 PM, complainant Manohar Chouksey (PW-2) had gone along with Arun Kumar Shridhar (PW-3) and Bula Shrinivas (PW-4) to Prakash Vidhyalaya, Bacheli, for inspection of a school. When they were doing inspection of the school, appellant assaulted Manohar Chouksey (PW-2) from back side with the help of '*gaiti*' due to which he sustained injury on his body. Then, Arun Kumar Shridhar (PW-3) and Bula Shrinivas (PW-4) caught hold the appellant. A written complaint was made by complainant Manohar Chouksey (PW-2) vide Ex.P-2 and on the basis of the said, F.I.R. was registered vide Ex.P-3. Statements of the witnesses were recorded under Section 161 of Cr.P.C. After completion of the investigation, a charge-sheet was filed. Trial Court framed the charge under Section 307 of the I.P.C. To prove the guilt of the accused/appellant, prosecution has examined as many as 10 witnesses. No defence witness has been examined. Statement of appellant under Section 313 of the Cr.P.C. was recorded, wherein accused/appellant has pleaded innocence and false implication in the matter.
3. After completion of trial, the trial Court has convicted and sentenced the appellant as mentioned in paragraph 1 of this judgment. Hence, this appeal.
4. Learned Counsel appearing on behalf of the appellant submits that trial Court has wrongly convicted the appellant without there being sufficient and clinching evidence against him. If the entire case of the prosecution is taken as it is, no case under Section 307 of the I.P.C. is made out. The alleged act committed by the appellant fall within the

purview of Section 323 of the I.P.C. only because the injury sustained by the victim is simple in nature which is also found to be one month old. Therefore, conviction of the appellant under Section 307 of the I.P.C. is not sustainable.

5. Per contra, Shri Ravish Verma, learned Counsel appearing for the State supports the impugned judgment and submits that sentence awarded by the trial Court is just and proper and requires no interference.
6. I have heard learned Counsel appearing for the parties, perused the statement of witnesses and other annexed documents available on record minutely.
7. With regard to the alleged incident, complainant Manohar Chouksey (PW-2) in his Court statement has deposed that on the date of incident, when he was doing inspection of the school along with Arun Kumar Shridhar (PW-3) and Bula Shrinivas (PW-4), the appellant came there from back side and assaulted him with the help of '*gaiti*' due to which he sustained injury. Arun Kumar Shridhar (PW-3) and Bula Shrinivas (PW-4) are the eye-witnesses of the incident and they both have supported the case of the prosecution and deposed accordingly. All the above three witnesses remained firm during their cross-examination. There is no reason to disbelieve the statements of these above witnesses. Looking to the statement of above mentioned witnesses, it is well-established that on the date of incident Manohar Chouksey (PW-2) was assaulted by the appellant.
8. With regard to the injury sustained by Manohar Chouksey (PW-2), he

has deposed in his Court statement that he sustained injury on his back behind head. Arun Kumar Shridhar (PW-3) and Bula Shrinivas (PW-4) have also deposed that Manohar Chouksey (PW-2) sustained injury on his back. Dr. Gajendra Sakya (PW-5) who examined Manohar Chouksey on 12.12.2018 deposed that during examination, he found that there was one deep injury on the back side of neck of injured Manohar which was healed and it was one month old injury. There was swelling and abrasion mark on his neck. According to this witness, injury was simple in nature. As per the M.L.C. report i.e. Ex.P-7 of Manohar Chouksey, the injury found on the neck was one month old. But as per the Court statement of Manohar Chouksey (PW-2), Arun Kumar Shridhar (PW-3) and Bula Shrinivas (PW-4), the injury caused to the injured was on the back. In such condition, as per the M.L.C. report, there was one deep injury on back side of neck of injured Manohar which was healed and it was one month old injury, and the said injury caused by the appellant is suspicious. Further, immediately after the incident, a written complaint Ex.P-2 was made on 16.11.2018 by Manohar Chouksey (PW-2) and as such on the said date the injured has to be medically examined but he was examined on 12.12.2018 i.e. after one month. Delay occurred in the medical examination of the injured is not explained by the prosecution.

9. On minute examination of the above evidence, it makes clear that on the date of incident, Manohar Chouksey (PW-2) was assaulted by appellant due to which Manohar sustained injury on the back below the neck as mentioned in M.L.C. report i.e. Ex.P-7. The said injury caused to Manohar by the appellant is suspicious. Further, considering the fact that the injury caused to Manohar Chouksey (PW-2) is simple in

nature. In my considered opinion, the act of the appellant does not fall within the purview of Section 307 of the Indian Penal Code, but would fall within the purview of Section 323 of the I.P.C. Accordingly, conviction of the appellant is altered from Section 307 of the I.P.C. to Section 323 of the I.P.C.

10. The maximum sentence prescribed for the offence punishable under Section 323 of the I.P.C. is one year. It is reported that the appellant has already suffered jail sentence of about two years. He be released forthwith, if not required in any other case.
11. Consequently, the appeal is allowed in part to the extent indicated above.
12. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge