

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on : 06.11.2019

Delivered on : 04-12-2019

CRA No. 949 of 2001

1. Brijesh @ Ghanti Sharma, aged about 32 years, S/o Shri Manharanlal Sharma, R/o Village- Dangania, Police Station- Azad Chowk, Raipur (C.G.)
2. Shabir Hussain Bharti, aged about 25 years, S/o Ahmed Hussain Bharti, R/o Near Idgah Bhata Masjid, Police Station- Purani Basti, Raipur (C.G.)

---- Appellants

Versus

State of Chhattisgarh, through Police Station- Purani Basti, Raipur, District- Raipur (C.G)

---- Respondent

AND

CRA No. 242 of 2004

Annu @ Ashish Shrivastava, S/o Shri Pannalal Shrivastava, aged about 23 years, R/o Sunder Nagar, Raipur, District- Raipur (C.G.)

---- Appellant

Versus

State of Chhattisgarh, Through: District Magistrate, Raipur, District- Raipur (C.G)

---- Respondent

For Appellants	:	Mr. Pawan Kesharwani, Advocate in CRA No. 949 of 2001 & Mr. Harshwardhan Parghania, Advocate on behalf of Mr. S.C. Verma, Adv. in CRA No. 242 of 2004.
For State/respondent	:	Mr. Ishwar Jaiswal, Panel Lawyer.
For Complainant	:	Mr. Rajat Agrawal, Advocate in CRA No. 242 of 2004.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. Since both the appeals arise out of same judgment/ sessions trial, they are heard analogously and are being disposed of by this common judgment.
2. **Criminal Appeal No. 949 of 2001** is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against judgment dated 18.09.2001 passed by Second Additional Sessions Judge, Raipur (C.G.) in Session Trial No. 51/1999, wherein the said court convicted appellant- Brijesh @ Ghanti & Shabir Hussain Bharti for commission of offence under Section 307/34 of IPC, 1860 and sentenced to undergo R.I. for 7 years and fine of Rs. 2000/- each with further default stipulations.
3. **Criminal Appeal No. 242 of 2004** is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against judgment dated 19.02.2004 passed by First Additional Sessions Judge, Raipur (C.G.) in Session Trial No. 51/1999, wherein the said court convicted appellant- Annu @ Ashish Shrivastava for commission of offence under Section 307 of IPC, 1860 and sentenced to undergo R.I. for 7 years and fine of Rs. 2000/- with further default stipulations.
4. In the present case, victim is Manish Singh Rajput (PW-7). As per version of the prosecution, about 7-8 days back from the date of incident, motorcycle of the victim and appellant- Annu @ Ashish Shrivastava was collided on which there was altercation and thereafter, there was settlement between them. On the date of

incident i.e. on 29.04.1998, all the three appellants stopped the victim and caused him knife blow. Matter was reported as per Ex. P/7 on the date of incident. The appellants were charge-sheeted and after completion of trial, the trial court convicted as mentioned above.

5. Learned counsel for the appellants submits as under:-

(i) Appellant- Brijesh @ Ghanti Sharma & Shabir Hussain Bharti have not assaulted the victim, therefore, the charge under Section 307 of IPC is not established against them.

(ii) Evidence of victim Manish Singh Rajput (PW-7) is full of material contradiction and omission, therefore, his statement cannot be acted upon.

(iii) Relation between the parties were strained, therefore, there is possibility of false implication.

(iv) Chance of other witnesses to remain present on the spot is under cloud because they are resident of different locality.

(v) Seizure of the article is not proved in the present case and for non-examination of some witnesses, case of the prosecution is doubtful, therefore, finding arrived at by the trial court is liable to be set aside.

4. On the other hand, learned State counsel submits that the finding arrived at by the trial court is based on relevant material placed on record and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.

5. First question for consideration before this Court is whether the appellants assaulted the victim- Manish Singh Rajput (PW-7). As per

version of this witness, on the date of incident, all the three appellants were present on the spot. Appellant- Brijesh @ Ghanti Sharma & Shabir Hussain Bharti made her vehicle lie down. Appellant- Annu @ Ashish Shrivastava assaulted him by knife while other two appellants assaulted him by fists.

6. From evidence of the victim himself, it is clear that only Annu @ Ashish Shrivastava assaulted him by knife while other two appellants have not assaulted him by any deadly weapon, but they assaulted him by fists. From evidence of Dr. P.L. Yadu (PW-8), it is established that the victim sustained injuries on chest and also found cut of blood vessels in sixth rib. Dr. G.P. Dewangn (PW-1) examined the victim on the date of incident i.e. on 29.04.1998 and found penetrated wound in chest, back and left thigh. He further opined that the victim would succumb to the injuries, if proper medical treatment was not provided to him in time. From direct and medical evidence, it is clear that appellant- Annu @ Ashish Shrivastava inflicted injuries to victim which was fatal in nature.
7. The trial court elaborately discussed the entire evidence and recorded finding that the case under Section 307 of IPC is made out against appellant- Annu @ Ashish Shrivastava. After reassessing the entire evidence, this Court has no reason record contrary finding. Accordingly, finding of the trial court regarding commission of offence by the appellant- Annu @ Ashish Shrivastava under Section 307 of IPC and his conviction are hereby affirmed.
8. So far appellant- Brijesh @ Ghanti Sharma and Shabir Hussain Bharti

are concerned, the only evidence against them is that they assaulted the victim by fists, therefore, their intention to kill the victim is not established by the entire evidence, therefore, charge under Section 307 of IPC against these appellants is not established. The conviction and sentence of these appellants is set aside and they are acquitted of the charges framed against them under Section 307/34 of IPC, 1860.

Heard on the point of sentence

6. Victim- Manish Singh Rajput had filed an application under Section 320 of Cr.P.C. for compounding the offence, which was rejected by this Court because offence under Section 307 of IPC is not compoundable.
7. The incident took place 21 years ago. Appellant- Annu @ Ashish Shrivastava has suffered jail sentence from 04.05.1998 to 30.06.1998, From 31.01.2003 to 19.02.2004 & from 19.02.2004 to 02.04.2005. In all, he has suffered jail term of 2 years & 4 months. Looking to the compounding of offence by the victim and further looking to the jail term suffered by Appellant- Annu @ Ashish Shrivastava, his jail sentence is reduced to the period already undergone by him while maintaining fine amount.
8. In view of the above, **Criminal Appeal No. 949 of 2001** filed by Brijesh @ Ghanti Sharma & Shabir Hussain Bharti is **allowed** and **Criminal Appeal No. 242 of 2004** filed by Annu @ Ashish Shrivastava is **partly allowed** with the above modifications.

Sd/-
(Ram Prasanna Sharma)
Judge