

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 9 of 2013

- Suraj @ Chotu Chouhan S/o Suresh Chouhan Aged About 20 Years R/o Prachi Vihar, Qtr. No. 143, P.S. Chkradhar Nagar, Distt.-Raigarh (CG)

---- Appellant

In jail

Versus

- State Of Chhattisgarh Through- District Magistrate, Raigarh Distt. Raigarh (CG)

---- Respondent

For Appellant : Shri Yogesh Pandey, Advocate.

For Respondent/State : Shri Adil Minhaj, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker

Judgment on Board

06/05/2016:

This appeal arises out of the judgment of conviction and order of sentence dated 1.12.2012 passed by the First Additional Sessions Judge, Raigarh in ST No.45/2012, convicting the accused/appellant under Section 307 of IPC and sentencing him to undergo RI for 10 years and to pay a fine of Rs.500/- with default stipulation.

02. As per the prosecution case, on 2.1.2012 when injured Vijay Sidar (PW-1) and his wife Anima Sidar (complainant) had gone to jungle for cutting wood, the accused/appellant along with Vicky @ Vijendra (acquitted accused) entered their house and took away the mobile of Anima Sidar. When PW-1 enquired from the appellant about cell phone of his wife, the appellant instead of returning the same inflicted knife

injury on his left rib. Immediately thereafter FIR (Ex.P/5) was lodged by Anima Sidar, on which offence under Section 307/34 of IPC was registered against the accused persons. Injured Vijay Sidar (PW-1) was medically examined by PW-2 Dr. R.N. Mandavi vide Ex.P/3 who noticed sharp cutting stab injury on right side of chest below right axilla of size 4.3 cm x 1.5 cm x 1.5 cm and opined that the injury was grievous in nature. The injured remained hospitalized from 2.1.2012 to 13.1.2012. After completing investigation charge sheet was filed against the accused persons under Section 307/34 of IPC and Section 25 of the Arms Act. However, the trial Court framed charge under Section 307/34 of IPC against them.

03. So as to hold the accused persons guilty, the prosecution examined three witnesses. Statements of the accused were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. In defence, the accused/appellant examined himself as DW-1.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment, while acquitting co-accused Vijendra @ Vicky of the charge, convicted and sentenced the appellant as mentioned in para-1 of this judgment.

05. Learned counsel for the appellant submits as under:

- that in fact, the complainant party was the aggressor, who came to the house of the appellant and beat him brutally. If in his self

defence the appellant caused any injury to the victim, it would not come within the ambit of Section 307 of IPC.

- even if the entire prosecution case is taken as it is, considering the nature of injury, evidence of the treating doctor and the act of the appellant, at best he can be held guilty under Section 325 of IPC.
- alternatively, it has been argued that if this Court ultimately maintains the conviction of the appellant, the sentence awarded by the trial Court being too excessive may kindly be reduced suitably.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that conviction of the accused/appellant is strictly in accordance with law and the sentence imposed on him is also commensurate with the gravity of the offence and as such, needs no interference by this Court.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-1 Vijay Sidar, the injured witness, has stated that he knew the appellant; on the date of incident when he told the accused persons that his wife Anima Sidar is calling them, the accused/appellant took out a knife and assaulted with it on his right rib. On his raising hue and cry, his son, wife and people of the vicinity came there. He has further stated that his mobile was stolen and as his son informed him that during his absence, the accused persons had come to their house, he went to the accused persons to talk with them in this regard, however,

the appellant assaulted him with knife. In cross-examination, this witness remained firm and reiterated as to the manner in which he was caused injury by the accused/appellant.

09. PW-2 Dr. RN Mandavi medically examined the victim (PW-1) on 2.1.2012 vide Ex.P/3 and noticed sharp cutting stab injury on right side of chest below right axilla of size 4.3 cm x 1.5 cm x 1.5 cm, which had affected pleura of right lung. In his opinion, the injury was grievous in nature, which was caused by sharp edged weapon. He had also examined the weapon of offence knife and opined that the injury suffered by the victim could be caused by the said weapon vide Ex.P/4. PW-3 TR Chouhan, investigating officer, has duly supported the prosecution case.

10. Close scrutiny of the evidence makes it clear that on 2.1.2012 it is the accused/appellant who inflicted knife injury on the victim (PW-1), thereby causing cutting stab injury on right side of chest below right axilla. PW-1 Vijay Sidar has consistently stated in his evidence about the act of the appellant and defence has not been able to elicit anything from him to its advantage. This apart, medical evidence also fully supports the prosecution case. In these circumstances, complicity of the accused/appellant in commission of the crime stands proved beyond all reasonable doubt.

11. Now the next question for consideration is whether the act of the accused/appellant makes him liable to be convicted under Section 307 of IPC or for any lesser offence?

12. Considering the nature and extent of injury caused to the victim,

the evidence of the treating doctor, who has though opined the injury to be grievous in nature, but nowhere has stated that it was sufficient in the ordinary course of nature to cause death, in my opinion, the appellant cannot be said to have assaulted the victim with intention to commit his murder but in the facts and circumstances, he can safely be held guilty of voluntarily causing grievous hurt by dangerous weapons. Being so, he is liable to be convicted under Section 326 of IPC and not 307, as has been held by the trial Court.

As regards quantum of sentence, in the totality of facts and circumstances, the ends of justice would be served if the appellant is sentenced to RI for five years and directed to pay a sum of Rs.5000/- as compensation to the victim with default sentence of six months.

13. In the result, the appeal is allowed in part. While acquitting the appellant of the charge under Section 307 of IPC, he is held guilty under Section 326 of IPC and sentenced to undergo RI for five years and pay a sum of Rs.5000/- as compensation under Section 357 of Cr.P.C. to the victim (PW-1), in default whereof to suffer additional RI for six months.

Sd/

(Pritinker Diwaker)

Judge