

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 2458 of 2000**

1. Mahamritunjay S/o Rajkumar Sharma, aged about 25 years, R/o Sonarpara Champa, P.S. Champa, District Janjgir-Champa, At Present Balco Nagar, Korba, District Bilaspur (M.P.)

---- Appellant**Versus**

1. State of Madhya Pradesh through P.S. Champa, Tehsil-Janjgir, District Janjgir-Champa (M.P.).

---- Respondent

For Appellant	:	Shri A.L. Singroul, Advocate.
For Respondent/State	:	Shri Pawan Kesharwani, Panel Lawyer.

Hon'ble Shri Justice Gautam Chourdiya**01/10/2019****Judgment On Board**

- 1) This appeal is filed under section 374(2) of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 09/09/2000 passed by Additional Session Judge Janjgir, Session Division Bilaspur (M.P.) now (C.G.) in Session Trial No. 300/1994; whereby the appellant Mahamritunjay stands convicted and sentenced as under:-

Conviction	Sentence
U/s. 307 of Indian Penal Code (in short "IPC")	R.I. for 5 years and fine of Rs. 500/-, in default of fine additional R.I. for 2 months.

- 2) Case of the prosecution in brief is that on the date of incident i.e. on 30/04/1994 around 08:10 AM near Balak High School, Champa accused Mahamritunjay assaulted victim Ajay Kumar (PW-03) by knife and thereby attempted to commit his murder. As a result of this assault Ajay Kumar sustained grievous injury on neck, chest and back part of body. Salim PW-04 informed about the incident to father of the victim Jyotishram @ Jagtaram

Sahu that accused Mahamritunjay made severe assault to his son Ajay Kumar with knife. Thereafter, Jyotishram @ Jagtaram Sahu reached at the place of incident and he found that his son Ajay Kumar had sustained grievous injury on neck, chest, shoulder and other back part of the body and admitted him in B.D.M. Hospital, Champa for treatment. Thereafter, Jyotishram @ Jagtaram Sahu, father of victim Ajay Kumar promptly lodged FIR (Ex. P-12) on same day of the incident. When the victim Ajay Kumar was admitted in Hospital, his statement vide Ex. P-2 was recorded by Executive Magistrate Champa namely. Dharamveer Sharma PW-01 in which specifically mentioned the name of the appellant as assailant. The victim was medically examined by PW-08 Dr. S.P. Gupta vide Ex. P-6 wherein he notices that the condition of the victim was serious and there was severe bleeding from the injuries. He found the following injuries on the person of the victim :-

- i. Incised wound on left side of chest size 3cmx2cmx3cm.
- ii. Incised wound on right side of chest size 2cmx1cmx2cm.
- iii. Incised wound on right side of shoulder size 7cmx2cmx4cm.
- iv. Incised wound on back of neck size 2cmx1/2cmx1cm.
- v. Two incised wound on right scapular region, each size 3cmx2cmx3cm.
- vi. Incised wound at the base on left little finger size 2cmx2cmx1cm.
- vii. Incised wound at scalp size .5cmx1cmx5cm over left parietal region.

According to the Doctor the injuries were dangerous in nature and he advised for X-Ray for the Chest. Doctor opined that all the injuries were caused by sharp and hard object within 1 to 2 hours prior to the medical examination.

- 3) One full pant, one Banyan, one full shirt of Vinay Kumar were seized vide Ex. P-3. Spot map Ex. P-4 was prepared by PW-09 Saiyad Abdul Rasid, Patwari. One knife having stain like blood

was seized from the accused/appellant vide Ex. P-4. One full shirt of the appellant having blood like stains was seized from him vide Ex. P-5. Salim Mukhtiyar PW-04 who also had suffered some injuries in the said incident was medically examined vide Ex. P-5 by Doctor V.P. Soni PW-07 according to which Salim Mukhtiyar PW-04 had suffered simple injuries. The weapon seized from the accused/appellant was sent for examination to the Doctor and as per Ex. P-9 Dr. S.P. Gupta PW-08 opined that the injuries suffered by victim Ajay Kumar can be caused by the weapon knife seized from the appellant. The seized articles were sent for chemical examination for FSL and as per FSL report Ex. P-21 blood was found on the cloths of victim Ajay Kumar, knife seized from the appellant and his shirt.

- 4) After completion of investigation, Charge Sheet was filed against the accused appellant under section 307 of I.P.C. The Trial Court framed charge against the accused/appellant under section 307 of I.P.C. which was denied by the accused and he pleaded innocence and false implication.
- 5) The prosecution in support of its case examined as many as 10 witnesses namely PW-01 Dharamveer Sharma, PW-02 Samaylal, PW-03 Ajay Kumar, PW-04 Salim Mukhtiyar, PW-05 Mayank Ranjan Shrivastava, PW-06 Sitaram, PW-07 Dr. V.P. Soni, PW-08 Dr. S.P. Gupta, PW-09 Saiyad Abdul Rasid and PW-10 Rajesh Khare. The statement of the accused was also recorded under section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case and pleaded innocence and false implication. In his defence the appellant has stated that victim Ajay Kumar who assaulted him with knife and during this scuffle Ajay Kumar accidentally sustained injuries and that he did not intentionally cause injuries to Ajay Kumar. No defence witness was examined by the accused in his defence.
- 6) Learned Trial Court considering the material available on record by the impugned judgment convicted and sentenced the

accused appellant as mentioned above.

