

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****RESERVED ON 2-5-2019****DELIVERED ON 6-5-2019****CRIMINAL APPEAL No. 242/2008**

(Arising out of judgment of conviction and order of sentence dated 14-2-2008 passed by 2nd Addl. Sessions Judge, Korba (CG) in ST No. 113/2006)

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Topchand Gupta @ Anjan Gupta son of Dasrath Lal Gupta, aged about 24 years, R/o. Emli Daggu, Kotwali Korba, Tahsil and District Korba (CG) (CG)

---Appellant**-VERSUS-**

State of Chhattisgarh through City Kotwali Korba (CG)

---Respondent

For appellant : Shri Sandeep Yadav, Adv.

For State : Shri Wasim Miyan, Panel Lawyer.

Hon'ble Shri Sharad Kumar Gupta, Judge

CAV JUDGMENT

1. In this criminal appeal the challenge is levied to the judgment of conviction and order of sentence dated 14-2-2008 passed by 2nd Addl. Sessions Judge, Korba (CG) in ST No. 113/2006 whereby and whereunder he convicted and sentenced the appellant as under :-

Offence u/S.	RI for	Fine Rs.	RI in default of payment of fine
307, Indian Penal Code (in brevity 'IPC')	5 Years	10,000/-	10 months
324, IPC	6 months	2,000/-	2 months
324, IPC	6 months	2,000/-	
25(1B)(b) of Arms Act.	1 year	1,000/-	1 month

All the jail sentences have been directed to run concurrently.

2. In brief the prosecution story is that on 9-8-2006 about 11.30 am, in front of Santoshi Mandir, Imli Daggar, appellant caused injuries to complainants Rakesh Kumar Yadav, Pappu Kumar Shrivastava and Thandaram Chauhan by a sword. Mother of the complainant Rakesh Kumar Yadav namely Smt. Ghana Bai lodged an FIR on very day at PS

Kotwali, Korba. After the investigation, a charge sheet was filed against him. After completion of trial, trial Court convicted and sentenced him as aforesaid.

3. Counsel for the appellant submits that trial Court has not appreciated the evidence in proper perspective. Thus, the conviction and sentences of the appellant are bad in eyes of law. Hence, appellant may be acquitted of the aforesaid charge.

4. Counsel for the State argued that the conviction and sentences of the appellant are based on clinching evidence. The conviction and sentences of the appellant do not call for any interference by this Court.

5. As per the MLC report Ex. P-4, P.W. 7 Dr. R.K. Divya had examined complainant Rakesh Kumar Yadav and found 9 injuries on his body, out of which 8 were incised wounds. One incised wound was found on base of neck. Three incised wounds were present on his parietal bone. One amputation of right index finger was also found. He opined that injuries No. 6, 7 and 8 were grievous in nature. Injuries were caused by hard and sharp object.

6. There is no such evidence on record on strength of which it can be said that Ex. P-4, is not believable. Thus this court believes on it.

7. As per the MLC report Ex. P-5, P.W. 7 Dr. R.K. Divya had examined complainant Pappu Kumar Shrivastava and found one incised wound on his left arm and another incised wound on his left elbow. He opined that injuries were simple in nature.

8. There is no such evidence on record on strength of which it can be said that Ex. P-5 is not believable. Thus this court believes on it.

9. P.W. 1 Ghanabai says in para 1 of her statement given on oath that she had seen that appellant was assaulting his son by sword.

10. P.W. 3 complainant Rakesh Kumar Yadav says in para 1 of his statement given on oath that appellant had assaulted him by sword.

11. P.W. 5 complainant Pappu Kumar Shrivastava says in para 1 of his statement given on oath that appellant had assaulted him, complainants Thandaram Chauhan and Rakesh Kumar Yadav by sword.

12. P.W. 8 Ajay Kumar Yadav says in para 1 of his statement given

on oath that appellant had assaulted complainants Thandaram Chauhan, Pappu Kumar Shrivastava and Rakesh Kumar Yadav by sword.

13. D.W. 1 Laxmi Narayan Das, D.W. 2 Rakesh Singh Thakur, D.W. 3 Dashrath Lal Gupta who is father of the appellant say in para No. 2 of their statement given on oath that complainant Rakesh Kumar Yadav, Pappu Kumar Shrivastava and Thandaram Chauhan had assaulted appellant, the sword of complainant Rakesh Kumar Yadav fell down, appellant picked the sword and undulated it.

14. There is no such evidence available on record on the strength of which it can be said that aforesaid statements of P.W. 1 Smt. Ghanabai, P.W. 3 Rakesh Kumar Yadav, P.W.5 Pappu Kumar shrivastava, P.W. 8 Ajay Kumar Yadav, are not simple, not natural and not normal.

15. There is no material on record on strength of which it can be said that alleged FIR Ex. P-1 is fabricated or concocted.

16. As per the alleged seizure Ex. P-9, P.W. 12 I.C. Shandilya had seized one sword from appellant.

17. There is no such material available on record on the strength of which it can be said that Ex. P-9 is not believable thus this Court believes on Ex. P-9.

18. Looking to the above mentioned facts and circumstances of the case, this Court disbelieves the aforesaid statements of DW 1 Laxmi Nanarayan Das, D.W. 2 Rakesh Singh Thakur, D.W. 3 Dashrath Lal Gupta in the reference that appellant had not committed any offence.

19. Looking to the above mentioned facts and circumstances of the case, this Court finds that prosecution has succeeded to prove beyond reasonable doubt the charges punishable under Sections 307, 324, 324, IPC and Section 25(1B)(b) of Arms Act, against the appellant.

20. After appreciation of the evidence discussed herebefore, this court finds that trial Court has not committed any illegality in convicting and sentencing the appellant as aforesaid. Hence, the appeal deserves to be dismissed.

21. The appeal is accordingly dismissed. The conviction and sentences of the appellant are hereby affirmed.

22. As per the report received from the Jail Superintendent, Central Jail Bilaspur the appellant has been released on 15-8-2010 after getting the benefit of remission extended to him. Thus, no further order is required.

Sd/-
(Sharad Kumar Gupta)
Judge