

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.A. No. 8 of 2016

Anand @ Nandu Adholiya, S/o. Shiv Prasad, Aged About 22 Years, R/o. Village Jalso, Bhuribhanta, Police Station Koni, District Bilaspur, Chhattisgarh.

---- Appellant

Versus

State Of Chhattisgarh, Through : Station House Officer, Police Station Chakarbhata, District -Bilaspur, Chhattisgarh.

-----Respondent

AND

CR.A. No. 47 of 2016

1. Sanju Kumar @ Sanju Dhruv, S/o. Santosh Dhruv, Aged About 19 Years
2. Santosh Kumar Verma, S/o. Baldaau Prasad, Aged About 35 Years,
Both are R/o Village Jalso, Bhuribhanta, P.S. Koni, Civil and Rev. Distt. Bilaspur, Chhattisgarh.
3. Vikrant @ Vicky Verma, S/o. Late Vijay Verma, Aged About 25 Years, R/o. Ward No. 9, Chakerbhata Camp, Police Station Chakerbhata, Civil and Rev. Distt. Bilaspur, Chhattisgarh.

---- Appellants

Versus

State Of Chhattisgarh, Through : Station House Officer, Police Station Chakarbhata, District -Bilaspur, Chhattisgarh.

-----Respondent

For Appellants	: Mr. Suryakant Mishra, Advocate
For Respondent/State	: Mr. Rahul Tamaskar, Panel Lawyer

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

05/09/2018

1. Since both the above appeals arise out of the common judgment dated 18.12.2015, passed by the learned Additional Sessions

Judge, Bilaspur, District – Bilaspur (C.G.) in Sessions Trial No.82/2015, the same are being disposed of by this common order.

2. These appeals have been preferred against the judgment of conviction and order of sentence, passed by the learned Additional Sessions Judge, Bilaspur, District – Bilaspur (C.G.) in S.T. No.82/2015 on 18.12.2015 convicting the appellants for the offence under Section 307/34 and sentencing them to under go R.I. for 5 years along with fine of Rs.2000/- each and in default of payment of fine, the appellants are required to further under go R.I. for 3 months.
3. Facts of the case in brief is this that on 01.05.2015 at about 11.00 PM in the night, the appellants were present in the hotel Central Point, Bodri after the bar was closed and were making a demand of liquor from the manager of the said bar. It was at that time, the victim – Rajendra Kumar Ajmani (P.W.-1) came to handle the situation, who was all of sudden assaulted by the appellant Anand Adholiya with knife causing injuries on his head. It is alleged that the appellants had intention to cause death of the victim. FIR has been lodged and after completion of investigation, charge-sheet has been filed before the concerned trial Court.
4. Appellants were charged with offence under Section 294, 506(2) and 307/34 of the Indian Penal Code. The appellants denied the charges and prayed for trial. The prosecution examined as many as 13 witnesses on its behalf. On examining the appellants under Section 313, they denied all the incriminating evidence against them

and pleaded innocence and false implication. No witness was examined in defence. On completion of trial, impugned judgment has been delivered, in which the appellants stands convicted and sentenced as mentioned aforesaid.

5. It is submitted by the learned counsel appearing on behalf of the appellants that the appellants have been erroneously convicted for the offence under Section 307 of the Indian Penal Code. On the basis of the evidence present on record, no case is made out for conviction in the offence under Section 307 of the Indian Penal Code. There is no medical report to show that the injury caused to the complainant was fatal in nature and also for the reasons that the incident that had taken all of a sudden without any premeditation or motive to cause death of the victim. It is a case of single blow of knife on the head of the victim, which itself demonstrate that even if the evidence of prosecution would be believed, the offence that would be made out would be at the most under Section 325 of I.P.C., which is lesser offence. Although, it is prayed that the appellants be acquitted of the charge, but it is prayed in alternative that in case, the Court is not inclined to allow these appeals and acquit the appellants, in that case, the sentence of imprisonment of the appellants be reduced to the period of detention already undergone by them in jail.
6. Counsel for the State opposes the grounds in appeal and the submissions made in this respect. It is submitted that the prosecution has proved its case beyond all reasonable doubt, as the main assailant in this case has used knife to assault and has injured

the victim, which itself speaks that he has intended to cause death of the victim and rest of the appellants were continuously in his company till the end of the incident, which shows their common intention. Hence, the prosecution has proved its case beyond all reasonable doubts and there is no room for interference in the impugned judgment of conviction and order of sentence.

