

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.492 of 2001

Judgment Reserved on : 29.8.2017

Judgment Delivered on : 27.10.2017

Kumar alias Hari Kumar, S/o Anoop Ram, age 32 years, R/o Village Kewachi (Kewachhi), Police Station Bemetara, District Durg, Chhattisgarh

---- Appellant

versus

The State of Chhattisgarh

--- Respondent

For Appellant	:	Shri R.N. Jha, Advocate
For Respondent/State	:	Shri Sameer Behar, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against the judgment dated 31.5.2001 passed in Sessions Trial No.203 of 2000 by the 2nd Additional Sessions Judge (F.T.C.), Bemetara convicting the accused/Appellant under Section 307 of the Indian Penal Code and sentencing him to undergo rigorous imprisonment for 4 years and to pay fine of Rs.3,000/- with default stipulation.
2. Case of the prosecution, in brief, is that the accused/Appellant is the younger brother of injured Shrawan (PW13). There was a dispute between them for the way to Kothar. On 3.3.2000 at about 9:00 a.m., due to the said dispute, the accused, with an intent to kill Shrawan, assaulted him on the head by a sharp edged weapon in the open courtyard of the house of Kartik (PW6). The incident was seen by Bhagmati (PW2), Bisahu (PW12), Sahadeo (not examined

by the prosecution) and others. Bhagmati (PW2) told about the incident to her husband Taran Singh (PW-1), who is the eldest brother of injured Shrawan. When Taran Singh went to see Shrawan, he saw that Shrawan was lying down unconscious in the verandah of the house of Ishwar (not examined by the prosecution). He saw that Shrawan had sustained many injuries on the head. He took him to Bemetara Hospital in a jeep and got him admitted there. Thereafter, Taran Singh lodged First Information Report (Ex.P-1) in Police Station Bemetara. Crime under Section 307 of the Indian Penal Code was registered against the accused/Appellant. On 3.3.2000, Shrawan was examined by Dr. P.K. Bajpai (PW-14). After the examination, he gave his report Ex.P-12 stating the following injuries sustained by injured Shrawan:

- “(1) Incised wound 4x1”x bone deep, placed vertically on right side of occipital region, advice for x-ray of scalp, bleeding present,
- (2) Incised wound 4x1½”x occipital bone is cut down on lower part of occipital region, placed transversally, bleeding present, advice for x-ray of skull,
- (3) Incised wound 1½x1x1” on upper part of right scapular region, placed vertically,
- (4) Incised wound 1½x1x1” on upper part of right scapular region, placed transversally,
- (5) Incised wound 3x1”x bone deep on left parieto occipital region, advice for x-ray of skull,
- (6) Incised wound 4x1”x bone deep on left parietal region, placed vertically, advice for x-ray,
- (7) Incised wound 3x½x½”, 2x½x½” and 1x½x½”, placed on upper part of left shoulder region.”

The doctor opined that the injuries were caused by a sharp cutting object within 24 hours. As per the X-ray report (Ex.P21), it was found that there was a fracture on the occipital bone of Shrawan.

The weapon of offence was seized vide Ex.P7 from the possession of the accused. After investigation, a charge-sheet was filed against the accused under Section 307 of the Indian Penal Code. Charge was framed against him under Section 307 of the Indian Penal Code.

3. So as to hold the accused guilty, the prosecution examined as many as 18 witnesses in support of its case. Statement of the accused under Section 313 Cr.P.C. was also recorded in which he denied the charge framed against him, pleaded his innocence and false implication in the case. In his defence, the accused/Appellant has examined himself as Defence Witness No.5 and has also examined 4 other witnesses.
4. After trial, the Trial Court convicted and sentenced the accused/Appellant as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant submitted that the prosecution has failed to prove the offence beyond reasonable doubt. The statement of the injured does not find cogent support from the independent witnesses. It was further submitted that in the facts and circumstances of the case, it is apparent that the alleged occurrence was created by the injured himself. The occurrence was instigated and provoked by own criminal acts of the injured as he himself started beating the accused/Appellant. The quarrel took place between them due to closure of the path by the injured which was being used by the accused. This version of the accused should have been relied upon by the Trial Court.

6. On the other hand, Learned Counsel appearing for the State submitted that the impugned judgment is in accordance with law and there is no infirmity in the same.
7. I have heard Learned Counsel appearing for the parties and perused the material available on record including the impugned judgment minutely.
8. The case of the prosecution is based upon the evidence of injured Shrawan (PW13), his brother Taran Singh (PW1), who lodged the FIR (Ex.P1), eyewitnesses Bhagmati (PW2), Beena (PW3), Premu (PW5) and Kartik (PW6).
9. In his statement, Shrawan (PW13) has deposed that on 3.3.2000 at about 9:00 a.m., he was going to leave his buffaloes in *Daihan* (ground). At that time, he saw that the accused/Appellant, wearing a shawl, was sitting in the residence of Charandas (not examined by the prosecution). Thereafter, when he was returning from the *Daihan* (ground), near the house of Kartik (PW6), the accused met him and asked him whether he will give passage or not. When he denied, the accused showed his anger by turning his eyes into red and asked him why will he not give him passage. Thereafter, the accused took out a sharp edged weapon (*Para Kutti*) from his shawl and assaulted him with the weapon. He received injuries on the head, back, shoulders and hands. To save himself, he scuffled with the accused and thereafter, leaving the accused he ran towards the house of Roopnath. Thereafter, when the accused came there chasing him, he ran to the house of Kartik (PW6). Thereafter, he fell unconscious.