- 7) Learned counsel for the appellant submits that the Trial Court has not properly appreciated the oral and documentary evidence available on record. He submits that in fact it is victim Ajay Kumar who was aggressor and tried to assault the appellant with knife and during scuffle victim Ajay Kumar accidentally suffered injuries. In these circumstances the Trial Court was not justified in holding the appellant guilty under section 307 of IPC because there was no intention on the part of the appellant to commit murder of the victim Ajay Kumar PW-03.
- 8) On the other hand learned counsel for the respondent/State supporting the impugned judgment and submits that the Trial Court considering the overall evidence available on record has rightly convicted and sentenced the appellant by the impugned judgment which calls for no interference by this Court.
- 9) Heard counsel for the parties and perused the material available on record.
- 10) PW-03 Ajay Kumar, injured victim, has stated that when he heard that the appellant wanted to killed him, he inquired about the same from the appellant on which the appellant assaulted him with knife on his neck, back, chest, abdomen and other parts of the body. He states that in the mean time two persons came their on Scooter and they took him in unconscious condition to Government B.D.M. Hospital, Champa for treatment.
- 11) PW-04 Salim Mukhtiyar, is the person who intervened in the quarrel between appellant and Ajay Kumar and also sustained injuries. He has supported the prosecution case regarding assault made by the appellant on victim Ajay Kumar. PW-04 is an independent injured eye witness and in his cross examination the defence has failed to elicit anything from him to make his evidence untrustworthy or doubtful. There is no reason to disbelieve the statement of this witness. There is no major contradiction or omission in the statement of PW-03 Ajay Kumar

and PW-04 Salim Mukhtiyar.

- 12) The statement of PW-03 Ajay Kumar also finds due corroboration from the medical evidence in the form of his MLC Ex. P-6 it has been duly proved by the treating Doctor PW-08 S.P. Gupta. PW-08 Dr. S.P. Gupta also examined the weapon knife seized from the appellant as per Ex. P-9 and opined that the injuries suffered by Ajay Kumar can be caused by the said weapon Ex. P-9. PW-07 Dr. V.P. Soni has proved the injuries suffered by Salim vide Ex. P-6 which were simple in nature.
- 13) As per Ex. P-10 vide Bed Head ticket of victim Ajay Kumar under went continuous treatment for about 23 days in the Govt. B.D.M. Hospital, Champa which has been proved by PW-08 Dr. S.P. Gupta. As per FSL report Ex. P-21 the blood was found on the knife seized from the appellant as well as on his shirt.
- 14) Thus considering the overall facts and circumstances of the case, the eye witness account of PW-03 Ajay Kumar and PW-04 Slim which finds due corroboration from the medical evidence in the form of MLC Ex. P-6 and the evidence of PW-08 Dr. S.P. Gupta coupled with the promptly lodged FIR Ex. P-12, it stands prove beyond reasonable doubt that it is appellant who assaulted Ajay Kumar PW-03 with knife and thereby caused him grievous injuries.
- 15) Further, considering the factual background giving rise to the incident, in particular the statement of victim Ajay Kumar in para 01 where he has stated that the appellant and himself (Ajay Kumar) were having good relation prior to the incident, appellant was his friend and that on being heard that the appellant wanted to kill him when he inquired from the appellant about the same he assaulted him with knife, it appears that there was no premeditation or intention on the part of the appellant to make assault on the victim. It is not the case of prosecution that the appellant came to the victim with intention to commit his murder and in furtherance of such intention assaulted him. According to the prosecution case itself when the victim Ajay Kumar called the

appellant and inquired about the veracity of the fact whether he wants to kill him, the appellant got angry and then made assault on the victim. Therefore, in the given facts and circumstances of the case, the appellant cannot be held guilty for the offence under section 307 of IPC but can safely be held guilty under section 308 of IPC i.e. attempt to commit culpable homicide.

- 16) As regards the sentence, considering the fact and circumstances giving rise to the incident, the fact that the appellant and the victim were friends, the manner in which the incident took place, the incident occurred about 25 years back, the age of the appellant at the relevant time i.e. 25 years, the appellant has no criminal antecedent as also the injuries and hardship suffered by the victim, this Court is of the opinion that the ends of justice would be served if the appellant is sentenced to the period already undergone by him which comes to about 08 months and he is directed to pay a fine of Rs. 5,000/- which shall be disbursed as compensation under section 357 of Cr.P.C. to the victim Ajay Kumar.
- 17) In the result, the appeal is allowed in part. Conviction of the appellant under section 307 of IPC and sentence imposed there under including the fine sentence are hereby set aside. Instead, the appellant is held guilty under section 308 of IPC and sentenced to period already undergone by him. However, he is directed to pay fine of Rs. 5,000/- which shall be disbursed as compensation under section 357 of Cr.P.C. to the victim Ajay Kumar after due verification by the Trial Court, if the said fine amount is not paid by the appellant within 3 months from today he shall have to undergo additional imprisonment for 1 month. If the appellant has already paid fine amount of Rs. 500/- as imposed by the Trial Court, the same shall be adjusted accordingly. Since the appellant is reported to be on bail, his bail bonds shall remain in force for a period of six months from today in view of provision of section 437-A of Cr.P.C.

-Sd/-
(Gautam Chourdiya)
Judge

