

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.1165 of 2018

Order Reserved on : 28.2.2019

Order Passed on : 19.3.2019

Uday Ram @ Rewa Ram Nirmalkar, son of late Kunwar Singh, aged about 34 years, R/o Village Imalidih, P.S. Dongargaon, District Rajnandgaon, Chhattisgarh

---- Applicant

versus

State of Chhattisgarh through the District Magistrate, Durg, District Durg, Chhattisgarh

--- Respondent

For Applicant	:	Shri Pravin K. Dhurandhar, Advocate
For Respondent	:	Smt. Smita Ghai, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. ORDER

1. The instant revision has been preferred against the judgment dated 19.9.2018 passed by the 5th Additional Sessions Judge/Juvenile Court, Durg in Criminal Appeal No.139 of 2018 arising out of the judgment dated 12.6.2018 passed by the Juvenile Justice Board, Durg in Criminal Case No.935 of 1999, whereby the Juvenile Justice Board has convicted and sentenced the Applicant as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 302/34 of the Indian Penal Code and Sections 15(1)(d) and 15(1)(g) of the Juvenile Justice (Care and Protection of Children) Act, 2000	Period of 1 year in Special Home and fine of Rs.2,000/- payable by the parent/guardian of the juvenile

The Additional Sessions Judge, affirming the judgment of conviction and sentence passed by the Juvenile Justice Board, has

dismissed the appeal.

2. Prosecution case, in brief, is that on 11.9.1999 at about 6:00 p.m., Nakul Mahalwar (PW2), a friend of Complainant Toran Singh Rajput (PW1) came to the house of the Complainant. Thereafter, both of them along with Radheshyam Rajput (the deceased), who was brother of the Complainant, went outside the home towards the chowk. Allegedly, the Applicant, who was a juvenile on that date and other 3 major accused persons, namely, Jani Yadav, Jitu Nishad and Shrawan Kumar Sahu came there armed with sword, gupti and knife and due to a previous enmity, they assaulted Radheshyam and caused his murder. The incident was witnessed by Complainant Toran Singh Rajput (PW1) and Nakul Mahalwar (PW2). Morgue (Ex.P1) was lodged by Complainant Toran Singh Rajput (PW1). First Information Report (Ex.P5) was also lodged by him. After the proceeding of inquest (Ex.P3), dead body of the deceased was sent for post mortem examination, which was conducted by Dr. A.P. Sawant (PW4). Total 77 injuries were found by him on the dead body of the deceased. Out of them, 71 injuries were cut injuries. 3 fractures were present on the jaw. Fracture was also present in 5 ribs. 3 fingers of right hand had been cut away. The injuries were of anti mortem in nature. Cause of death was due to excessive haemorrhage and shock and injuries to vital organs. Post mortem report is Ex.P14. During the course of investigation, vide seizure memo (Ex.P11), one gupti was seized from the present Applicant which was stained with blood. From other co-accused persons also, weapons were seized which were used in the crime in question. Clothes of the accused persons were also seized. On completion of the investigation, against the

present Applicant, since he was a juvenile, the present charge-sheet was filed before the Juvenile Justice Board. Charges were framed against the present Applicant under Section 302/34 of the Indian Penal Code. As many as 8 witnesses were examined by the prosecution. In his statement recorded under Section 313 of the Code of Criminal Procedure, the Applicant denied the guilt. On completion of the trial, the Juvenile Justice Board convicted and sentenced the Applicant and the Additional Sessions Judge/Juvenile Court affirmed the judgment of conviction and sentence as mentioned in the first paragraph of this order. Hence, this revision by the Applicant.

3. Learned Counsel appearing for the Applicant submitted that both the Courts below have wrongly appreciated the evidence of Toran Singh Rajput (PW1) and Nakul Mahalwar (PW2). They are eyewitnesses of the incident, but they have stated contrary to each other. Therefore, statements of both these witnesses are not reliable. Learned Counsel further submitted that both the Courts below have wrongly relied upon the statement of Toran Singh Rajput (PW1) and arrived at the conclusion of conviction of the Applicant, which is perverse. Both the Courts below have failed to appreciate that the prosecution has failed to prove overt act committed by the accused persons and also failed to prove that who among the accused persons gave the life threatening assault over the body of the deceased.
4. Learned Counsel appearing for the State/Respondent supported the impugned judgment.
5. I have heard Learned Counsel appearing for the parties and

perused the records minutely.

6. In the instant case, there are two eyewitnesses, namely, Toran Singh Rajput (PW1) and Nakul Mahalwar (PW2). Toran Singh Rajput (PW1) is brother of the deceased. Though Nakul Mahalwar (PW2), who is another eyewitness of the incident, has not supported the case of the prosecution, Toran Singh Rajput (PW1) has categorically stated in his statement before the Court that at the time of incident he along with Nakul Mahalwar (PW2) had reached the spot. At that time, he saw that the present Applicant and the other co-accused persons were jointly assaulting the deceased with big swords. He has further stated that he tried to intervene, but the assailants feared him with the swords. In the meantime, police officials reached the spot. Then all the accused persons ran away from there. This witness has lodged the FIR (Ex.P5) as well as the morgue intimation (Ex.P1). As stated by him, many wounds caused by swords were present on the stomach and chest of the deceased and the neck of the deceased had bent down. This witness has remained firm during his cross-examination. Though this witness is brother of the deceased, only on the basis of his relationship with the deceased his statement cannot be discarded. From the evidence adduced by the prosecution, it is also clear that vide seizure memo (Ex.P11), one blood stained gupti was seized from the present Applicant, which further corroborates the story of the prosecution.
7. Therefore, considering the above evidence available on record, I find that both the Courts below have rightly convicted the Applicant for the offence punishable under Section 302/34 of the Indian Penal Code. The judgment of both the Courts below is well

reasoned and based on the evidence available on record. I find no illegality or perversity in their judgment of conviction.

8. As regards the sentence imposed upon the Applicant, only 1 year punishment has been imposed upon him by the Courts below. This seems that a lenient view has been taken by the Courts below while imposing sentence upon him. I find that the sentence imposed upon him is just and proper.
9. Consequently, the instant revision is dismissed.
10. Records of the Courts below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
JUDGE