

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 96 of 2016**

- Shekhar Bhonde S/o Ratanlal Bhonde, Aged About 19 Years, R/o Near Ramjanki Mandir, Ayodhya Nagar, Santoshi Nagar, P.S. Tikarapara, Civil And Revenue District Raipur, Chhattisgarh., Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh Through The Police Station Tikarapara, Civil And Rev. District Raipur, Chhattisgarh., Chhattisgarh

---- Respondent

For Appellant : Mr. J.K. Gupta, Advocate.

For Respondent/State: Ms. Madhunisha Singh, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Judgment on Board

29/11/2018

1. This appeal has been preferred against judgment dated 22-12-2015 passed in S.T. No.15/2015 by 9th Additional Session Judge, Raipur, District Raipur, C.G. convicting the appellant under Section 25(1)(1-A), 27(1) of Arms Act and Section 324 of the IPC and sentencing him with R.I. for 5 years, R.I. for 3 years and R.I. for 1 year along with fine Rs.5000/-, Rs. 5000/- and Rs.5000/-, respectively, with default stipulations and direction that all the jail sentences shall run concurrently.
2. The case of the prosecution, in brief, is this that, on 24-10-2015 at about 10.15 p.m. in the night complainant Goutam Das (PW-1) with his friends stopped the appellant and asked as to why he has assaulted and thrashed Pawan, because of which, the appellant getting enraged used obscene words and threatened the complainant and took out a knife and assaulted him causing injuries on his backside of the chest. Complainant Goutam Das lodged the FIR Ex.-P/1. The complainant was medically examined and one incised wound was found in the left side of his chest of size 3 x 2 cm. vide Ex.-P/6. Thereafter, the victim

was referred to higher center for further treatment and consultation. Statement of the witnesses were recorded under Section 161 of the Cr.P.C. After completion of the investigation charge sheet was filed before the concerned Court.

3. The appellant was charged with offence under Section 294, 307 of the IPC and Section 25(1)(1-A), 27(1) of Arms Act, to which he denied and prayed for trial.
4. On completion of the prosecution evidence, the appellant was examined under Section 313 of the Cr.P.C. in which he denied all the incriminating evidence brought against him by the prosecution, pleaded innocence and false implication. No witness was examined in defence.
5. On completion of the trial, the impugned judgment was passed in which the appellant has been convicted and sentenced as aforementioned.
6. It is submitted by the counsel for the appellant that no case is made out for conviction of the appellant. It is prayed that the appellant has been sentenced for one year's R.I. in the main offence under Section 324 of the IPC, whereas, he has been sentenced R.I. for 5 years in the offence under Section 25(1)(1-A) of Arms Act, which appears to be disproportionate. In the alternative, it is prayed that in case this Court is not inclined to allow this appeal and acquit the appellant, then jail sentence of appellant under Section 25(1)(1-A) of Arms Act may be reduced.
7. Per contra, learned counsel for the State opposes the grounds raised and submission made, submitting that the prosecution has proved its case beyond reasonable doubt and there is no room for interference in the impugned judgment.

8. Heard learned counsel for the parties and perused the record of the trial Court.
9. Goutam Das (PW-1) is complainant who has stated that on the date of incident after some argument the appellant took out a knife and assaulted him causing injury on his left side of the back. He has lodged the FIR Ex.-P/1. His statement has remained unrebutted in cross-examination. The statement of Goutam Das (PW-1) is supported by the statement Mo. Ramjan (PW-2), Abdul Nazir (PW-4) and Pawan Nishad (PW-5)
10. Doctor R.S. Rao (PW-6) has stated that on examining the injured one incised wound was found on the left side of his chest of size 3 x 2 cm., depth of the injury could not be measured and he has opined that the injury was caused by some hard and sharp object vide his report Ex.-P/6. He referred the complainant for further treatment to higher center.
11. ASI Peelaram Sahu (PW-8) has lodged the FIR (Ex-P/1) on the basis of the information given by Goutam Das (PW-1).
12. Inspector Mohd. Nasir Bathi (PW-11) has stated that on the interrogating the appellant under Section 27 of the Evidence Act he made statement about keeping the recovered article vide memorandum Ex.P/10 and at the instance of the appellant he made seizure of one knife vide Ex.-P/11. His statement has remained unrebutted in his cross-examinationn.
13. Ratan Mistri (PW-9) has supported the statement given by Inspector Mohd. Nasir Bathi (PW-11) and his statement has remained unshaken in his cross-examination.
14. Doctor R.S. Rao (PW-6) has examined the seized knife and given report vide Ex.-P/7 that this weapon could have been used for causing injury to the complainant.

15. After due consideration on all the evidence present in the record of the trial Court, I am of this opinion that conviction of the appellant under Section 324 of the IPC and Section 25(1)(1-A), 27(1) of Arms Act need no interference. However, the prayer made by the appellant in alternative is required to be considered as the main offence against the appellant is making use of a knife to assault the complainant. The punishment imposed for injury caused is lesser compared to the punishment imposed for possession of knife without license which is prescribed under Section 4 of the Arms Act. Hence, the prayer made by the appellant has some substance.
16. After overall consideration on all the material, evidence and circumstances of the case, I am of this opinion that sentence of imprisonment imposed upon the appellant under Section 25(1)(1-A) of Arms Act appears to be excessive and needs to be reduced. On the basis of the finding and discussion made hereinabove this appeal is allowed in part with the modification of sentence of imprisonment imposed upon the appellant under Section 25(1)(1-A) of Arms Act. The sentence imposed upon the appellant under this Section is reduced to the period of three years R.I. along with fine of Rs.5000/- with default stipulation as imposed by the trial Court. Conviction of the appellant under Section 27(1) of Arms Act and 324 of the IPC are maintained. The appeal is disposed off accordingly.

Sd/-
(Rajendra Chandra Singh Samant)
Judge