

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 3414 of 1999

Order reserved on 31.07.2019

Order pronounced on 07.08.2019

Shahjada Khan, S/o Kalla Khan, aged 20 years, Occupation –
Driver, R/o Haidamiya Mohalla, P.S. Mahoba, District Hamirpur at
present P.S. Modhapara, Raipur (CG) --- **Appellant**

Versus

State of M.P. (Now CG)

--- **Respondent**

For Appellant : Mr. Sashi Kumar Kushwaha, Advocate

For State/Respondent : Mr. Himanshu Sharma, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V. Order

A day prior to the date of incident i.e. on 24.11.1998 the accused/appellant herein is alleged to have come to the locality of complainant/victim (PW-1) and abused him filthily which was objected to by the inhabitants of the neighbourhood. On the next day i.e. on 25.11.1998 at about 3:15 PM the accused/appellant again came there and dealt a knife blow on his belly as a result of which the complainant fell down on the ground. The accused/appellant is alleged to have again dealt a knife blow on the buttock of the complainant even after he had fallen down on the ground and having done that he ran away from the spot. The incident is said to have been seen by the people of the locality but unfortunately they all turned hostile. Thereafter, the complainant (PW-1) somehow managed to go to the Police Station and lodged the report Ex. P-1 on the basis of which offences under Sections 294 and 307 IPC were registered against the appellant. Blood stained clothes of the victim were seized under Ex.P-2 and thereafter on the memorandum of the accused/appellant Ex.P-4 seizure of knife was also made vide Ex.P-5. Thereafter, on medical examination of the victim and completion of investigation the *challan* was filed against the accused/appellant under Section 307 IPC and Sections 25 & 27 of the Arms Act. The Court below

however framed the charge against the accused/appellant under Section 307 IPC only.

2. Learned Court below vide judgment impugned dated 14.12.1999 convicted the accused/appellant under section 307 IPC and sentenced him to undergo RI for 5 years and pay fine of Rs.1000/-, plus default stipulation. Hence this appeal.

3. Victim (PW-1) namely Abdul Latif has duly supported the case of the prosecution stating that when he protested the abuses being hurled by the accused/appellant, he dealt a knife blow in his stomach and thighs. He has further stated that after inflicting 2-3 more blows on his body the accused/appellant left the spot. Thereafter, he went to the Police Station and lodged the report Ex.P-1. Subsequently, he has stated that after being assaulted by the accused/appellant his intestines had come out and the wounds were bleeding profusely. For the injuries suffered by him he is stated to have been hospitalized for about 20 days. According to him his shirt, pant and underwear were seized by the Police under Ex.P-2. The so-called independent witnesses being PW-2, PW-3, PW-5, PW-6 and PW-7 have not supported the case of the prosecution and have been declared hostile. PW-8 however has supported the case of the prosecution stating that on the date of incident his sister (mother of the victim) came to his house and informed him that the victim was inflicted knife injuries by the appellant. Thereafter, he accompanied her to the hospital and saw that some substance was coming out of the injuries on the stomach of the victim which he had tried to press with the help of cotton on the advice of the doctor. This witness further stated that at that time the victim was fully conscious and disclosed to him about being assaulted by the accused/appellant. In his presence the clothes of the victim, drenched with blood, were seized under Ex.P-2. PW-9 is the witness who had accompanied the victim to the Police Station but has not supported the case of the prosecution for the reasons best known to him.

PW-15 is the doctor who first medically examined the victim and gave report Ex.P-9A stating that she noticed incised wound in the size of 2 cm X 2 cm on the right side of the umbilicus, and the omentum had come out. The other incised wound noticed by this witness was in the size of 5 cm X 5 cm into subcutaneous deep found on the right gluteal region. According to her, the injuries present on the body of the victim could have been caused by the knife produced before her for examination. However, to determine the nature of injuries she had referred the victim to PW-12 who performed surgery on him. PW-12 who conducted surgical operation on the victim found two punctured wounds of various diameters in the periphery of the umbilicus of the victim. Though in the Court he has not stated anything as to the injuries being simple or grievous in nature yet on 24.12.1998 he had answered the query stating that the injuries found on the stomach of the victim was grievous in nature and could have been fatal if timely medical treatment was not provided to him. Investigating Officer being PW-11 and PW-13 have also supported the case of the prosecution in its entirety.

4. Thus from the aforesaid factual discussion it can safely be inferred that a day prior to the date of incident the accused had hurled abuses at the victim and on being objected thereto he moved away. Subsequently, on the next day he again came to the locality where the victim resided carrying knife with him and inflicted injuries on his stomach and also on the buttock. All this makes it clear as a noon day that had there been no intention on the part of the appellant to cause grievous injuries with an intention to commit his murder, he would have felt appeased on the day one and could not have waited for the next day to again approach the victim after being equipped with a lethal weapon known as knife and caused injuries on the vital part of his body like stomach which made him stay in the hospital for treatment for about 10 days (i.e. from 25.11.1998 to 05.12.1998 vide Ex.P-21C). Further on the memorandum of the

accused/appellant (Ex.P-4) seizure of knife, though not blood stained according to the FSL report (Ex.P-12) was made under Ex. P-5. Furthermore, the seizure of blood stained clothes of the victim also fortifies the case of the prosecution. Though the query report stating injuries to be grievous in nature has not been proved by the prosecution, the facts and circumstances of the case, the injuries suffered by the victim, his hospitalization for about 10 days, seizure of knife made on his memorandum, statement of PW-8 and other evidence on record make this Court arrive at the conclusion that the accused/appellant was predetermined to cause the death of the victim but however he was fortunate enough to survive the same.

5. In this view of the matter the view taken by the learned Court below convicting and sentencing the accused/appellant as mentioned above does not suffer from any legal flaw. The findings recorded while passing the judgment impugned are based on proper appreciation of the evidence of the witnesses and, therefore, no interference therewith is called for in this appeal.

6. Appeal thus being without any substance is liable to be dismissed and it is dismissed as such. The appellant seems to be enjoying bail and, therefore, he is directed to be put in prison forthwith to serve out the sentence imposed on him.

Sd/-

(Vimla Singh Kapoor)

Judge