

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No 877/2006

Division Bench

APPELLANT :

State of Chhattisgarh
Through - Police Station
Chirmiri, District Korea
(C.G.)

RESPONDENT :

1. Rajesh Nishadraj,
S/o - Late Shri Motilal,
Aged about - 32 years,
R/o Bartunga Mines,
Quarter- Chirmiri,
District - Korea (C.G.)
2. Mohd. Javed Khan,
S/o - Mohd. Hanif, Aged
About 24 years,
R/o - Chhoti Bazar,
Chirmiri, District - Korea
(C.G.)

Attested
Sd/-
RSUS
Deleted as per order dt 04.01.17
V. A. Goudan
(Adv)
04.01.07
5347/06
07/12/06
Filed on
by Shri
Sanyam
Advocate
207/12/06

**CRIMINAL APPEAL U/S 377 OF THE CODE OF CRIMINAL
PROCEDURE 1973, AGAINST THE SENTENCE.**



29

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 806 Of 2006

- Mohd.Javed Khan, S/o Mohd. Hanif, aged about 24 years, R/o Chhota Bazar, Chirmiri, Distt. Koriya (Chhattisgarh)

---- Appellant

Vs

- State Of Chhattisgarh, through Station House Officer, P.S. Chirmiri, Distt. Koriya (CG)

---- Respondent

And

CRA No. 877 Of 2006

- State Of Chhattisgarh, through Police Station Chirmiri, Dist. Korea

---- Appellant

Vs

- Mohd.Javed Khan, S/o Mohd. Hanif, aged about 24 years, R/o Chhoti Bazar, Chirmiri, Distt. Koriya (Chhattisgarh)

---- Respondent

For Appellant in Cr.A. No.806/06:

Miss Sharmila Singhai & Mr. Sanjay Agrawal, Advocates.

For Respondent:

Mr. V.A. Goverdhan, Panel Lawyer.

For Appellant in Cr.A. No.877/06:

Mr. V.A. Goverdhan, Panel Lawyer.

For Respondents:

Miss Sharmila Singhai, Mr. Sanjay Agrawal & Mr. Vivek Shrivastava, Advocates.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice R.C.S. Samant

Judgement

Per P. Diwaker, J

04/01/2017

1. Since the above two appeals arise out of the judgment dated 8.9.2006



30

passed by the Additional Sessions Judge, Manendragarh, District Koriya in S.T. No.411/04, the same are being disposed of by this common judgment.

2. Accused/appellant has been convicted under Section 307/34 of the Indian Penal Code (for short "the IPC") and sentenced to undergo R.I. for 7 years & fine of Rs.1,000/-, in default to undergo additional RI for 4 months.
3. Facts of the case, in brief, are that on 28.6.2004 at 11.00 a.m. FIR (Ex.P-2) was lodged by injured Rambalak (PW-2) to the effect that a year ago accused Rajesh Nishadraj along with one Devraj came to his mutton shop, demanded Rs.500/- from him and on his refusal, they abused him filthily and also damaged the shop of his brother-in-law situated adjacent to his mutton shop. It is alleged that on 27.6.2004 at about 8.00 p.m. when he was returning home on his motorcycle, the accused persons armed with sword intercepted him on the way and caused sword injuries to him. On the basis of this FIR, investigation was done by the police and the accused persons were prosecuted for the offence punishable Section 307/34 IPC. Injured Rambalak was medically examined by Dr. V.N. Singh (PW-7) vide Ex.P-9 and noticed following injuries:-

- Cut wound of 1"x 1½ and one superficial incised wound over right arm.
- Few superficial incised wounds at right forearm.
- Cut wound of 1½ x ½" size over right thumb.
- Few superficial incised wounds over left arm.
- Superficial incised wound over left forearm with painful swelling.
- Small cut wound on left middle finger.
- Superficial incised wound at left side of neck.
- Tenderness and bony irregularity in right clavicle
- Minor abrasion over right front thigh.



(3)

- Fracture of right clavicle bone.

4. So as to hold the accused persons guilty, the prosecution has examined 09 witness in all. Statements of accused persons were also recorded under Section 313 of the Code of Criminal Procedure, 1973 in which they denied the charge levelled against them and pleaded their innocence and false implication in the case.
5. After hearing the parties, the trial Court has convicted and sentenced the accused persons as mentioned above.
6. During the pendency of appeal, co-accused Rajesh Nishadraj has expired on 20.3.2016 and therefore Criminal Appeal No.699/06 filed by him has been dismissed as abetted vide order dated 4.1.2017.
7. Mr. Agrawal, counsel for appellant Mohd. Javed Khan submits that if the entire prosecution case is taken as it is, offence under Section 307 IPC is not made out against the appellant. He submits that as per medical report of the injured, the injured suffered fracture of clavicle bone which, according to the treating doctor, was grievous in nature, but the prosecution has not produced any X-ray report or plate to establish such injury and therefore at best the offence under Section 324 IPC would be attracted in the present case. He further submits that the appellant has already been remained in jail for 3 months & 11 days, therefore, his sentence may be reduced to the period already undergone by him by enhancing the fine amount.
8. On the other hand, it has been argued on behalf of the State that the manner in which Rambalak (PW-21) was assaulted, the intention on the part of the accused persons to cause his death is writ large and therefore the conviction of accused/appellant under Section 307/34 IPC is just and proper and no interference therewith is warranted. He however submits

that sentence awarded by the trial Court is disproportionate to the act attributed to accused/appellant and the same deserves to be enhanced.

