

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1002 of 2000**

Gopal Singh, son of Phool Singh Gond, aged about 20 years, R/o Village-Sawadera, P.S. Shakti, District Janjgir-Champa, M.P. (Now C.G.)

---- Appellant**versus**

The State of M.P. (Now C.G.), Through the P.S. Saranggarh, District Raigarh, M.P. (Now C.G.)

Respondent

For Appellant : Shri D.N. Prajapati, Advocate.

For Respondent : Ms. Madhunisha Singh, Panel Lawyer

Hon'ble Shri Deepak Gupta, Chief Justice**Hon'ble Shri Justice Sanjay K. Agrawal****Judgment on Board****16/08/2016**

1. This appeal by the convicted Accused is directed against the judgment dated 29.03.2000 passed in Sessions Trial No. 91 of 1999 by the Second Additional Sessions Judge, Raigarh, whereby the Additional Sessions Judge convicted the Accused/Appellant under Section 307 of IPC and sentenced him to undergo rigorous imprisonment for life.
2. The undisputed facts, shorn of any unnecessary details, are that Complainant Aatmaram was working as Instructor in I.T.I., Sarangarh. He was living along with his family as tenant in the premises

belonging to one Chhabilal Yadav. The Appellant, at the relevant time, was undergoing training in the said I.T.I. in Electrician Trade. The Appellant had cleared the examination of first year of the I.T.I. Course. He was in the second year of the said course and was not eligible to appear in the final examination of the second year since he did not meet the minimum required attendance of 80% for appearing in the examination.

3. The case of the prosecution, in brief, is that the Appellant tried to convince the Complainant to somehow get his case managed in such a way that the minimum required attendance of 80% is marked in his case and he may be made eligible for appearing in the examination. According to the prosecution, at the instance of the Accused/Appellant, the Complainant took him to the Principal of the I.T.I. and the Accused offered bribe of Rs.2,000/- to the Principal and also pleaded before the Principal to increase the percentage of his attendance to 80%. This was not done. Thereafter, the Appellant came to the house of the Complainant and again pleaded before him to somehow increase his attendance. He also offered him to pay bribe of Rs.2,000/-. When the Complainant did not agree and told the Accused/Appellant that his attendance-sheet had already been sent to the higher authorities and now nothing could be done in his favour and he should appear in the examination after six months, the Accused/Appellant suddenly turned violent and stabbed the Complainant with a dagger all over the chest and abdomen and other parts of the body with an intention to kill him. First Information Report

(FIR) Exhibit- P/1 was lodged soon after the incident. The dagger was recovered from the spot. The Complainant was taken to the hospital where the doctor examined him and prepared the MLC. The Accused/Appellant was also subjected to medical examination. The dagger, which was used in the assault, was produced before the doctor for examination. After investigation was complete, charge-sheet was filed against the Accused/Appellant under Section 173 Cr.P.C. After trial, he has been convicted and sentenced as aforementioned. Hence, the present appeal.

4. The main defence of the Accused/Appellant before this Court is that the prosecution has failed to give any explanation for the two injuries found on the person of the Accused/Appellant. It has also been urged that the dagger may have been used by both the sides or even by the Complainant himself. Lastly, it is pleaded that there was no intention to kill since none of the injuries by itself is sufficient to lead to death of the injured. In the alternative, it is submitted on behalf of the Accused/Appellant that the sentence imposed is very harsh and even if the conviction is upheld, the sentence should be reduced to the period already undergone.
5. We have carefully gone through the records of the case. We have perused the FIR (Exhibit P-1). The story recorded in the FIR is virtually identical to the prosecution version.
6. Aatmaram (PW-1) appeared in the witness-box. His statement is by

