

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1000 of 2015**

1. Wasim Khan S/o Ahamed Khan, Aged About 24 Years, R/o R.D.A. Plot, Behind Suhela Kirana Stores, Police Station Tikrapara, Raipur District Raipur Chhattisgarh , Chhattisgarh
2. Ajay Khan @ Golu S/o Rafiq Khan, Aged About 22 Years, R/o Sanjay Nagar, Gousiya Chowk, Police Station Tikrapara, District Raipur Chhattisgarh, District : Raipur, Chhattisgarh

---- Appellants**Versus**

- State Of Chhattisgarh Through - Station House Officer, Police Station - Kotwali, District Raipur Chhattisgarh, Chhattisgarh

-----Respondent

For Appellants	: Shri Gurudev I. Sharan, Advocate
For Respondent/State	: Shri Anant Bajpai, Panel Lawyer

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

09/10/2018

1. This appeal has been preferred against judgment dated 10-08-2015 passed in S.T. No.220/14 by 9th Additional Sessions Judge, Raipur, District Raipur, C.G. convicting appellant No.1 under Section 307 of the IPC and appellant No.2 under Section 307 read with Section 34 of the IPC and sentencing them with R.I. for 7 years along with fine Rs.500/- with default stipulation.
2. The prosecution story in brief is this, that on 05-07-2014 the appellants had quarreled with complainant Mohd. Jahid Khan, in which appellant No.2 had assaulted him with hands and fists and appellant No.1 assaulted him with a knife causing stab injuries on his abdomen and other parts of the body. The injured/complainant

was admitted to the hospital. One unnumbered FIR (Ex.-P/1) was lodged immediately registering the offence under Section 307, 34 of the IPC against the appellants. The investigation was conducted and charge sheet was filed before the concerned Court.

3. The appellants were charged under Section 307/34 of the IPC to which they denied and prayed for trial. On being examined under Section 313 of the Cr.P.C. they denied all the incriminating evidence against them and pleaded innocence and false implication. No witness was examined in defence.
4. On completion of the trial the impugned judgment of conviction and order of sentence was passed by the trial Court wherein the appellants have been convicted and sentenced as mentioned hereinabove.
5. Learned counsel for the appellants submits that no case is made out under Section 307 of the IPC, hence, the order of conviction under Section 307 of the IPC passed by the Court below is totally erroneous and without any substance. Hence, the appellants were entitled for acquittal in this case. In the alternative, if this Court does not incline to allow the appeal and acquit the appellants, then sentence of imprisonment imposed upon the appellants may be reduced to the period of detention already undergone by them in jail.
6. Per contra, learned counsel for the State opposing the grounds raised in this appeal submits that the prosecution has proved its case beyond reasonable doubt. The appellants had with intention to

cause death caused injury to the complainant Mohd. Jahid Khan (PW-1) regarding which there is sufficient evidence on record. Hence, the appeal may be dismissed.

7. The main and important witness in this case is Mohd. Jahid Khan (PW-1), who has stated that on the date of incident the appellants came to him and all of sudden started abusing and assaulting him. When appellant No.1 Wasim Khan was assaulting him appellant No.2 Ajaj Khan @ Golu had caught hold of him from behind. At the same time appellant No.1 took out a knife from his pocket and stabbed him four to five times in the abdomen and other parts of the body. He has stated about lodging of dehati nalishi (Ex.-P/1). In cross-examination he has admitted that earlier the appellants had been his friends. He has denied all the adverse suggestion given by the defence and has remained firm in this statement given in his examination-in-chief.
8. Doctor Amit Agrawal (PW-13) examined the complainant on the same day and found one stab wound on right umbilical area of size 2.5 x 0.5 cm. with peritoneal breach, another incised wound of size 2 x 1 cm., one incised wound on right mid-line size 3 x 2 cm with peritoneal breach and another incised wound on left side of chest of 8 x 2 x 1 cm, which was muscle deep regarding which report Ex.-P/20 has been proved before the Court. He has further stated that the complainant was operated on the injuries and according to his opinion the injuries were sufficient to cause his death, and his report remained unchallenged in his cross-examination.

9. Doctor Sumit Solanki (PW-4) has examined the complainant after passing of about one month on 04-08-2014 and has also examined the seized knife and has given his opinion in Ex.-P/15 giving advice to let seized articles examined by the FSL.
10. There is no other eye-witness in this case and there is no need to discuss on the evidence given by the other witnesses who happen to be the procedural witnesses and hearsay witnesses.
11. According to the statement given by Mohd. Jahid Khan (PW-1), it is clearly established that appellant No.1 was the person and appellant No.2 was in his company when appellant No.1 assaulted the complainant with knife causing him grievous injuries on his body. According to Doctor Amit Arawal (PW-13), the injuries caused to the complainant if not treated could have proved fatal for him. Because the complainant had to undergo surgery which shows that the injuries caused to the complainant were life threatening. Whether only on the basis of this evidence it can be made out that the appellants had intended to cause death of the complainant is another question which shall be considered further.
12. Mohd. Jahid Khan (PW-1) was not made any statement that the appellants had intended to cause his death. The circumstances that he explained are these that, because of some dispute the appellants came to him and first they abused and then assaulted with hands and fists and in the third stage appellant No.1 took out a knife from his pocket and stabbed the complainant. Hence, the way in which the incident started by abusing the complainant, shows that

had the appellants intended to cause death of the complainant, from the very beginning they would have started stabbing the complainant, but the act of stabbing happened in the last and on this basis it cannot be made out that the appellants had intended to cause death of the complainant.

13. After due consideration on all the evidence present on record of the trial Court, I am of this view that the case against the appellants is covered under Section 326/34 of the IPC. Hence, on the basis of this evidence, conviction of the appellants under Section 307, 307/34 of the IPC appears to be bad in law.
14. On the basis of this finding, the appeal is allowed in part. Conviction of the appellant No.1 under Section 307 of the IPC and appellant No.2 under Section 307/34 of the IPC are altered into Section 326 and Section 326/34 of the IPC and against their conviction in the aforesaid section, they are sentenced to undergo R.I. for 5 years each and to pay fine of Rs.500/-. In default of payment of fine, they shall have to undergo additional R.I. for three months.

Sd/-
(Rajendra Chandra Singh Samant)
Judge