

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 2343 of 1999

Order reserved on 26.09.2019

Order pronounced on 19.12.2019

Rekhchand, son of Shri Phoolchand Satnami, aged about 21 years,
R/o Village Khopli, District Durg, MP(Now CG) --- **Appellant**

Versus

State of M.P., through PS Utai, District Durg (Now CG)
--- **Respondent**

For Appellant : Ms. Sareena Khan, Advocate (Legal Aid)

For State : Mr. Ishan Verma, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V. Order

Facts of the case in brief are that in the intervening night of 11th -12th of May, 1991 when injured Bholaram (PW-2) was sleeping outside his house, accused/appellant herein along with 7-8 other persons visited his house, threatened him of life and thereafter took him inside the minibus which was stationary in the thrashing field. It is also alleged that the accused/appellant also caused knife injuries on his legs and left him near village Jamgaon in unconscious state. Thereafter, the injured (PW-2) somehow came to Bheshnarayan Chandrakar (PW-1) – the lodger of the FIR (Ex.P-1) and informed him about being assaulted by 3-4 persons with knife. Thereafter, he was taken to DK Hospital Raipur and during treatment his dying declaration was also recorded. On the basis of report (Ex.P-1) offences under Sections 364 and 307 IPC were registered against as many as 9 persons including the accused/appellant herein. After completion of investigation charge-sheet was filed against them under Sections 364, 307, 395/397/149 IPC. The Court below however framed the charge under Sections 364/307/395/397/149 IPC.

2. Learned Court below after considering the evidence of the witnesses acquitted 7 accused persons of the charges levelled against

them but convicted the accused/appellant herein under Sections 364, 395/397, 307/149 IPC and sentenced him to undergo RI for 5 years with fine of Rs.1000; RI for 7 years; and RI for 7 years with fine of Rs.2000 respectively, with default stipulations. One of the accused namely Mohammad Sarik absconded and therefore, could not be tried along with the other accused persons. It is relevant to note here that accused Phoolchand died during trial.

3. Counsel for the accused/appellant submits that the evidence available on record is not sufficient for convicting the accused/appellant under Sections 364, 395, 397, 307 and 149 IPC as the requirement thereof is not satisfied from the evidence adduced by the prosecution. She submits that though 3 independent witnesses were cited by the prosecution yet during trial they could not be examined for the reasons best known to it and this non-examination of the important witnesses renders the case of the prosecution doubtful. Another independent witness namely Khemchand Chauhan (PW-3) though examined by the prosecution yet he has not supported the case of the prosecution. Thus the judgment impugned being contrary to the material on record collected by the prosecution is liable to be set aside and the accused/appellant deserves acquittal particularly when on the same set of evidence the other accused persons have already been acquitted.

4. State counsel however supports the judgment impugned and submits that the findings recorded by the Court below are strictly in accordance with law and does not call for any interference in this appeal.

5. The important witness in this case is injured Bholaram (PW-2) and it is apparent from his statement that the mother the accused/appellant had sold a minibus to father of the injured but as the full sale amount was not paid, the said minibus was being operated by the accused/appellant and his brother and for that some dispute arose in between them. The

evidence of Bholaram also makes it clear that the accused/appellant herein along with his associates had attacked him with knife and dragged him out of the moving minibus. His evidence further shows that though the condition of injured was critical yet he somehow managed to come to Bheshnarayan (PW-1) and disclosed the incident to him. It is PW-1 who took the injured to hospital and also lodged the report in the concerned Police Station. From the evidence of Bholaram (PW-2) it is also apparent that he was assaulted with knife by the accused/appellant herein and one Phoolchand (died during trial) as a result of which he suffered injuries on his left elbow, right hand, finger, thumb, stomach, neck, chest, ribs, right arm and back. This version of the injured has been supported by the evidence of Dr. PL Yadu (PW-6) and Dr. Kiran Agrawal (PW-12) who have also opined the corresponding injuries on the body of the injured vide reports Ex.P-8 and Ex.P-14 respectively. Since the Court below did not find any cogent evidence as to the role played by other accused persons, they have been acquitted by the judgment impugned. Bheshnarayan (PW-1) who lodged the report and took the injured for medical examination has stated that the injured was found drenched in blood and had disclosed about being caused knife injuries by 3-4 persons. He has also proved the FIR (Ex.P-1) lodged by him. Since there was no independent witness to the seizure made on the memorandum of accused Abid under Ex.P-3, the same has rightly been disbelieved and discarded by the Court below. Furthermore, the main important witness in this case is the injured (PW-2) and his statement recorded before the Police as also in the Court makes it clear that accused/appellant had assaulted him with hands and fists as also with the weapon like knife. He has also specifically stated that while the accused/appellant was driving the minibus, the other accused/persons had thrown him out of the same. Evidence of PW-1 also goes to show that after seeing the injured in serious condition he took him to the DK Hospital Raipur and got him admitted there for treatment. Thus the prosecution has

proved beyond reasonable doubt that the accused/appellant herein first threatened the injured of life, abducted him and also looted the minibus purchased by his father from the mother of the accused/appellant herein. Thus the findings recorded by the Court below holding the accused/appellant guilty under Sections 364, 395, 397 and 307 read with 149 IPC are based on strict appreciation of the evidence adduced by the prosecution and there is no legal flaw in the same warranting any interference by this Court.

6. Accordingly, the appeal being without any substance is hereby dismissed and the judgment impugned is maintained. Accused is reported to be on bail, therefore, his bail bonds stand canceled and he is directed to be sent to jail forthwith completing his jail sentence.

Sd/-

(Vimla Singh Kapoor)

Judge