

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1160 of 2013**

Bhojraj @ Bhojram Dewangan S/o Fatteram Dewangan Aged
About 40 Years R/o Budhwari Bazar, Birgaon, PS Urla,
Raipur, Civil And Rev. Distt. Raipur C.G.

---- Appellant**Versus**

State Of Chhattisgarh Through SHO, PS Urla, Raipur, Civil
And Rev. Distt. Raipur C.G.

---- Respondent

For Appellant	: Shri Santosh Bharat, Advocate
For State/Respondent	: Shri Sumit Jhanwar, Panel Lawyer

HON'BLE SHRI JUSTICE CHANDRA BHUSHAN BAJPAI**JUDGMENT****15/11/2016**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 29.8.2013 passed by the 7th Additional Sessions Judge, Raipur (CG) in ST No.216/2012, whereby and whereunder the learned trial Judge after holding the appellant guilty for attempting to take the life of Suresh Dewangan, PW2, convicted him under Section 307 of the Indian Penal Code (for short the 'IPC') and sentenced to undergo R.I. for 7 years and to pay fine of Rs.1000/-, in default of payment of fine to undergo R.I. for 6 months. Further directed that the period already remained in jail during trial till the judgment be set off with the sentence awarded.

2. The conviction is impugned on the ground that without there being any iota of evidence, the Court below has convicted and sentenced the appellant as aforementioned and thereby committed illegality.

3. As per case of the prosecution, the complainant PW-2 and the accused /appellant are the real brothers. On 9.7.2012, the accused/appellant after consuming liquor reached to the house and he was making dispute with his mother. Thereafter, the complainant / victim intervened then during arguments, the accused/ appellant assaulted him at various parts of the body by knife. The Urla Police recorded Ex.P/5, the unnumbered FIR and thereafter sent the injured for MLC and medical treatment. PW-10, Dr. A.K. Baghel examined the victim and noticed 2 stab wounds and 2 lacerated wounds and 1 incised wound near chest and adjoining area. His report is Ex. P/2A. The complainant was admitted in the Hospital. He was treated by PW-11, Dr. Sandeep Chandrakar and ultimately discharged on 18.7.2012 after 9 days. The said Doctor in his opinion on a query submitted that injury No.3A was of grievous nature and if not treated within time, the same was fatal for life. The police recorded statement of witnesses under Section 161 Cr.P.C. and after necessary investigation, filed the charge sheet before the Judicial Magistrate First Class, Raipur (CG), who in turn registered the matter as Cr. Case No. 244/2012 and vide order dated 16.10.2012 committed the same for trial. The learned Additional Sessions Judge, Raipur received the case on transfer for trial.

During trial the appellant was charged for the offence under Section 307 IPC. The appellant denied the charges and prayed for trial.

4. In order to prove the guilt of the appellant, prosecution examined as many as 12 witnesses. Statement of the appellant was recorded under Section 313 Cr.P.C. in which he denied the circumstances appearing against him, pleaded innocence and false implication in the crime in question. After affording opportunity of hearing to the parties, the learned Additional Sessions Judge convicted and sentenced the appellant as above.

5. Learned Counsel for the appellant submits that after consideration of the entire material he is not assailing the instant appeal on conviction part whereby, the appellant has been convicted under Section 307 IPC, but he is confining his arguments for the quantum part only. He submits that the accused/ appellant is an illiterate person. He was a labour prior to the incident and was managing anyhow his bread. On account of some family dispute the incident has suddenly happened. He is the first offender, having no criminal antecedents as per report of the Doctor, only one injury was grievous in nature thereby, other 4 injuries were simple in nature. The complainant is his real brother. He was in the hospital for 9 days only. He had served the sentence for 4 years, 4 months and 5 days till date. Looking to the entire facts and circumstances, he be sentenced for the period already undergone by him.

6. Per contra, learned Counsel for the State has opposed the arguments advanced on behalf of the appellant and submitted that the accused/appellant had assaulted to his unarmed real brother on account of some family dispute, where the complainant attempted to intervene not to make any dispute with the mother and as the accused/appellant was annoyed, for this intervention, he in reaction assaulted as aforementioned and looking to the entire facts and circumstances, the trial Court very moderately sentenced the appellant, hence, the appeal may be dismissed on both the counts.

7. In order to appreciate the arguments, I have heard Learned Counsel for the parties, perused the judgment impugned and record of the Court below.

8. Upon minute examination of the material adduced by the prosecution it reveals that only one injury was reported to be grievous in nature. With this, other injuries were not grievous. The complainant remained in hospital for 9 days only. The accused and the complainant both are the real brothers. On account of some dispute where the accused/appellant was making some interaction with his mother and the complainant intervened in the matter. The accused/appellant is an illiterate person. He had remained in jail for 4 years, 4 months and 5 days till date. There is no minimum sentence prescribed for the offence under Section 307 IPC.

9. Upon consideration of the entire facts, in the considered view of this Court, the ends of justice would be served if the appellant may be sentenced for the period already undergone by him.

10. Consequently, the criminal appeal filed by the appellant is allowed in part.

11. The conviction of the appellant and the fine sentence awarded along with the default sentence is hereby affirmed. So far as the substantive jail sentence concerned, instead R.I. for 7 years, the accused/appellant is sentenced for the period already undergone by him. The accused/appellant is in custody, he be released forthwith if not required in any other case. If the fine amount is not deposited, then the authorities concerned are directed to serve the default sentence as mentioned in para 33 of the judgment. If the fine amount is deposited, then the appellant be released forthwith.

Sd/

(Chandra Bhushan Bajpai)
JUDGE