7. I have heard the learned counsel for the parties and perused the record of the Court below.
8. The question raised before this Court whether the conviction of the appellants under Section 307 of the Indian Penal Code is made out on the basis of the evidence present on record or not?
9. Perused the evidence of all the witnesses on record. The main witness Rajendra Kumar Ajmani (P.W.-1) has stated that on the date of incident, the appellants were present at the Bar in the premises of hotel Central Point in Bodri making demand of liquor. As the bar had closed and the appellants were refused to provide liquor, for that reasons the appellants started abusing and threatening the Manager Tanmay Ghosh. This witness came to intervene. He has stated that all the appellants started abusing and threatening this witness and then appellant - Anand Adholiya took out a knife and assaulted this witness. This witness suffered one incised wound on his head and he went unconscious. Subsequent to that, this witness was admitted in the hospital for three days. In cross-examination, his statement has been remained un-rebutted and there is no such admission or suggestion so as to contradict the statement given by

him in examination-in-chief.

10. Surendra Kumar Patel (P.W.-7) is eye-witness, who has supported the statement given by the Rajendra Kumar Ajmani (P.W.-1) completely. In cross-examination his statement has remained unshaken. Sandep Thakre (P.W.-11) is one of the employee of the hotel Central Pooint has similarly stated and supported the statement given by Rajendra Kumar Ajmani (P.W.-1) and his statement has remained un-rebutted in his cross-examination.
11. Thus the statement of Rajendra Kumar Ajmani (P.W.-1) is corroborated with the statement of two eye-witnesses in this case and is further corroborated by medical evidence by Dr. P.C. Banerjee (P.W.-3), who has stated that on examining the victim Rajendra Kumar Ajmani (P.W.-1), he found one incised wound of size 15x½ cm, which was skin deep. This injury was caused by some hard and sharp object within six hours before the time of medical examination. Report Ex.P-3 has been proved by him. No question was put to him in his cross-examination regarding the injury caused to the complainant. Hence, the complainant had suffered one incised wound on his head is a fact, which further corroborates the evidence of Rajendra Kumar Ajmani (P.W.-1)
12. Pawan Kumar Gupta (P.W.-9) is Senior Consultant in Radiology department in Apollo Hospital, Bilaspur has stated that according to the C.T. scan report Ex.P-23 injured Rajendra Kumar Ajmani (P.W.-1) had suffered one fracture on parietal bone and he has also reported that no internal brain injury was found in the C.T scan. His

statement to this extent is unchallenged and un-rebutted in his cross-examination, which further goes to show that injured in this case has suffered a grievous bony injury on his parietal bone of his head.

13. On closely scrutinizing the statement given by Rajendra Kumar Ajmani (P.W.-1), it appears that when he was engaged with the appellants and others, he was all of sudden assaulted by appellant – Anand Adholiya with knife. This witness has made no statement that all the appellants had intended to cause his death. Further eye-witnesses namely Surendra Kumar Patel (P.W.-7) and Sandeep Thakre (P.W.-11) have also not made any such statement that the appellants had intended to cause death of Rajendra Kumar Ajmani (P.W.-1). Apart from that, it is a case of single blow of knife. No further attempt was made by any of the appellants to further injure the victim and make sure that Rajendra Kumar Ajmani (P.W.-1) is done to death. Although Dr. P.C. Banerjee (P.W.-3) has stated in his query report (Ex.P-5) that the injuries could have proved fatal, if it were not treated in time. But this report does not explain that injury could have proved fatal in ordinary course of nature and this report is not consistent with the C.T. scan report Ex.P-23 proved by Dr. Pawan Kumar Gupta (P.W.-9).
14. Hence, under these circumstance, I am of this opinion that on the basis of the evidence present on record no case is made out, that the appellants had intended to cause death of the injured Rajendra Kumar Ajmani (P.W.-1)._ Hence on the basis of this finding I am further of this opinion that the offence of attempt to cause death is

not made out in this case. On the other hand, the act of the appellant – Anand Adholiya seems to be an offence under Section 326 of the Indian Penal Code and the act of the other appellants in this case is made out an offence under Section 326 read with Section 34 of the Indian Penal Code.

15. On the basis of the finding hereinabove, this appeal is allowed in part. The conviction held and sentence imposed in the impugned judgment is hereby set-aside. Instead of that, the appellant – Anand Adholiya is convicted for the offence under Section 326 of the Indian Penal Code and rest of the appellants have convicted for the offence under Section 326 read with 34 of the Indian Penal Code. The appellant – Anand Adholiya is sentenced with rigorous imprisonment of four years with fine of Rs.2000/- and in default of payment of fine he has to further under go R.I. for 3 months. Rest of the appellants, who are in jail for about 3 years are sentenced with imprisonment of period of detention already undergone by them in jail along with fine of Rs.2000/- and in default of payment of fine they are required to further under go R.I. for 3 months.
16. The appellants are reported to be in jail. The appellants in Cr.A. No.47/2016 be set at liberty forthwith after realizing the fine amount, if not required in any other case.

Sd/-
(Rajendra Chandra Singh Samant)
Judge