

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 80 of 1995

Judgment reserved on : 05.10.2016

Judgment delivered on:-07.10.2016

Anand Tambe S/o. Diwakar Rao Tambe, Aged about 23 years, R/o.
Chantapara, Police Station Civil Lines, Bilaspur (M.P.)

---- Appellant

Versus

State of Madhya Pradesh Through Police Station Civil Lines,
Bilaspur (M.P.) (Now Chhattisgarh).

---- Respondent

For Appellant	:-	Mr. Pramod Verma, Sr. Advocate along with Mr. Suresh Pandey, Advocate
For Respondent	:-	Ms. Shobha Kashyap, Dy. Govt. Advocate

S.B. Hon'ble Shri Justice Anil Kumar Shukla

C A V Judgment

(Delivered on 7th October, 2016)

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 12.01.1995 passed by the 5th Additional Sessions Judge, Bilaspur in Sessions Trial No. 220/1992, whereby & whereunder, after holding the appellant guilty for attempt to commit murder and injuries by knife to complainant Basantrao Gurjar and his son Vishwasrao Gurjar, convicted him under Sections 307 and 324 of IPC and sentenced him to

undergo rigorous imprisonment for 4 years and 2 years, respectively.

2. Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted and sentenced the appellant as aforementioned and thereby committed an illegality.
3. The undisputed facts are that complainant Basantrao Gurjar was residing in his own house in Tilaknagar at Chantapara, Bilaspur, in which the appellant was also residing as a tenant.
4. Case of the prosecution, in brief, is that complainant Basantrao Gurjar was residing in Chantapara. The appellant is son of the complainant's uncle. Due to non-payment of house rent for two months, a dispute arose between the complainant and the appellant, on which some altercation took place between them. On 13.05.1991, a quarrel took place between the complainant and the appellant on account of switching of bulb and on refusal of the complainant for switching of the bulb, the appellant assaulted him by a Knife, as a result of which the complainant sustained injuries on his stomach, left rib and left ear, hearing the altercation, son of the complainant, namely, Vishwas Gurjar (PW-7) came there for intervening between them, then the appellant also assaulted him with the knife. On hearing the hue and cry, Vijay Kumar Gurjar (PW-1) and Ashok Kumar Gurjar (PW-2) also came there and Ashok Kumar Gurjar (PW-2) took the complainant to Sardar Patel Hospital, Bilaspur for his treatment, where Doctor A. Sen (PW-5) treated the

injured/complainant and thereafter Dr. R.A. Sharma (PW-11) examined the complainant and gave his report vide Ex.-P/5A. The doctor sent information to Police Station Civil Lines, Bilaspur. Thereafter, FIR (Ex.-P/11) for an offence under Section 307 was registered in the said police station. The police, after completion of the investigation, filed a charge-sheet under Section 307 of IPC before the concerned Court. Statement of the accused was also recorded under Section 313 CrPC in which he denied the guilt and pleaded innocence.

5. After hearing the parties and going through the record, the Court below has convicted the accused/appellant as aforementioned.
6. Learned counsel for the appellant has not disputed the fact that the appellant had caused injuries to complainant Basantrao Gurjar and his son Vishwas Rao Gurjar with a sharp weapon. Learned counsel mainly argued on the point that the conviction imposed upon the accused/appellant under Section 307 IPC is illegal and the case may be punishable under section 308 IPC. He further argued that looking to the nature of dispute, it is clear that because of the sudden provocation the incident took place. He argued that considering the medical evidence, wherein the doctor has opined that the injuries sustained by the injured were simple in nature, the conviction of the appellant may be altered from Section 307 IPC to Section 308 of IPC. He further argued that the incident is of the year 1991 and at the time of incident the appellant was just 23 years old. At present, the appellant is a practicing lawyer and no fruitful purpose would be served in

case the appellant is made to undergo the remaining jail sentence imposed upon him. Therefore, the sentence imposed upon him may be reduced to the period already undergone by him.

7. Ms. Shobha Kashyap, Dy. Government Advocate for the State/respondent, while supporting the impugned judgment, submitted that the trial Court has rightly convicted and sentenced the appellant and the same does not call for any interference by this Court.
8. Basantrao Gurjar (PW-4) deposed in his evidence that the appellant assaulted him with a knife on his stomach, left rib and left ear and thereafter, he was taken to Sardar Patel Hospital, Bilaspur for treatment, where he was admitted for about 28-29 days.
9. Dr. A. Sen (PW-5) examined injured Basantrao Gurjar (PW-4) and deposed that at the time of admission in the hospital the condition of the injured was normal, he was not suffering from fever, the condition of breathing was 24 per minute, the pulse condition of the injured was 88 per minute and his blood pressure was 120/80 MHG, his lungs were clear, his abdomen was soft and the injured/patient was in conscience condition and he had come on his feet. The doctor found the following injuries-
 1. Incised wound $\frac{3}{4}$ " x $\frac{1}{4}$ " on upper part of the left ear.
 2. Incised wound $\frac{1}{4}$ x 1" 2 inch over the navel and mid of axial line.