and large consistent with the prosecution story and corroborates all what has been stated in the FIR. At the cost of repetition, it may be stated that the Complainant (PW-1) in his statement has affirmed on oath that the Accused/Appellant was not eligible for appearing in the examination since he did not have the requisite 80% attendance. A week before the occurrence, the Accused/Appellant had visited the Complainant and at his instance, the Complainant had taken the Accused/Appellant to the office of the Principal, but the Principal did not yield to the request of the Accused/Appellant. No doubt, there are some exaggerations and embellishments in the statements made in the Court by the prosecution witnesses that the Accused/Appellant had given a threat in the office of the Principal that he shall get his work done by hooliganism (*gundagardi*) and committing murder. These facts have not been corroborated with what has been recorded in the FIR. But, on the basic issue, the statements are ad idem. Aatmaram (PW-1) further states that on 11.06.1999, at about 8:30 – 9:00 pm, the Accused/Appellant came to his house. When the Accused/Appellant knocked the door, it was opened by Indrajeet Varik (PW-3), who called the Complainant. Again, the Accused/Appellant raised a demand that his attendance be suitably modified. However, when the Complainant refused to do so, the Accused/Appellant attacked the Complainant from behind and stabbed him on his chest and stomach etc. and attempted to kill him. The witness also states that he caught hold of the dagger, the weapon of assault and then he called Indrajeet Varik (PW-3). The wife and niece of Aatmaram (PW-1)

also came to the spot. Complainant Aatmaram (PW-1) had caught hold the Accused/Appellant as well as the dagger. The wife took hold of the dagger and handed over the same to Indrajeet Varik (PW-3). Aatmaram (PW-1) has been cross-examined in detail, but there is not even a suggestion made to him that the Complainant was the aggressor or that he had assaulted the Accused/Appellant.

7. Janhavi (PW-2) is wife of Complainant Aatmaram (PW-1). She states that she was at her home when the occurrence took place. She came to the courtyard to keep the utensils and then saw that near the door, the Accused/Appellant was stabbing her husband and he gave number of stab injuries in her presence. She also states that she somehow caught hold of the dagger and handed over the same to Indrajeet Varik (PW-3). She then searched for a rope in her house to tie the Accused/Appellant, but, in the meantime, the Accused/Appellant ran away. She, later, handed over the dagger to the police. In the cross-examination, she states that the Accused/Appellant gave 4-5 stabs to her husband in her presence. She, however, could not give any explanation as to how the Accused/Appellant received injuries.

8. Indrajeet Varik (PW-3) is the neighbour. He also made a similar statement. According to him, he heard a knock at the door and when he opened the door, he found the Accused/Appellant, who stated that he wanted to meet Complainant Aatmaram (PW-1). He then called Aatmaram. After a little while, he heard the cries of Aatmaram and

thereafter he came down out of his house and saw that Complainant Aatmaram (PW-1) was smeared with blood and had caught hold of Accused/Appellant and was shouting that somebody may take possession of the dagger. He [Indrajeet Varik (PW-3)] caught hold of the Accused/Appellant's hand and in the meantime, Janhavi (PW-2) took possession of the dagger. Thereafter, the Accused/Appellant managed to escape.

9. We may now refer to medical evidence. Dr. J.R. Dhritlahare (PW-8) examined both the Accused/Appellant and the Complainant. His report with regard to examination of the Complainant is Exhibit P-7. In Exhibit P-7, he has mentioned the following injuries:

1. Incised wound over the mid-chest supra stern region, 2.5 x 1 cm;
2. Incised wound on the left side of anterior aspect of axillary region, 1.5 x 1 cm oblique;
3. Incised wound on the left side of mid axillary region, 3.5 x 1.5 cms between the 5th and 6th ribs;
4. Incised wound of the left side of mid axillary region, 1.5 x 1 cm;
5. Incised wound on the left side of axillary region between 7th – 8th ribs, 2.5x1 cm;
6. Incised wound, 10 x 2.5 cms on the left flank of upper part of abdomen, oblique direction;
7. Incised wound on the left side of abdomen below umbilicus, 3.5 x 2 cms;
8. Incised wound of linear injury on the left side of deltoids region, 8 x 0.3 cm;
9. Incised wound on the left arm, inner aspect of axillary region, 5 x 0.3 cm;