- 10.** Elder brother of the injured Taran Singh (PW1) has deposed that at the time of occurrence, he was at his house. His wife Bhagmati (PW2) came there and informed him that his brothers are quarreling. He went to the place of occurrence, but nobody was present there. Then he went to the house of Kartik (PW6). He saw that Shrawan (PW13) was bleeding from the head and shoulders. Thereafter, he took Shrawan on a jeep and lodged the FIR (Ex.P1) in Police Station Bemetara. He further deposed that Shrawan told him that the accused had assaulted him with a knife.
- 11.** Bhagmati (PW2) has supported the above statement of Taran Singh (PW1) and deposed that when she was near the house of Rameshar, some persons told her that her family members were quarreling with each other. She further deposed that she saw from the distant place that the brothers were quarreling and thereafter she went and told this to her husband Taran Singh (PW1).
- 12.** Beena (PW3) has also supported the case of the prosecution and deposed that she also saw the quarrel between the accused and Shrawan. Both were scuffling with each other.
- 13.** Premu (PW5) and his father Kartik (PW6) have also supported the case of the prosecution and deposed that at the time of occurrence Shrawan, running, had come to their house. He was smeared with blood. He had fallen unconscious in their house.
- 14.** As per the statement of Shrawan (PW13), he had received injuries on the head, shoulders and back. Dr. P.K. Bajpai (PW14), who examined Shrawan on 3.3.2000 at about 10:20 a.m., has given a medical report (Ex.P12) in respect of the injuries sustained by

Shrawan. The doctor found the seven incised wounds on the body of injured Shrawan as quoted above in the second paragraph of this judgment. The doctor had advised for x-ray examination of injuries No.1, 2, 5 and 6. He also deposed that the injuries were found within 24 hours of the examination which were caused by a sharp cutting object.

15. As per the statement of Dr. A.K. Sahu (PW18), a Radiologist and the x-ray report (Ex.P21), the occipital bone was found fractured. Dr. D.C. Jain (PW17) has deposed that injured Shrawan was admitted in the hospital on 3.3.2000 and was discharged on 13.3.2000.
16. As per the statement of Shrawan (PW13), the accused had assaulted him with a sharp cutting object (*Para Kutti*). Station House Officer V.K. Shukla (PW15) has deposed that on 3.3.2000, he had recorded the FIR (Ex.P1) as reported by Taran Singh (PW1). He further deposed that during the investigation, he took disclosure statement (Ex.P9) of the accused and as per the disclosure statement he seized a sharp cutting object (*Para Kutti*) from the possession of the accused vide Ex.P7, which the accused had produced after taking out from his almirah. The seized sharp cutting object was examined by Dr. P.K. Bajpai (PW14). He opined that the injuries sustained by injured Shrawan could be caused by the said sharp cutting object (*Para Kutti*). He further opined that death of Shrawan was possible if he would not have got immediate medical assistance.
17. The accused has taken a defence that at the time of occurrence, it was injured Shrawan who first assaulted on him with a Lathi.

Thereafter, Shrawan had dashed with a stone and fallen down and as a result of which he had sustained injuries. In his Court statement, the accused (DW5) has deposed that first Shrawan had given him 10-12 blows with a Lathi. 2-3 blows of the Lathi had been given on the head. He had also sustained injuries on both the shoulders, back and thumb. He snatched the Lathi from the possession of Shrawan and thrown the same away. On this, Shrawan had assaulted him with a knife as a result of which he had sustained injury on the hands. Thereafter, the accused began to run away. Shrawan chased him and dashed with a stone, as a result of which he sustained injuries. The accused was examined by Dr. D.K. Tandon (DW4). As per his statement and his medical report (Ex.D7), the accused had sustained a swelling on the forehead and injuries were present on the left thumb and middle finger. As per his opinion, all the injuries were simple in nature which were caused by a hard and blunt object. Therefore, it is clear that the accused had not received any injury which was caused by a sharp cutting object. Therefore, it is clear that the accused had exaggerated about his injuries.

18. As per the defence of the accused, at the time of occurrence, Shrawan had fallen down and, therefore, he had sustained injuries, but not a single question or suggestion was put before Dr. P.K. Bajpai (PW14) or Dr. A.K. Sahu (PW18) in this regard by the accused. Shrawan (PW13) has categorically stated that he was assaulted by the accused by a sharp cutting object (*Para Kutti*) and as a result of which he sustained injuries on the head, shoulders, hands and back, which is duly corroborated by the medical reports (Ex.P12 and P21).