3. Incised wound $\frac{1}{4} \times \frac{1}{2}$ on the top of the umbilical and the injury could not be assessed due to beading and multiple stab injury.

10. Dr. A. Sen (PW-5) in para 11 of his statement has deposed that the injuries found on the body of injured Basantrao Gurjar, were simple in nature, the duration of injuries were 1-3 hours prior to admitting in the hospital and in absence of any disorder the injured was likely to recover within 10-15 days. He certified his report vide Ex.P-7.
11. On 14.05.1991, at 10.15 PM, the injured was admitted in the District Hospital and was examined by Dr. R.A. Sharma (PW-11). He deposed in para-3 of his deposition that the injury suffered by injured Basantrao Gurjar on his stomach was serious in nature and in absence of proper treatment there was possibility of his death. The doctor has not deposed in his evidence that internal organ were effected and he had sustained serious injuries. He only stated that the blood was found inside the abdomen. In such a situation, the injured sustained serious injuries in any of his internal organs is not proved. Injured Basantrao Gurjar (PW-4) has not deposed in his evidence that despite the opportunity available to the appellant he did not give him any other blow. However, at the time of causing such injuries over the abdomen and left ear, the appellant would be aware that by such act death of the complainant may likely to take place.

12. Sections 307 and 308 IPC are relevant for adjudication of this case, which read as under:

“ Section 307. Attempt to murder.—Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to 1[imprisonment for life], or to such punishment as is hereinbefore mentioned. Attempts by life convicts.—2 [When any person offending under this section is under sentence of 1[imprisonment for life], he may, if hurt is caused, be punished with death.

Section 308 IPC - Attempt to commit culpable homicide.—Whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

13. **Attempt to commit culpable homicide:-** ingredients of offence:- A perusal of the provisions contained in section 307 and section 308 I.P.C. shows that they make provision for punishment of an attempt to commit certain offence and that while section 307 IPC is linked with the offence of murder punishable under section 302, IPC. Section 308 IPC is linked with the offence of culpable homicide punishable under section 304, Part-I IPC and section 307 IPC covers those cases where the act has not resulted in death but if it had resulted in death, the offence would have amounted to murder. Similarly, section 308 IPC, covers a case where the act has not resulted in death but if it resulted in death, the offence would have amounted to culpable homicide not amounting to murder.

14. As far as the injuries caused to Vishwas Gurjar (PW-5) is concerned, Dr. A. Sen in his deposition in para -9 has stated the following injures-

1. Incised wound $\frac{3}{4}$ " x $\frac{1}{4}$ " on upper side of left thigh.
2. Incised wound $\frac{1}{4}$ x $\frac{1}{2}$ " on left buttock region

He opined that both injuries were simple in nature and were caused by a hard and sharp instrument.

15. Considering the facts and circumstances of the case, particularly the medical evidence and the facts that the incident took place because of a sudden provocation, I am of the opinion that the conviction imposed upon the appellant deserves to be and is hereby altered from Section 307 IPC to Section 308 IPC. However, the conviction imposed under Section 324 IPC is affirmed.

16. So far as the sentence is concerned, the submission of the counsel for the appellant is that the incident took place on 14.05.1991, when the appellant/ accused was just 23 years old. According to the counsel for the appellant, at present the appellant is a practicing lawyer and the incident took place 25 years ago and the complainant was his near relative. The incident had happened due to switching the bulb on. Therefore, the sentence awarded to the appellant may be restricted to the period already undergone by him.

17. From perusal of the record, it appears that the appellant has suffered jail sentence for 80 days. The offence was committed on 14.05.1991 and the appellant was convicted and sentenced on 12-1-1995. The appeal remained pending since 1995, i.e., for about 23 years. In these facts and circumstances of the case, I do not feel it appropriate to send the appellant back to jail. I am of the view that ends of justice would be met if, while convicting the appellant under Sections 308 and 324 IPC, the jail sentence awarded to him is restricted to the period already served by him besides imposing fine.
18. In the result, the appeal is partly allowed. The conviction imposed upon the appellant under Section 307 IPC is set aside and instead he is convicted under Section 308 IPC. The conviction imposed upon him under Section 324 IPC by the trial Court is affirmed. For both the offences, the appellant is sentenced for the period already undergone by him. In addition thereto, for the offence under Section 308 IPC, the appellant is sentenced with fine of Rs.10,000/- also, in default of payment thereof, the appellant shall undergo further rigorous imprisonment for six months. Similarly, for the offence under Section 324 IPC, the appellant is sentenced with fine of Rs.2,000/-, in default of payment thereof, he shall undergo further rigorous imprisonment for two months. Both the amounts of fine be deposited by the appellant before the trial Court within a period of one month from the date of this judgment.

19. The amount of fine of Rs.10,000/-, deposited by the appellant, shall be paid to the legal heirs of complainant Basantrao Gurjar (PW-4) as compensation, as Basantrao Gurjar is reported to be dead.

Sd/-
(Anil Kumar Shukla)
Judge

santosh