

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 450 of 2002

- Suneel @ Kali, S/o Premchand Isai, aged about 32 years, R/o Kumharpara, behind Kosa Center, Jagdalpur, Chhattisgarh.

---- Appellant.

Versus

- State Of C.G.

---- Respondent

WITH

CRA No. 494 of 2002

- Kailash Dongare, aged 26 years, S/o Upendra Dongare, R/o Moharani Ward, Jagdalpur (CG)

---- Appellant.

Versus

- State Of C.G., through Station Officer, Police Station Kotwali, Jagdalpur (CG)

---- Respondent.

WITH

CRA No. 593 of 2002

- Ajay Soni, S/o Shambhunath Soni, age 30 years, residence of Maharani Ward Jagdalpur (CG)

---- Appellant.

Versus

- State of C.G. Chhattisgarh

---- Respondent.

WITH

CRA No. 997 of 2002

- Tanveer Bharti, S/o Maya Ram, aged about 21 years, Resident of Maharani Ward, Jagdalpur (CG)

---- Appellant

Versus

- State Of Chhattisgarh, through District Magistrate, District Bastar, Jagdalpur, CG.

---- Respondent

For Appellants	-	Mr. Rahul Agrawal, Mr. Sumit Singh Rathore, Mr. Ajay Chandra, Mr. Prafull Bharat, Mr. Keshaw Dewangan & Mr. Vaibhav Kartikeya Agrawal, Advocates.
For State	-	Ms. Ishwari Ghritlahre, PL.

Judgment on Board by Hon'ble Smt. Vimla Singh Kapoor, J.
05.03.2020

As per the FIR (Ex.P-1) lodged by Kishanlal Nag (PW-1) on 22.03.2001 at about 1 pm when he was in his house along with his wife, the accused/appellants herein along with three others unauthorizedly gained an entry therein carrying deadly weapons with them. It is alleged that accused Vikash Das dealt a sword blow on his neck but fortunately trying to ward off the said blow it fell on his left hand causing injury thereon. On hearing the cries raised by him as also by his wife, the people from the vicinity came there, and on seeing them all the accused persons ran away. Kishanlal Nag (PW-1) underwent medical examination for the injuries suffered by him in his hand at Maharani Hospital Jagdalpur. Seizure of blood stained pieces of the floor, underwear and towel of PW-1 was made under Ex. P-2 and Ex. P-3. On the memorandum of Vikash (Ex. P-8), seizure of sword was made under (Ex. P-9). Seizure of knife was also made from accused Kailash Dongare under (Ex. P-4). After completion of investigation, charge-sheet was filed against the accused persons under Sections 147, 148, 149, 452, 307 IPC and Section 25 of the Arms Act, followed by framing of charges under Sections 148, 307/149, 452 IPC and Section 25 (1) (b) and 27 of the Arms Act.

2. Learned Court below by the judgment impugned dated 10.04.2002 passed in Sessions Trial No. 332/2001 acquitted all the accused persons of the charge under Section 307 IPC and

in its place held all of them guilty under Section 324/149 IPC. All the accused persons have also been acquitted of the charge under Section 27 of the Arms Act. Except accused Vikash Das, all others have also received acquittal under Section 25 of the Arms Act. Learned Court below has also convicted all the accused/appellants under Sections 452 and 147 IPC. The sentence imposed on the accused/appellants is RI for six months with fine of Rs. 100/- under Section 147; RI for three years with fine of Rs. 100/- u/s 452 and RI for six months with fine of Rs. 100/- u/s 324/149 IPC. There is no appeal from Accused Vikash Das against his conviction.

3. Counsel for the accused/appellants submit that conviction of the accused/appellants as described above is not based on the proper appreciation of the testimony of the witnesses including the medical evidence, the accused/appellants deserve acquittal. In the alternative, a prayer for reduction of sentence to the period already undergone has also been made.

4. State counsel however supports the judgment impugned.

5. Apart from the injured (PW-1), Sunil Nag (PW-3) has also supported the case of the prosecution stating that he knew all the accused persons by name and face, and that on the date of incident when he was standing near a Kirana Shop, he saw accused Vikash, Ajay, Kheru and Tanvir entering the house of victim (PW-1) carrying battle axe, sword and knife with them. After sometime on hearing the cries emanating from the house of PW-1, he went to the spot and saw PW-1 in injured

condition. He has stated that the left hand injury of PW-1 was bleeding and that on seeing them the accused persons ran away from the spot. He has also supported the seizure of sword from accused Vikash made under Ex. P-9 based on his memorandum under Ex. P-8. Dr. K.M. Gupta (PW-4) has also supported the case of the prosecution stating that he noticed a cut injury on the index finger of the left palm of PW-1 in the size of 4 cm x 1/2 cm into muscle deep. He also noticed cut injury on his left forearm in the size of 6 cm x 3 cm into muscle deep - both caused by hard and sharp edged weapon as is clear from Ex. P-10. As regards nature of injury, this witness had advised for X-ray, which subsequently was taken by Dr. Govind Singh (DW-1). He however did not notice any fracture. Furthermore, the articles seized under Ex. P-2 and Ex. P-3 were sent for chemical analysis but no report from the laboratory has been received. Though no individual role has been assigned to each of the accused/appellants yet all of them are equally liable for their act as they had gained an entry in the house of PW-1 by forming an unlawful assembly of as many as seven members and thus bringing into the picture the provision of Section 149 IPC. Since the injury received by the victim was simple in nature, their conviction u/s 324/149 IPC appears to be just and proper otherwise they would have been dealt with u/s 307/149 IPC. Likewise, their conviction u/s 452 IPC also does not appear to suffer from any legal flaw as there is clear evidence PW-1 and PW-3 that the accused/appellants unauthorizedly gained an entry in their house carrying the

deadly weapons with them. Even the seizure of sword from Vikash Das has also been proved by PW-3.

5. Thus, there is sufficient evidence on record to hold the accused/appellants guilty u/s 147, 452, 324/149 IPC. Their conviction is thus maintained.

6. As regards sentence, keeping in mind the fact that accused Kailash Dongare (appellant in Criminal Appeal No. 494/2002), Ajay Soni (appellant in Criminal Appeal No. 593/2002) and Suneel @ Kali (appellant in Criminal Appeal No. 450/2002) have already remained inside for about 13 months; 7 months and 10 months respectively and have already faced a long drawn prosecution since 2001, this Court feels it appropriate to reduce their jail sentence to the period already undergone. Order accordingly.

7. As regards accused/appellant - Tanveer Bharti, the record shows a sorry state of affairs where though he was granted bail by this Court on 29.10.2002 but on account of not being able to appear before the Registry on the dates so given, his bail came to be cancelled and he was dispatched to jail. Thereafter, he was again granted bail by this Court vide order dated 21.09.2004 but in spite of the extensions granted on two different occasions he failed to furnish the bail bonds and therefore could not be released from jail. Thereafter, nothing is on record as to whether he is at large or still inside the prison. However, one thing is clear from the record that the accused/appellant has remained inside for a substantial period

nearing completion of the entire jail period, and being so his jail sentence is reduced to the period already undergone. Needless to say, he be set free forthwith if he is still languishing in jail in connection with this case.

8. All the aforesaid four appeals are therefore, allowed in part with the observations and directions made above.

Sd/-

(Vimla Singh Kapoor)
Judge

Jyotishi/Pawan