

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO. 944 OF 2002

Shiv Charan, S/o Bhola Ram Yadav, aged about 22 years, R/o Kharod,
P.S. Sheorinarayan, District Janjgir-Champa (C.G.)

... Appellant

versus

State of Chhattisgarh

... Respondent

For Appellant	:	Mr. Parag Kotecha, Advocate.
For Respondent-State	:	Mr. Lav Sharma, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

11/11/2017

1. The present appeal is by the Legal Aid Department assailing the judgment of conviction and sentence dated 13.6.2002 passed by the Additional Sessions Judge, Janjgir, Sessions at Bilaspur, in Sessions Trial No. 173 of 2001, whereby the Appellant has been convicted for the offence punishable under Section 307 of IPC and sentenced to undergo R.I. for 5 years with fine of Rs.100/- with default stipulation.

2. The Appellant initially was in custody from 9.3.2001 to 14.9.2001, i.e., for a period of about 6 months and 6 days. Thereafter, he was on bail during trial. Subsequently, he was convicted vide the impugned judgment dated 13.6.2002 and again got released on bail on 15.2.2003, i.e., again for a period of about 8 months and 2 days he was in custody. Thus, in all, the Appellant had remained in custody for a period of about 14 months and 8 days.

3. Case as per the prosecution in brief is that the Appellant is said to have assaulted the victim, Gopal Prasad, with a knife on 8.3.2001 and in the process, Gopal Prasad received four injuries all of which were incised wounds. A report was immediately lodged and thereafter the Appellant was taken into custody.

4. A criminal case was registered against the Appellant and the matter was put to trial before the Additional Sessions Judge, Janjgir, vide Sessions Trial No. 173 of 2001, on the charges levelled against the Appellant under Sections 307, 324 of IPC and Sections 25(1)(b) and 27 of the Arms Act.

5. During trial, in all, 9 witnesses were examined on behalf of the prosecution. There were no witnesses examined in defence.

6. After conclusion of the trial, the learned Sessions Court, vide the impugned judgment, reached to the conclusion that the prosecution has not been able to establish its case so far as the charges levelled against the Appellant under Section 324 of IPC and Sections 25 and 27 of the Arms Act is concerned and accordingly acquitted the Appellant of the said charges. However, the learned Sessions Court found the Appellant stands guilty of having committed the offence under Section 307 of IPC and on convicting him for the said offence, sentenced him to undergo R.I. for 5 years with fine of Rs.100/- with default stipulation.

7. It is this judgement of conviction and sentence which has been assailed by the Appellant in the present appeal.

8. This Court thus is now confined to adjudicate upon the issue, as to whether the conviction of the Appellant under Section 307 of IPC and the sentence awarded is justified or not?

9. Though the brief was allotted to a Panel Lawyer of the High Court Legal Aid Committee, but since the allotted Panel Lawyer was not present in the Court, this Court, considering the seniority of the matter, thought it proper to take the assistance of Shri Parag Kotecha, who is also a Panel Lawyer of the Legal Aid Committee and present in the Court, for disposal of this appeal.

10. Shri Parag Kotecha, who is assisting the Court on behalf of the Appellant, after perusal of record and the evidence which have come on record, submits that it appears that none of the injuries which have been inflicted by the Appellant are serious injuries for which an offence under Section 307 of IPC could have been made out against the Appellant. He further submits that it is a case where there appears to be an old enmity between the appellant and the injured which led to the appellant assaulting the injured, Gopal Prasad, PW-1. He also submits that it is a case where the another victim, Vinod, was also present along with injured, Gopal Prasad at the time of the accident, but the said Vinod, who perhaps would had been the most important witness, has not been examined and therefore the case of the prosecution becomes doubtful. He thus prayed for the setting aside of the impugned judgment of conviction.

11. Shri Kotecha, further contended that it is a case where even if the facts of the case of the prosecution are admitted in toto, even then, at best, it can be a simple case for grievous injuries without attributing the provisions of Section 307 of IPC and thus the impugned judgment is liable to be suitably modified.

12. Per contra, Shri Lav Sharma, Panel Lawyer, appearing for the State, referring to the deposition of both the eye-witnesses as also the nature of injuries sustained by the victim-Gopal Prasad, submits that these are sufficient indicators of the prosecution to have sufficiently proved its case before the Court below and the appeal thus deserves to be rejected.

13. Having considered the submissions put forth on either side and on perusal of record, undisputedly, there were only four injuries sustained by the injured-Gopal Prasad, i.e., an incised wound over cheek in size 3x3cm, an incised wound behind the left ear in size 3x2cm, again an incised wound near left temporal region in size 3x3cm and an incised wound on

the left shoulder in size 2x1cm. The record does not show any other injuries.

14. Taking into consideration the fact that these injuries were not very severe in nature and the fact that there was an old enmity between the two established, in addition the evidence which have come on record particularly the statement of Dr. N. Prasad, PW-5, who in his evidence has deposed that if the intention of the accused-appellant was of taking the life of the victim he had all the opportunity to attack him on more vital areas instead of the places where the victim had suffered injuries. In view of the same, this Court has no hesitation in reaching to the conclusion that the offence in the given facts and circumstances of the case does not make out it to be a case under Section 307 of IPC, but it appears to be a case which would fall within the ambit of Section 324 of IPC.

15. Accordingly, the conviction of the Appellant for the offence punishable under Section 307 of IPC is set aside. However, he stands convicted for the offence under Section 324 of IPC.

16. So far the sentence to be awarded under Section 324 of IPC is concerned, considering the fact that the Appellant has already remained in custody for a period of 14 months and 8 days, this Court is the opinion that ends of justice would meet if he is sentenced to the period already undergone by him. It is ordered accordingly.

17. The Appellant is reported to be on bail. His bail-bonds shall remain in operation for a period of 6 months from today in view of the provisions contained in Section 437-A of CrPC.

18. As a result, the appeal is allowed in part and the impugned judgment of conviction under Section 307 of IPC is modified to the extent that the Appellant stands convicted under Section 324 of IPC however he is sentenced to the period already undergone by him in jail.

19. This Court renders a word of appreciation to Shri Parag Kotecha, Advocate, for rendering his valuable assistance to this Court in the disposal of the appeal.

Sd/-
(P. Sam Koshy)
Judge

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