

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 1613 of 1998

Judgment reserved on : 16.11.2016

Judgment delivered on : 08.12.2016

- Ajay Kumar, son of Ajit Ram Satnami, aged about 21 years, student, Resident of Bankimongra, village Tundra, Police Station Bankimongra, District Bilaspur (MP)

---- Appellant

Versus

- State of MP, now Chhattisgarh

---- Respondent

For Appellant	:	Shri Sunil Verma, Advocate on behalf of Shri BMK Bajpai, Advocate
For Respondent/State	:	Shri Neeraj Sharma, Dy Govt Advocate

Hon'ble Shri Justice Anil Kumar Shukla

CAV Judgment

1) This appeal is directed against the judgment of conviction and order of sentence dated 17.07.1998 passed by the Sixth Additional Sessions Judge, Bilaspur in Sessions Trial No. 482 of 1996, whereby learned ASJ after holding the appellant guilty for commission of offences under Sections 304-I & 324 of the IPC, sentenced him to undergo RI for 6 years and to pay fine of Rs.1,000/- in default of payment of fine, to further undergo one year RI; Six months RI respectively.

2) Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted & sentenced the appellant as aforementioned and thereby committed illegality.

3) Case of the prosecution, in brief is that on 20.10.1996 deceased Gaurishankar, Shiv Narayan, Vijay and complainant Inaytulla went to Manoranjan Mandir to see Goddess Durga. Accused/appellant Ajaykumar also was present there. Gaurishankar called upon Ajaykumar and there was a conversation between them and thereafter, both of them went backside of the Mandir. Shiv Narayan, Vijay and Inaytulla also followed them and saw that Gaurishankar and Ajaykumar were fighting with each other with hands and fists. When Shiv Narayan, Vijay and Inaytulla intervened them, at that time, Ajaykumar took out knife and assaulted them in which Inaytulla got hurt and he moved away then the accused assaulted Gaurishankar by that knife in his stomach. When it was bleeding, Ajaykumar ran away from the spot with the knife. Shiv Narayan took Gaurishankar to the SECL hospital, Bankimongra and surgical specialist Dr. US Kondapurkar (PW-6) treated him and advised for an operation. Medical examination report of the doctor is vide Ex.P/4. Deceased Gaurishankar had been shifted to the Government Hospital, Korba for getting operation, from where he had been again shifted to Bhilainagar hospital on 27.10.1996, where Gaurishankar died at 4.10 am, after seven days of the incident. Morgue intimation and FIR had been registered by Ashok Mishra (PW-13), Station In-charge, vide Ex.P/18 and Ex.P/17 respectively. Dead body was sent for autopsy to the district hospital, Durg vide Ex.P/8. Autopsy was conducted by Dr VK Sao, vide Ex.P/9.

4) Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973. After completion of investigation, charge-sheet was filed before the Court of Judicial Magistrate First Class, Katghora, who in turn, committed the case to the Court of Sessions from where learned Sixth Additional Sessions Judge, Bilaspur received the case on transfer for trial.

5) In order to prove the guilt of the accused/appellant, the prosecution has examined as many as 13 witnesses. The appellant was examined under Section 313 of the Cr.P.C., in which he denied the circumstances appearing against him and claimed innocence and false implication in the crime in question.

6) After providing opportunity of hearing to the parties, learned Sixth Additional Sessions Judge, Bilaspur has convicted and sentenced the appellant as aforementioned.

7) I have heard learned counsel for the parties, perused the judgment impugned and record of the trial Court.

8) At the outset, learned counsel for the appellant submits that in light of evidence of the witnesses available on record, he is not disputing the conviction, but considering the age of the appellant and the fact that the appellant is in jail for more than two years, the sentence requires re-consideration. In this connection he further submits that the incident is of the year 1996 and almost 20 years elapsed till now. Therefore, looking to the custody period of the appellant, his sentence may be reduced to the period already undergone by the appellant. Learned counsel placed reliance in the

matter of **Khanjan Pal Vs State of UP** (1990) 4 SCC, wherein the sentence of the appellant was reduced to the period already undergone.

9) On the other hand, learned State counsel supported the judgment impugned and submitted that the evidence adduced on behalf of the prosecution is sufficient for drawing inference that the appellant has committed the offence.

10) In order to appreciate the arguments advanced on behalf of the parties, I have examined the evidence available on record.

11) During a casual conversation between the appellant and the deceased an altercation ensued which culminated in the stabbing with knife. The appellant used the knife only once and did not act in any cruel manner. It was in the sudden altercation and in the heat of passion that the appellant inflicted the injuries with the knife on the body of the deceased without any intention or premeditation.

12) Present appellant has been granted bail on 11.11.1998 and has been facing trial since the date of the incident i.e., he is under trial for about 20 years till now. It is not in dispute that the appellant was aged about 20 years at the time of the incident and he remained in jail for more than two years of the total sentence awarded to him. The incident took place in the year 1996.

13) Looking to the submissions made by learned counsel for the parties and facts and circumstances of the case, considering that the appellant does not want to challenge the conviction imposed upon him but, he only prays for reduction of the sentence, the

prayer of learned counsel for the appellant appears to be acceptable in my view and in light of the judgment in the matter of **Khanjanpal** (supra), wherein the appellant was not committed to prison for any further period and he was directed to pay additional fine. Therefore, considering all the facts and circumstances of the case, it would be appropriate that while enhancing the fine amount imposed upon the appellant, if the jail sentence is reduced to the period for which he remained in jail, that would meet the ends of justice.

14) In the result, the appeal is partly allowed. The judgment of conviction against the appellant under Sections 304 Part-I and 324 of the IPC by the Court below is hereby maintained. So far as sentence part is concerned, since the appellant has already undergone jail sentence for a period of more than two years; the offence was committed on 20.10.1996; and further that the case remained pending for more than 20 years, the appellant is sentenced to the period already undergone by him. However, the appellant is further required to pay a fine of Rs.10,000/-. The sentence is thus converted to additional fine of Rs.10,000/-. On realisation, the fine amount shall be paid to the parents of deceased Gaurishankar within two months from the date of receipt of this order. In default of payment of fine amount, the appellant shall undergo RI for one year.

15) The appellant is on bail. His bail bonds are not discharged at this stage and shall remain operative for a period of six months in view of the provisions contained under Section 437-A of the Cr.P.C.

Sd/-

(Anil Kumar Shukla)
JUDGE

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