

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 302 of 2007

- Ram Ratan @ Ratan, S/o Shri Parasram Thakur, aged about 32 years, Resident of Ram Nagar, Supela, Bhilai, Distt. Durg (C.G.)

---- Applicant

Versus

- State Of Chhattisgarh, Through District Magistrate, Durg, District-Durg (C.G.)

---- Respondent

For the Applicant : Shri Shrawan Agrawal, Advocate.
For the State/Respondent : Shri Sameer Behar, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment on Board

14/02/2017

1. This revision is directed against the judgment in Criminal appeal No.40/06 passed by 4th Additional Sessions Judge, Durg on 15.06.07, upholding the conviction and sentence passed by trial Court against the applicant.
2. The prosecution case is that the complainant Balkar Singh PW/1 lodged an FIR Ex.P/1 in P.S.-Chhawani, District-Durg on 23.08.2001 at about 23:50 p.m. alleging that at about 23:30 p.m. he saw a boy with whom he was acquainted was outraging the modesty of Smt. Kumari Bai PW/2, seeing this he intervened. The boy used filthy abusive words against him, threatened and thereafter assaulted him

with a weapon which was *khukhari* on his head, causing various injuries and fled from the spot. Offences under Sections 294, 506-B and 323 of IPC was registered against unknown person. Balkar Singh PW/1 was medically examined by Dr. V.S. Baghel PW/4 vide Ex.P/2, who found him having eight injuries on his body. Spot map Ex.P/4 was prepared on 10.12.2001. One iron made *Khukhari* was seized from the possession of applicant vide Ex.P/3. Statement of witnesses were recorded under Section 161 of Cr.P.C. On completion of investigation, applicant was charge-sheeted.

3. Trial Court charged the applicant/accused under Section 294, 324 and 506-B of IPC and Section 25 (1)-B, 27 of Arms Act, on denial of charges, trial was conducted and after giving full opportunity to the prosecution and defence, judgment dated 08.02.06 was passed and convicting the applicant under Section 324 of IPC and sentenced with R.I. for one year with a fine of Rs. 500/-. Applicant was acquitted of the remaining charge of the offences. Applicant challenged the judgment of conviction and order of sentence before the Sessions Court, Durg. The appeal was heard and decided by the Fourth Additional Sessions Judge, Durg in which the judgment of trial Court was upheld and the appeal was dismissed.
4. The grounds in this revision are these, that the applicant was falsely implicated, the prosecution has failed to prove the case against applicant beyond reasonable doubt. Courts below have given erroneous findings of conviction against the applicant, prayer has

been made to interfere with the judgment of the Courts below.

5. It is submitted by the learned counsel for the applicant, that the main witness of this case Balkar Singh PW/1 stated that he was acquainted with applicant even then FIR was lodged against unknown person. The witness of Smt. Kumari Bai PW/2 has turned hostile. Balkar Singh PW/1 while deposing before the Court has omitted, contradicted and improved his statement, hence, unbelievable. The only remaining witness Devanand PW/3 is not the witness of this incident, thus, the evidence of prosecution was full of doubts. For these reasons, applicant deserve to be acquitted by extending him benefit of doubt.
6. Considering the material on record and the arguments submitted from both the side the question in this revision is, whether the conviction against the applicant is supported by evidence of prosecution beyond all reasonable doubt ?
7. Balkar Singh PW/1 is the main witness, he has stated that he is acquainted with the applicant. On the date of incident, he saw applicant quarreling with Smt. Kumari Bai PW/2 thereafter applicant using a weapon which looked like *Khukhari* assaulted him and caused injuries. He has stated about lodging the report Ex.P/1. In cross examination, he has stated that he has recording in FIR Ex.P/1 that applicant was outraging the modesty of Smt. Kumari Bai PW/2. Further he has stated that he did not know the applicant before the date of incident. He has denied suggestion about falsely implicating the applicant.

8. Smt. Kumari Bai PW/2 had been a key witness. On her examination, she has stated ignorance about the incident, prosecution has not declared hostile this witness. On being questioned by Court she has denied and not given any statement in support of prosecution. Dewanand PW/3 has stated that on the date of incident, he was at his residence, on hearing same cry, he came out and saw applicant having injuries on his face, he was told by complainant that applicant used weapon like sword to cause injuries to him. In cross examination, he has stated that he saw applicant fleeing from the spot and denied adverse suggestion given in this respect. He is the only witness who has supported the statement of Balkar Singh PW/1 to some extent.
9. Dr. V.S. Baghel PW/4 examined Balkar Singh PW/1 on 24.08.01 and found incised wound on his upper part of head, one incised wound right side of his face, one incised wound of left finger on his hand, one incised wound on right scapula region, another injury on right scapula region, one incised wound on right side on his chest and one abrasion on the back side of his neck, vide his report Ex.P/2 he opined that first seven injuries were caused by some hard and sharp weapon and eighth injury was caused by some hard object. His statement has remained unrebutted.
10. ASI Lalit Sahu PW/5 has stated, that one weapon looking like *Khukhari* was seized from the possession of applicant vide Ex.P/3 on 10.12.01. In cross examination, he admitted that the seizure and arrest of the applicant was done after three months from the dated of

incident. No explanation was offered by him as to why the seizure and arrest of the applicant was done after three months from the date of the incident.

11. Learned counsel for the applicant has submitted that this part of investigation raises doubt on the prosecution which shall be considered in further paragraph.
12. The case of prosecution rests on the evidence of the sole witness Balkar Singh PW/1. In his Court statement he has changed the background of the incident that applicant was quarreling with Smt. Kumari Bai PW/2 and also stated that husband of Smt. Kumari Bai Devanand PW/3 was present on the spot and witnessed the incident. This is a material change in the statement before the Court compared to the previous statement that is the FIR Ex.P/1. No reason or motive of applicant has been mentioned by the witness as to for what reasons applicant assaulted Balkar Singh PW/1. Further he has stated that he was not acquainted with applicant before the date of incident, whereas in FIR Ex.P/1 he has recorded, that he was acquainted with applicant only he could not recall his name. This kind of change and improvement in the statements is material which can be taken into consideration to give this finding that f Balkar Singh PW/1 is not a fully reliable witness, thus he is partly reliable and partly unreliable.
13. In such state of things the statement of Balkar Singh PW/1 needs corroboration. Smt. Kumari Bai PW/2 has not supported and Devanand PW/3 is not the witness in this incident. On the basis of

these findings, it is held that the judgment given by the trial Court and the judgment of the lower appellate Court recording the finding of conviction against the applicant is not based on legally admissible evidence, thus perverse. Applicant was entitled for being extended benefit of doubt and acquitted of charge.

14. For these reasons, this revision is allowed. The conviction and sentence against the applicant by both the Courts below is hereby set aside. Applicant is acquitted.

Sd-

(Rajendra Chandra Singh Samant)

Judge