19. From the statements of Bhagmati (PW2) and Beena (PW3) also, it is clear that they had seen the quarrel between the accused and Shrawan. From the statements of Premu (PW5) and Kartik (PW6) also, it is clear that Shrawan was smeared with blood and fallen down. The weapon of offence, i.e., the sharp cutting object (*Para Kutti*) was seized from the possession of the accused vide Ex.P7, which was examined by Dr. P.K. Bajpai (PW14). He opined that the injuries suffered by Shrawan could be caused by the said weapon.
20. From the above discussion, it is established that the injuries sustained by Shrawan (PW13) were caused by the accused with the sharp cutting object (*Para Kutti*).
21. It is admitted by injured Shrawan (PW13) that there was already a dispute going on between him and the accused for a path. He further admitted that at the time of occurrence, he first assaulted the accused with a Lathi. His elder brother Taran Singh (PW1) has also admitted in paragraph 3 of his cross-examination that both his wife and Shrawan told him that first Shrawan had assaulted the accused.
22. It was argued by Learned Counsel for the accused/Appellant that the intention of the accused was not to commit murder of his brother Shrawan. Therefore, offence under Section 307 of the Indian Penal Code is not made out. He placed reliance on **1994 SCC (Cri) 432 (Tukaram Gundu Naik v. State of Maharashtra)**. In this case, it was observed by the Supreme Court as under:

“6. Dr. Khare, PW 16, who examined the injured,

found one clean-cut incised wound over epigastric region, another clean-cut incised wound on the left elbow joint, the third clean-cut incised wound on the left side of the side and the fourth clean-cut incised wound over left side of the back. He opined that these injuries were caused with a sharp-edged weapon like a knife. Learned counsel for the appellant from the record pointed out that it was only a folding knife and if these injuries were inflicted during scuffle, it cannot be said that either clause I or clause III is attracted so as to infer that the intention was to commit murder. Consequently Section 307 IPC is also not attracted.

7. In this context, the evidence of PW 12 also becomes relevant. He deposed that he was also present in the village panchayat office and that he heard the exchange of words and he also heard the sound of milk cans in the verandah and it was dark outside the verandah. No doubt this witness was treated hostile but his evidence would show that it was dark and there was a scuffle. Further, the doctor's evidence would show that none of the vital organs was injured. Under these circumstances, a doubt arises whether the accused intended to commit murder and thus made an attempt. In our view the accused can be attributed only knowledge that by inflicting such injuries he was likely to cause death and an attempt to commit such an offence would be one punishable under Section 308 IPC. Section 308 lays down that such an offence is punishable with imprisonment which may extend to three years or with fine or with both and if hurt is caused, the assailant can be punished with

imprisonment of either description which may extend to seven years or with fine or with both.”

23. In the instant case also, I find that the aggressor was injured Shrawan (PW13). It was Shrawan who first assaulted to the accused with the Lathi. Thereafter, the accused assaulted him with the sharp cutting object (*Para Kutti*). From the evidenced on record, it is also clear that the accused had also sustained some injuries. Both the accused and Shrawan are real brothers. From the medical evidence also, it is established that though Shrawan had sustained total seven incised wounds yet out of them only one injury was grievous in nature and rest of the injuries were simple in nature. Injuries No.1 and 2 had occurred on the back side of head, injuries No.5 and 6 were on left side of head, injuries No.3 and 4 were on right side of the back and injury No.7 was on the left shoulder. It is also clear that there was a scuffle. Doctor's evidence show that none of the vital organs of Shrawan was injured. Under these circumstances, in my view, the accused can be attributed only knowledge that by inflicting such injuries he was likely to cause death and attempted to commit such offence which would be one punishable under Section 308 of the Indian Penal Code.
24. Therefore, the conviction imposed upon the accused/Appellant under Section 307 of the Indian Penal Code is set aside and in place thereof he is convicted under Section 308 of the Indian Penal Code.
25. So far as sentence part is concerned, both the accused and the injured are real brothers. The accused is facing the *lis* since 2000,

i.e., for about 17 years. He has no criminal antecedent. He has already undergone 1 year and 3 months. Taking into consideration the facts and circumstances of the case, I am of the considered opinion that ends of justice would be met if, while convicting the accused under Section 308 of the Indian Penal Code, he is sentenced with the period of 1 year and 3 months, i.e., the period already undergone by him imposing an amount of fine of Rs.3,000/-.

- 26.** In the result, the appeal is allowed in part. The conviction and sentence imposed upon the Appellant under Section 307 of the Indian Penal Code is set aside. Instead, he is convicted under Section 308 of the Indian Penal Code and sentenced with the period already undergone by him and he shall pay fine of Rs.3,000/- within 2 months from the date of receipt of a copy of this judgment, in default, he shall be liable to undergo simple imprisonment for 2 months. The amount of fine, if any already deposited by the Appellant shall be adjustable in the amount of fine imposed upon him by this Court today.
- 27.** It is reported that the Appellant is on bail. His bail bonds shall continue for a further period of six months from today in terms of Section 437A of the Code of Criminal Procedure.
- 28.** Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
JUDGE