10. Incised wound on the left face, oblique linear injury, 5 x 0.2 cm;

11. Incised wound on right side of palm at little finger, 2.5 x 0.3 cm and at middle finger, 1.5 x 0.3 cm.

10. The medical report clearly indicates that there were as many as 11 incised wounds on the person of the Complainant. These wounds were mainly on the chest region and some of them were on the upper part of the abdomen. The large number of stab wounds and the fact that these stabs were in the chest region clearly indicate that the intention of the Accused/Appellant was to kill the Complainant. The assault was murderous in nature, but miraculously the Complainant survived despite serious injuries. The Accused/Appellant has also suffered two injuries. There is no doubt that there is no apparent evidence as to how he suffered the injuries. But, in view of the nature of injuries suffered by the Complainant and the explanation given by him that he had caught hold of the dagger and the Accused/Appellant, the possibility of such injuries having suffered by the Accused/Appellant because of the grabbing each other cannot be ruled out. Be that as it may, the attack by the student on his Instructor on a trivial issue of lower attendance cannot be termed anything else but an attempt to cause murder. Therefore, we have no hesitation in upholding the conviction awarded to the Accused/Appellant under Section 307 IPC.

11. As far as the sentence is concerned, the Trial Court did not take into consideration many factors. The Accused/Appellant, at the time of

occurrence, was a student. He was only 22 years of age when the occurrence took place. This was not a pre-planned case of attempt to murder. It was a desperate attempt by a student to somehow get his attendance modified to the minimum required of 80% and when the Complainant did not agree, the Accused/Appellant, in a fit of anger, caused the injuries. These are the factors which were to be taken into consideration while sentencing the Accused/Appellant. When sentence is to be passed, the Court must consider both the aggravating circumstances and the mitigating circumstances. The legislature in its wisdom has provided that in a case of attempt to murder where anybody does any act with such intention or knowledge that if he, by that act, causes death, he would be guilty of murder, and shall be punished with imprisonment of either description for a term which may extend to 10 years and during the process, if hurt is caused to any person by such act, he shall be liable either to life imprisonment or such a punishment as otherwise provided, i.e., upto 10 years. Therefore, the legislature in its wisdom in an offence of attempt to murder left it to the discretion of the Court to impose punishment from one day to life imprisonment. When such wide discretion is given, such discretion has to be exercised in a judicious manner. Reasons must be given why the maximum sentence has been imposed or why the minimum sentence should be imposed. It is not just the whims and fancies of a Judge to choose any sentence and impose the same. Sentencing is as important as deciding the case itself.

12. In the present case, the learned Trial Court did not take into consideration the mitigating circumstances especially the young age of the Accused/Appellant, the fact that he had obviously assaulted the Complainant in a fit of rage and the fact that there was no previous enmity between them were not taken into consideration by the learned Court below while sentencing the Accused/Appellant. While sentencing the Accused/Appellant, the Court should also take into consideration that whether the Accused is beyond reformation or not. If chances of the Accused being reformed are there, the sentence should be on the lower side with a view to encourage reformation of such a person. At the same time, behaviour of the Accused cannot be condoned. In the instant case, the Accused/Appellant had attacked his Teacher. The assault was cruel and there were as many as 11 stabs.

13. Normally, taking all these factors into consideration, we may have been justified in imposing a punishment of 7-10 years in this case. We would have been inclined to do so but in the present case, we find that the Accused/Appellant has spent more than five years behind the bar. He was granted bail on 12.07.2004. He has been out of the jail for more than 12 years, but now he would be 34 years of age, and he may have married and may have small children. If we send him behind the bars, we would also be punishing his wife and children for a crime for which they are not responsible. The delay in the judicial process cannot be used to punish the family members of the Accused.

14. In this view of the matter, we are taking a more lenient view than we

would have normally taken and, therefore, while upholding the conviction awarded to the Accused/Appellant, we, in the interest of justice, reduce the substantive sentence imposed upon him to the period of incarceration already undergone by him, in the peculiar facts and circumstances of the case.

15. Consequently, the criminal appeal is allowed in part to the extent indicated above.

Sd/-

(Deepak Gupta)
Chief Justice

Sd/-

(Sanjay K. Agrawal)
Judge