

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.A. No. 1745 of 2017

Montu Singh @ Honey Singh, S/o. Vishambhar Singh Rajput, Aged About 18 Years, R/o. Suneeta Park, Sooraj Nagar, Police Station Telibandha, District Raipur, Chhattisgarh.

---- Appellant

Versus

The State Of Chhattisgarh, Through : The Station House Officer, Police Station Telibandha, District Raipur, Chhattisgarh.

-----Respondent

For Appellant	: Mr. M.P.S. Bhatia, Advocate
For Respondent/State	: Mrs. Madhunisha Singh, Panel Lawyer

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

14/12/2018

1. This appeal has been preferred against the judgment of conviction and order of sentence, passed by the learned 3rd Additional Judge, Raipur of Court of First Additional Sessions Judge, Raipur, District – Raipur (C.G.), in Sessions Trial No.128/2017 on 20.09.2017, convicting the appellant for the offence under Section 329 of the I.P.C. and sentencing him to under go R.I. for 3 years and fine of Rs.1000/-, for offence under Section 307 of the Indian Penal Code and sentencing him with R.I. for 5 years and fine of Rs.1000/- and for the offence U/s. 25 (1-B) (B) of Arms Act and

sentencing him to undergo R.I. for 1 year and fine of Rs.500/-, with default stipulations.

2. The case of the prosecution is this that on 21.12.2016 at about 23.30 o'clock in the night, the appellant asked for money to the complainant – Abdul Hasrat Khan (P.W.-2) for buying liquor. The complainant refused to give money because of which, the appellant stabbed him with knife on his back with intention to cause his death. The FIR Ex.P-2 was lodged. During the investigation, one automatic knife having the blade in length 9" was recovered and seized from the possession of the appellant vide Ex.P-8 at the instance of the appellant vide his memorandum Ex.P-9. After recording of statement of witnesses U/s. 161 of Cr.P.C. and completion of investigation, charge-sheet has been filed before the concerned Court.
3. Appellant was charged with offence under Section 294, 307, 329, 506-II of the Indian Penal Code. The appellant denied the charges and prayed for trial. The prosecution examined as many as 11 witnesses on its behalf. On examining the appellant under Section 313, he denied all the incriminating evidence against him and pleaded innocence and false implication. No witness was examined in defence. On completion of trial, judgment has been delivered, in which the stands convicted and sentenced as mentioned aforesaid.
4. It is submitted by the learned counsel appearing on behalf of the appellant that the conviction of the appellant is totally bad in law. No case is made out for conviction against the appellant under Section

307 of the Indian Penal Code as it is a case of single injury caused by knife and there is no such report of the examining doctor that the injuries caused was fatal or dangerous to life. The appellant and the complainant both are close friends and they have compromised their dispute. The complainant has appeared before this Court and by the orders passed by this Court, the statement of the complainant has also been recorded, according to which, he has made statement that he has compromised the dispute with the appellant without any fear and favour and prayer has been made to this Court to accept the compromise and terminate the appellate proceedings in this appeal.

5. Reliance has been placed on the judgment passed in case of *Gulab Das and Ors. Vs. State of Madhya Pradesh, passed in Cr.A. No.2126/2011, passed on 16.11.2011*, in case of *Rajendra Harakchand Bhandari & Ors. Vs. State of Maharashtra & Anr., passed in Cr.A. No.902/2011, judgment dated 08.04.2011* and the judgment of this Court in case of *Navneet Singh @ Tiger @ Ravi Singh Vs. State of C.G., reported in 2017 (2) C.G.L.J. -5*. It is submitted that in similar case, Hon'ble Supreme Court and the High Court after adapting a lenient view on the basis of compromise between the parties have reduced the period of sentence imposed upon the accused persons to the period of sentence already undergone by them in jail. It is a similar case, therefore, it is prayed that, in case this Court is not inclined to allow this appeal and acquit the appellant, the appellant be sentenced with imprisonment of period of detention already undergone by him in jail.

