

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 972 of 2007**

Md. Faarookh, aged 23 years, S/o Md. Ismile, Near Masjid,
Sanjay Nagar, PS Tikrapara, Raipur.

---- Appellant

Versus

The State of Chhattisgarh, By DM, Raipur

---- Respondent

For Appellant	: Mr. Vikram Dixit, Advocate.
For Respondent/State	: Mr. Vikash Shrivastava, Panel Lawyer

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

24/02/2020

01. This appeal arises out of the judgment of conviction and order of sentence dated 08.10.2007 passed by Sessions Judge, Raipur (C.G.) in Sessions Trial No. 120/2007, convicting the accused/appellant for the offence punishable under Section 307 of the Indian Penal Code and sentencing him to undergo rigorous imprisonment of five years with fine of Rs.500/-, in default of payment of fine to further undergo rigorous imprisonment for one month.

02. Case of the prosecution, in brief, is that when on 12.03.2007

about 11.30 pm, complainant- G. Sai Krishna, who is student of B.B.A., parked his motor-cycle in front of office parking of Anil Dubey (Property dealer) on which some dispute arose between the accused and the complainant regarding payment of parking charges in the form of change (*Chilhar*), due to which accused assaulted the complainant with the help of sharp knife, as a result thereof, complainant sustained grievous injuries on his neck, back side, shoulder, which were sufficient to cause his death and thereafter, the accused fled away from the place of occurrence. Motorcycle of the complainant was seized vide Ex. P-3. One sharp edged knife was also seized vide Ex.P-5. Clothes of complainant i.e. blood stained shirt and vest (*Baniyan*) were seized vide Ex. P-7. MLC was conducted as per Ex. P/8 of complainant – G. Saikrishna, in which he sustained flowing injuries:

1. one stab wound over Lt. shoulder, laterally bone deep through deltoid muscle about 1" x 0.5"- fresh bleeding- +NT.
2. one stab wound over Lt. Shoulder region, near base of neck overlying the trapigius fold vertically deep through muscle in to apex of lung & pleura apex of lung punctured. Surgical emphysema present around the wound size of wound- 1 x 05" bleeding present.
3. stab wound over neck region (Cervical side) Rt. Side size 1 x 0.5" .
4. stab wound over back midline near lower dorsal vertebra on the

Rt. Side, Track – oblique, Transverse & Upward, inserting up to
Rt. Thoracic cavity between 2 ribs posteriorly size- 1 x 0.5”

Air leak (surgical emphysema present around the wound side) &
bleeding- present.

Rt. sided Hemopneumothorax & Lt. Sided hemopneumothorax.

Dehati Nalisi (Ex. P/1) was prepared immediately on the same day by Police Station Maudhapara, Raipur and on the basis of which FIR (Ex.P-11) was registered against the accused/appellant under Section 307 of the IPC and accused/applicant was arrested on 13.03.2007 vide Ex.P-12.

03. After usual investigation, charge sheet was filed against the appellant under Section 307 of IPC and Sections 25 & 27 of the Arms Act. Thereafter, the trial Court framed charge under Section 307 of IPC against the appellant which was denied by him and he prayed for trial.

04. So as to hold the accused/appellant guilty, the prosecution examined as many as 7 witnesses namely- G. Sai Krishna (PW-1), R. Ramesh (PW-02), Lalit Tiwari (PW-03), Manoj Sharma (PW-04), Dr. Devendra Kumar Naik (PW-05), Dr. (Smt.) A. Datt (PW-06) & Veerendra Sharma (PW-07). Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. No defence witness has been examined on behalf of

accused/appellant.

05. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the accused/appellant as mentioned in paragraph one of the judgment.

06. Learned counsel for the appellant submits that accused has been falsely implicated in the crime in question as the dispute arose between the accused/appellant and the complainant with regard to payment of parking charges in the form of change (*Chilhar*). He submits that since the injuries suffered by the complainant are simple in nature, therefore, it cannot be said that appellant attempted to commit murder of the complainant. Alternatively he submits that considering the facts and circumstances of the case, the manner in which the incident occurred, the fact that the appellant was aged about 23 years at the time of incident and now he is of 36 years of age, the period of his detention, he may be sentenced to the period already undergone by him.

07. Per contra, learned counsel for the State would submit that prompt FIR (Ex.P-11) has been lodged by R. Ramesh (PW-2) and the medical reports of the complainant (Exs. P-8 & 9) also fully supported the case of the prosecution. Therefore, the impugned judgment passed by the trial Court being based on proper appreciation of oral and documentary evidence on record needs

no interference by this Court.

08. I have heard learned counsel appearing for the parties and perused the record of the court below including judgment impugned.

09. Complainant -G. Sai Krishna (PW-1) has stated in his evidence that he was paralyzed due to the grievous injuries suffered by him in the said accident. He states that when he was parking his vehicle in front of the office parking of complainant, the accused demanded parking charge in form of change (chilhar) from him and due to which dispute arose between them and, thereafter, accused/appellant using filthy language instantly brought out one sharp edged knife from his pocket and brutally assaulted him, as a result of which, he (complainant) sustained grievous injuries on his neck, back side, shoulder and other parts of the body, which were sufficient to cause his death. The matter was intervened by witnesses namely R. Ramesh and Manoj Rathi, who were present at the time of occurrence, and they separated the accused and complainant otherwise the appellant would have committed murder of complainant.

10. R. Ramesh (PW-2) has also reiterated the same facts as narrated by the complainant about the incident.

11. Virendra Sharma (PW- 07), Police-Inspector, has stated in his evidence that he prepared Dehati Nalishi (Ex. P/01) as per

information given by R. Ramesh and thereafter on the basis of which, FIR (Ex. P/11) has been registered against the accused/appellant on the date of incident itself and he prepared spot map (Ex.P-2) and also the motor-cycle was seized from the place of occurrence vide Ex. P/3. During investigation, one knife was seized from the possession of the accused as per seizure memo (Ex. P/5). The complainant was sent for medical examination. Clothes of complainant i.e. blood stained shirt and vest (*Baniyan*) were seized vide Ex. P-7 and the accused/appellant was arrested on 13.03.2007 vide Ex. P/12. Lalit Tiwari (PW-3) has also supported seizure memo Ex. P/5 and Ex. P/6. Manoj Sharma (PW-4) has also proved seizure memo (Ex. P/7). Thus, it is held that complainant sustained grievous injuries on vital part of the body which were caused by the appellant with the help of sharp edged weapon and there is no reason at all to disbelieve the evidence of eyewitnesses to the incident, medical report, statement of the treating doctor.

Therefore, looking to the facts & circumstances of the case, the manner in which the appellant assaulted the complainant on his vital parts of the body, the nature and gravity of the injuries suffered by the complainant, I am of the opinion that the trial Court is fully justified in convicting and sentencing the accused/appellant under Section 307 of IPC, which does not call for any interference in the instant appeal.

12. In view of the foregoing, the appeal being devoid of merit is liable to be and is hereby dismissed. It is reported that the appellant has completed his sentence awarded to him and has been released from jail, therefore, there is no need to pass any order with regard to his arrest, surrender etc.

Sd/-

(Gautam Chourdiya)

Judge

Amita