9. We have heard counsel for the parties and perused the impugned judgment and record of the trial Court.
10. Iqbaluddin (PW-1) did not support the prosecution case and turned hostile.
11. Complainant Rambalak (PW-2) has stated in his evidence that a year prior to the date of incident, accused Rajesh & Prakash came to his mutton shop and demanded Rs.500/- and when he did not show inclination to give money, they abused him filthily and damaged the shop of his brother-in-law situated adjacent to his mutton shop. They have lodged report in the police station in this regard. He has further stated that on the date of incident when he was returning to his home, on the way the accused persons armed with sword tried to stop him, however, he managed to escape. He has further stated that accused persons chased him and assaulted him by sword causing injuries to various parts of his body.
12. Narendra Singh (PW-3), eyewitness of incident, has stated that on the date of incident he along with others was standing near the shop of one Giri and talking to the injured. The accused persons armed with weapon like sword reached there and started assaulting the victim. They tried to intervene in the matter.
13. Anand Kumar Verma (PW-4) has not supported the prosecution case and turned hostile.
14. Sunil Gupta (PW-5) is the witness of memorandums (Ex.P-5 & P-7) and seizure memos (Ex.P-6 & P-8).
15. Dr. V.N. Singh (PW-7), who had examined the complainant has stated that he had sustained number of injuries on various parts of his body. In the

cross-examination this witness has stated that except Injury No.8 i.e. fracture of right clavicle bone, other injuries were simple in nature. He has admitted that number of X-ray plate is mentioned in the report of injured but in this case it is not mentioned in his report Ex.P-9. He has further admitted that only after seeing x-ray report the grievousness of Injury No.8 could be determined and as on that day such report was not available, no opinion therewith could be given.

16. Laxmikant Gaikwad (PW-9) is the investigating officer and has supported the prosecution case.
17. Sanjay Gupta (PW-9) is the another witness of memorandums (Ex.P-5 & P-7) and seizure memos (Ex.P-6 & P-8).
18. Minute examination of the material available on record goes to show that on 27.6.2004 when the complainant/injured was returning to his home, the accused/appellant along with deceased accused chased him and inflicted injuries to him by sword. Evidence of the injured/complainant (PW-2), who has vividly narrated the incident, has been duly supported by eyewitness Narendra Singh (PW-3), who has categorically stated that the injured was assaulted by accused/appellant with sword. Version of the victim (PW-2) gets further corroboration from the evidence of Dr. V.N. Singh (PW-7) who had examined the victim and found the aforementioned injuries on his body. The defence has not been able to bring anything on record to show false implication of accused/ appellant by the injured on account of animosity, enmity etc. Thus, on the basis of aforesaid evidence, complicity of accused/appellant in commission of the offence stands proved beyond reasonable doubt.
19. Now the next question which arises for consideration of this Court is whether the act of accused/appellant makes him liable to be convicted

under Section 307 IPC or any lesser offence?

20. On perusal of the evidence on record, it is apparent that on the basis of x-ray report of the victim, the doctor (PW-7) has opined that Injury No.8 was fracture and it was grievous in nature, however, the x-ray report to prove fracture of clavicle bone was not produced by the prosecution. Even the doctor who issued the report Ex.P-9, has stated that in the absence of X-ray report, he cannot state regarding grievousness of Injury No.8 i.e. fracture on clavicle bone. Thus, there is no legally admissible evidence to establish that the injuries suffered by the victim (PW-2) were grievous in nature as described in Section 320 IPC and being so, the conviction of appellant under Section 307 IPC is not sustainable and is liable to be set aside. However, taking into consideration the cumulative effect of the evidence and the statement of the doctor, the accused/appellant cannot escape his conviction under Section 324 IPC.
21. As regards sentence imposed on the appellant, considering the fact that the prosecution has failed to prove any injury to be grievous; the occurrence has taken place almost 13 years back and there is nothing on record to show that the appellant had any criminal antecedents, we think it appropriate that sentence of rigorous imprisonment of six months under Section 324 IPC would be adequate.
22. In the result;
- Criminal Appeal No.806/06 is allowed in part. While acquitting the appellant of the charge under Section 307/34 IPC, he is held guilty under Section 324/34 IPC and sentenced to undergo RI for 6 months. In addition to this, the appellant shall pay a sum of Rs. 10,000/- (Rupees Ten Thousand only) towards compensation as envisaged under Section 357 (3) of the Code to the victim. The said amount

shall be deposited before the trial Judge concerned who shall disburse the same in favour of the victim on proper identification. The accused/appellant is reported to be on bail, therefore, his bail bonds stand cancelled and he is directed to be taken into custody forthwith to serve out remaining part of the sentence.

- Criminal Appeal No.877/2006 is dismissed in view of criminal appeal of accused/appellant having been partly allowed.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(RCS Samant)
Judge

roshan