6. Counsel for the State opposes the grounds raised in appeal and the submissions made in this respect. According to the medical report of the injury caused to the complainant, it is clear that assault was made and injury was caused with intention to cause death of the complainant. The offence under Section 307 of Indian Penal Code is not compoundable, hence, such compromise between the parties, can not be entertained at this stage, therefore, the appeal be dismissed.
7. I have heard the learned counsel for the parties and perused the record of the Court below.
8. The point in issue in this appeal is whether the prosecution has proved the charges against the appellant on the basis of the evidence beyond reasonable doubt?
9. The main witness in this case is Abdul Hasrat Khan (P.W.-2). He has stated that on the date of incident, he had some dispute with the appellant. Later on, when he was standing on the street, the appellant came from behind and stabbed him with knife on his back. He fell down getting unconscious. He was firstly taken to the hospital for preliminary treatment and thereafter referred to Medical College Hospital, Raipur where he was admitted and treated for 14-15 days. He has stated about lodging of FIR vide Ex.P-2. This witness made some omission because he was cross-examined by the prosecutor in which he has admitted that firstly the appellant asked him for money to buy liquor and on his refusal, the appellant

has abused and threatened him. He also admitted that the appellant had stabbed on his back uttering threat to cause his death and also admits about scuffle that took place between him and appellant. In cross-examination, his statement has remain unchanged. There is no such other statement made by him in cross-examination, so as to contradict the statement made in examination in chief.

10. Eye-witness of this incident Taran Yadav (P.W.-1), Arbaj Khan (P.W.-3), Shekhar Nihal (P.W.-4) have not supported the prosecution case. Minhaz Khan (P.W.-5) is though witness of memorandum and seizure has made statement in support of Abdul Hasrat Khan (P.W.-2) in examination in chief, but in cross-examination he has admitted that he was not a witness to the incident.
11. The victim was examined by Dr. Dheerendra Kumar Sao (P.W.-6), who has stated that when the victim was brought to his hospital, he was given preliminary treatment and thereafter, he went to the Medical College, Raipur for further treatment. Dr. Manoj Poptani (P.W.-8) has stated that on 21.12.2016 at about 11.51 PM, the victim Abdul Hasrat Khan was examined by him, who had one deep wound on right side of his back and was having trouble in breathing. On further examination, he found that membrane of left lung was filled with blood and air. The victim was immediately operated and one inter coastal drain was placed to give him relief in breathing. Medical report is give vide Ex.P-12 and the document Ex.P-13 is the discharge papers.

12. After close scrutiny of the all the evidence of relevant witness, it has appeared that on the basis of unrebutted statement of Abdul Hasrat Khan (P.W.-2), which is corroborated by medial evidence and partly supported by other witness, the prosecution has successfully proved its case beyond reasonable doubt. Hence, there appears to be no reason to interfere in the impugned judgment of conviction.
13. Another circumstances that has developed is this that the complainant and the victim have compromised their dispute and the complainant Abdul Hasrat Khan (P.W.-2) has made statement before this Court that he does not want to further prosecute this appellant and prays for conclusion of this appeal. After placing reliance on the judgment of Hon'ble Supreme Court in case of Rajendra Harakchand Bhandari (supra), Gulab Das & Ors. Vs. State of M.P. (supra) and the judgment of this High Court I feel inclined to reduce the period of sentence of imprisonment imposed against the appellant in the impugned judgment.
14. Therefore, this appeal is allowed in part. The conviction in the impugned judgment, passed by the trial Court is confirmed by this Court, whereas, the sentence of imprisonment is modified. The appellant is now sentenced with period of detention already undergone by him in jail for offences under Section 329, 307 of the Indian along with fine of Rs.1000/- and Rs.1000/- respectively. The appellant has remained in jail for about more than one year and three months, therefore, the sentence of imprisonment imposed upon him in the impugned judgment for the offence under Section

25 (1-B) (B) of Arms Act is considered to have been under gone by him, which shall be deemed that all the sentences have been run concurrently. If the fine sentence imposed upon the appellant is already paid, he may be released immediately, if there is no reason to detain him in jail .

15. Accordingly, the appeal is disposed of.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram