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HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment Reserved on : 08.03.2019

Judgment Delivered on : 08/04/2019

CR.A. No. 8 of 2013

Sourabh Sharma, S/o. Chandra Shekhar Sharma, Aged About 23 Years, R/o. Brahmanpara, Near Hanuman Mandire, P.S. Azad Chowk, Raipur, Distt.-Raipur, Chhattisgarh.

---- Appellants

Versus

State Of Chhattisgarh, Through- P.S. Azad Chowk, Raipur, Distt.-Raipur, Chhattisgarh.

-----Respondent

AND

CR.A. No. 59 of 2013

Naveen Singh Thakur, S/o. Suresh Singh Thakur, Aged About 27 Years, R/o. Bramanpara, Near Sohaga Mandir, P.S. Ajad Chowk, Distt. Raipur C.G.

---- Appellants

Versus

State Of Chhattisgarh, Through – S.H.O., P.S. Ajad Chowk, Distt. Raipur, Chhattisgarh.

-----Respondent

For Appellant : Mr. V.K. Sharma, Advocate
(in Cr.A. No.8/2013)

For Appellant : Mr. Y.C. Sharma, Advocate
(in Cr.A. No.59/2013)

For Respondent/State : Mr. Avinash K. Mishra, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V JUDGMENT

08/04/2019

1. Both the appeals are heard and decided together by this common order as they are arising out of the same sessions trial.

2. These appeals have been preferred against the judgment of conviction and order of sentence, passed by the learned 4th Additional Sessions Judge, Raipur, District – Raipur (C.G.) in Sessions Trial No.35/2011 on 21.12.2012, convicting the appellants for the offence under Section 307/34 of the Indian Penal Code and sentencing them to undergo R.I. for 5 years and fine of Rs.100/- and for the offence under Section 341/34 of the Indian Penal Code and sentencing them to pay fine amount of Rs.100/- with default stipulations.
3. Facts of the case in brief is this that on 12.11.2010 at bout 17.00 PM in the evening, the appellants unnecessarily engaged in quarrel with victim Ratnadeep Khare (P.W.8), Kamlesh Tripathi (P.W.-12) and Ravi Pandey (P.W.-9). In the heat of this quarrel, Golu Thakur and co-accused Jaggu Thakur assaulted Ratnadeep Khare and Ravi Pandey with knife causing fatal injuries to them. FIR (Ex.P-9) was lodged in the Police Station Ajad Chowk by Ratnadeep Khare and Kamlesh Tripathi. After completion of investigative procedures, charge-sheet was filed before the concerned Court.
4. The trial Court charged the appellants and one co-accused Jaggu Thakur with offence under Section 341, 307, 34 of the Indian Penal Code. The appellants and co-accused – Jaggu Thakur denied the charges and prayed for trial. The prosecution examined as many as 16 witnesses on its behalf. On examining the appellants and the co-accused Jaggu Thakur under Section

313, they denied all the incriminating evidence against them and pleaded innocence and false implication. No witness was examined in defence. On completion of trial, judgment has been delivered, in which the appellants stand convicted and sentenced as mentioned aforesaid. However, the co-accused Jaggu Thakur has been acquitted from all the charges levelled against him by the trial Court.

5. It is submitted by the learned counsel appearing on behalf of the appellant- Saurabh Sharma and Navin Singh Thakur both that these appellants have not named as the persons in the FIR, who has assaulted the victim with knife. They have been falsely implicated in this case. Witness P.W.-1 and P.W.-2 have clearly admitted that they do not know the appellants. The main assailant Golu Thakur @ Ankit Thakur has been tried by the juvenile Court separately. The evidence of prosecution witnesses was not worthy of reliance. It is also submitted that the doctor has reported that all the injuries found are simple in nature, therefore, no case is made out for conviction under Section 307 of I.P.C. The incident had occurred in the spur of moment, when the juvenile offender had assaulted the victim with knife, therefore, it was not an act on the part of these appellants in furtherance of any common intention. Relied on the judgment of Supreme Court reported in *(2017) 13 SCC 98*, it is prayed that the appellants be acquitted of the charges.

6. Counsel for the State opposes the grounds raised in both the appeals and the submissions made in this respect. It is submitted that the prosecution has proved its case beyond all reasonable doubts. Hence there is no room for interference in the impugned judgment.
7. I have heard the learned counsel for the parties and perused the record of the Court below.
8. The point in issue in these appeals are whether the prosecution has proved the charges against the appellants on the basis of the evidence beyond reasonable doubt?
9. Ratnadeep Khare (P.W.-8) is the victim, who had stated that on the date of incident, when he was on the way to Budhapara with his friend Ravi Pandey, some boys stopped them on the way and started abusing them. When he objected, then he and his associates were assaulted with knife. He has identified the appellants and the co-accused persons as the persons, who were present at the time of incident and assault and he had suffered injuries on his right hip and Kamlesh has also suffered injuries on various part of his body. The condition of Ravi Pandey was worst. All of them were hospitalized. On the information given by him, Dehati Nalishi (Ex.P-14) was lodged. As his statement was not in accordance with the previous statement, the prosecutor with the permission of the Court, asked leading question, in which he has given positive answers regarding the earlier statement (Ex.P-16). In supplementary statement (Ex.P-

17) he has admitted, that he had named the assailants in Ex.P-15 as Ankit Thakur and Golu Thakur. In cross-examination, he was unable to make clear statement, whether appellant Saurabh Sharma had stopped him or not and whether Saurabh Sharma had assaulted him with knife or not. He has denied the suggestion of absence of the appellant – Saurabh Sharma at the time of incident. He has further stated that he was stabbed by Golu Thakur on his hip and that Golu and Ankit Thakur were the same person. Considering the statement in cross-examination, it appears that there is no direct allegation that these appellants, who were present had assaulted with knife, but he clearly stated that both the appellants were present on the spot and were involved in quarrel, when the incident of assault by knife took place.

10. Ravi Pandey (P.W.-9) has stated that on the date and time of incident Ankit @ Golu Thakur after using abusive words took out a knife and stabbed his abdomen, left leg and hip. Ratnadeep Khare and Kamlesh came to intervene, they were also assaulted by him. He has stated, that at the same time, these appellants Saurabh Sharma and Navin also assaulted them with hands and fists, threatening to kill them. In cross-examination, he has denied all the adverse suggestion given in defence and has remained firm in his statement. There is no other statement made by him so as to suggest that his statement in examination-in-chief has been contradicted.

11. Kamlesh Tripathi (P.W.12) has made similar statement that assault with knife was made by Ankit @ Golu Thakur and these appellants were present, who assaulted them with hands and fists causing injuries to him and other victims. In cross-examination, his statement has remained unrebutted and there is no such other statement made by him so as to suggest that his statement in examination-in-chief has been contradicted. In cross-examination, he has denied all the adverse suggestion given to him.
12. Bhupendra Sen (P.W.-1) has not supported the prosecution case and declared hostile by the prosecution. Pankaj Singh Thakur (P.W.-2) came on the spot soon after the incident and saw the victim Ravi Pandey in an injured condition, who was taken to hospital by him. He is not an eye-witness. Vijay Tiwari (P.W.-10) met with Kamlesh and Ratnadeep, who were in injured conditions after the incident, who were taken to the hospital by him. He was told by them that they were assaulted by Ankit Thakur and Navin Thakur. He is only a hearsay witness.
13. Dr. Mayank Dewangan (P.W.-7) has stated that Kamlesh Tripathi was admitted in the hospital for treatment, who had three penetrating injuries of his abdomen, who was treated in accordance with discharge tickets (Ex.P-12). He has opined that the injuries caused to the victim were of simple in nature. He has further stated that victim Ravi Pandey was admitted in hospital on 12.11.2010, who had one penetrating injuries on the abdomen on

the left side of his navel, one penetrating injury on his left hip, one penetrating wound on gluteal fold of the left side and one another penetrating injuries in gluteal fold of the ride side. He has opined that the injuries caused in the abdomen by the side of navel involving intestine was repaired by surgery and one hematoma was found in transverse mesocolon region. He has opined that injuries caused to the victim vide discharge ticket Ex.P-13 are of grievous nature and may have proved fatal in case they are not treated in time. His statement could not be rebutted in his cross-examination.

14. Dr. Anil Kumar Baghel (P.W.-16) is the person who has conducted medico legal examination of Ravi on 12.11.2010 and found one penetrating injury on lower abdomen, three penetrating injuries of his left hip. According to his report, one injury was caused by sharp and pointed object. The victim was referred for further treatment to surgery and orthopedic departments by him. On the same day, he examined Ratnadeep Khare and found three penetrating injuries on his left hip, which may have been caused by hard and sharp object vide his report Ex.P-37. He referred the victim to surgical and orthopedic department. On the same day, he examined Kamlesh Tripathi vide Ex.P-38 and found three penetrating injuries just below waist, one incised wound in his left palm and one incised wound in his right shoulder. The victim was further referred to surgical and orthopedic department by him. His statement in examination in chief has remained un-rebutted.

15. Rest of the witnesses are the witness of investigative procedures, therefore, there is no requirement to scrutinize the same. The allegation that has been established against these appellants is this that they were present on the spot, where the quarrel took place and while the juvenile offender Ankit @ Golu Thakur allegedly injured the victims by using knife, the appellants were present, who by use of hands and fists on the victims, acted in furtherance of common intention. Hence on this basis, these appellants are equally responsible in act of causing injuries to the victim in this case. On examining the medical evidence, it is found that the injuries to Ratnadeep Khare and Kamlesh Tripathi were not found to be of grievous nature, however, injuries caused to Ravi Pandey in his abdomen was of grievous nature, which may have proved fatal, in case he was not treated timely. There is no such report or opinion by the doctor that injuries caused to any of the victim would have been directly resulted in death in ordinary course of nature. A death which may be caused due to the complication of the injuries is different than the death which is a direct consequence of the injuries, for which doctor usually report that the injuries were sufficient to cause death of the victim in ordinary course of nature. This is not so in this case, therefore, after considering on all the relevant evidence present on record of the trial Court, I am of this opinion that the appellant in both the appeals have responsible for commission of offence under Section 324/34 with respect to the victim Kamlesh Tripathi (P.W.-

12) and Ratnadeep Khare (P.W.-8) and are also responsible for commission of offence under Section 326/34 with respect to the victim Ravi Pandey (P.W.-9). Therefore, the conviction under Section 307 of the Indian Penal Code is bad-in-law.

16. Accordingly, the conviction of the appellants are modified and the appellants are now convicted under Section 324/34 and 326/34 of the Indian Penal Code instead of Section 307 of the Indian Penal Code and sentenced to undergo R.I. for 1 year and fine of Rs.100 and in default of payment of fine further undergo R.I. for 1 month for the offence under Section 324/34 of Indian Penal Code and for the offence under Section 326/34 of the I.P.C., sentenced to undergo R.I. for 3 years and fine of Rs.100 and in default of payment of fine further undergo R.I. for 1 month. The conviction of the appellants for the offence under Section 341 of I.P.C. is maintained as it is.
17. The appellants are reported to be on bail, their bail bonds are canceled and they are directed to surrender to serve out the remainder of the sentence.
18. Accordingly, both the appeals are partly allowed.

Sd/-
(Rajendra Chandra Singh Samant)
Judge