

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 287 of 2008**

- Mannu @ Abhimanyu Chandrawanshi, S/o Shri Suresh Ram, aged about 22 years, R/o Balaji Nagar, Behind Vijay Kirana Stores, Khurshipar, Bhilai, Tahsil and District Durg, C.G.

----Appellant**Versus**

- The State of Chhattisgarh, Through P.S. Chhawani, Tahsil and District Durg, C.G.

---- Respondent

For Appellant	Shri D.N. Prajapati, Advocate.
For Respondent/State	Shri Vimlesh Bajpai, Government Advocate.

Hon'ble Shri Justice Gautam Chourdiya**Judgment on Board****28/08/2020**

1. The appeal is heard through Video Conferencing.
2. This appeal arises out of the judgment of conviction and order of sentence dated 20.07.2007 passed by the 9th Additional Sessions Judge (Fast Track Court), Durg, C.G. in Sessions Trial No.278/2004, whereby the appellant stands convicted and sentenced as under:-

Conviction	Sentence
Under Section 326 of Indian Penal Code	R.I. for three years and fine of Rs.500/-, in default of payment to further undergo R.I. for two months.
Under Section 25(1-B)(b) of the Arms Act	R.I. for one year and fine of Rs.200/-, in default of payment to

	further undergo R.I. for one month.
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(All sentences were directed to run concurrently)

3. Case of the prosecution, in brief, is that on the date of incident i.e. 05.10.2004 at about 7:30 pm near Balaji Nagar, accused/appellant along with one juvenile (S) met Sant Bahadur with an intention to commit his murder and after threatening him of life, assaulted upon him by sword, as a result of which he sustained grievous injuries on his hands. On the same day, FIR Ex.P-3 was lodged by PW-8 A. Bhanumurti against the accused persons which was initially registered on zero number and thereafter it was registered vide Ex.P-4 under Crime No.1209/2004 at Police Station Chhawani, Durg. Injured- Sant Bahadur was medically examined by PW-9 Dr. V.R. Meshram, who gave his MLC report vide Ex.P-5 and found following injuries on the body of injured-Sant Bahadur:-

1. Incised wound on right palm size 6" x ½ x muscle deep, bleeding present, tendons are exposed.
2. Incised wound on left forearm back size 4" x 1½" x muscle deep, bleeding and fracture underlying present on left forearm.
3. Incised wound on right shoulder of joint region size ¼ " x ¼ " x ¼ ", bleeding present.
4. Incised wound on left forearm outer-surface of size 3 ½" x 1 ½ x bone deep, bleeding present.

As per Doctor, injuries were caused by hard and sharp object and duration of injuries was within 24 hours.

4. During investigation, appellant's memorandum was recorded vide Ex.P-1, consequent to which one sword was recovered from his possession vide Ex.P-2. Memorandum of Juvenile (S) was also recorded vide Ex.P-8, consequent to which one sword was recovered from his possession vide Ex.P-9. One white colour hosier (*baniyaan*) of injured Sant Bahadur was seized from his wife Smt. Champa Devi Ex.P-3. Spot Map Ex.P-7 was prepared by Investigating Officer. Seized articles were sent to FSL for examination vide Exs. P-10 and P-11. As per FSL report vide Ex.P-15, blood was found on the seized articles. Accused persons were arrested on 08-10-2004 vide Exs. P12 and P-13. After recording statements of the witnesses, charge sheet was filed against the accused/appellant Mannu @ Abhimanyu Chandrawanshi under Section 307 read with 34 of IPC and under Section 25, 27 of the Arms Act and separate charge sheet was also filed against the juvenile (S) before the Juvenile Justice Board.
5. The trial Court framed charges under Section 307 read with 34 of IPC and under Section 25 (1-B) (b) of the Arms Act against the appellant which were denied by him and he prayed for trial. The prosecution examined 13 witnesses in support of its case i.e. PW-1 Sonu, PW-2 B.L. Ramteke, PW-3 Rani, PW-4 Smt. Champa Devi, PW-5 Rinku Singh, PW-6 A. Damyanti, PW-7 Sant Bahadur, PW-8 A. Bhanumurti, PW-9 Dr. V.R. Mehsram, PW-10 I.R. Sahu, PW-11 Kumari Soni, PW-12 Ramesh and PW-13 Dr. Vinod Kumar Chouhan and PW-14 Dr. Rajeev Kumar Pal.

Statement of accused/appellant was recorded under Section 313 of Cr.P.C. in which he denied the incriminating circumstances appearing against him in the prosecution case, pleaded innocence and false implication. In his defence, he examined only one witness i.e. DW-1 Manoj Kumar Singh.

6. 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 above.
7. Learned counsel for the appellant submits that in this case FIR Ex.P-3 was lodged against two accused persons i.e. appellant and juvenile (S) but as per the evidence of the prosecution witnesses, it is clear that they were trying to protect the juvenile (S) and therefore, falsely implicated the appellant. He further submits that no independent witness has supported the prosecution case even the complainant-PW-8 A. Bhanumurti, who lodged the FIR against the appellant has also turned hostile and not supported the prosecution case. There are material contradictions and omissions in the statements of the injured PW-7 Sant Bahadur and other witnesses. No cogent evidence is available on record against the appellant. Therefore, the trial Court only on the basis of conjectures and surmises has held the appellant guilty and therefore, the impugned judgment is liable to be set aside and the appellant be acquitted of the charges leveled against him.

Alternatively, he submits that if this Court ultimately comes

to the conclusion that the appellant is guilty of the offence under Section 326 of IPC and under Section 25 (1-B)(b) of the Arms Act, considering the fact that the incident took place around 16 years ago, the appellant was a young offender of 22 years at the relevant time and he has no criminal antecedent, he has already remained in jail for more than six months, by granting the benefit of Probation of Offenders Act, the accused may be sentenced to the period already undergone by him.

8. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction and sentence of the accused/appellant are strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.
9. Heard learned counsel for the parties and perused the material available on record.
10. PW-1 Sonu, PW-5 Rinku Singh, PW-11 Kumari Soni and PW-12 Ramesh have turned hostile and not supported the prosecution case. PW-2 B.L. Ramteke, S.I. registered the FIR Ex.P-4 and proved the same.
11. PW-3 Rani, daughter of the injured- Sant Bahadur and PW-4 Smt. Champa Devi, wife of the injured-Sant Bahadur, both have stated that they had heard about the incident that accused persons assaulted upon the injured-Sant Bahadur by sword and when they went there they saw Sant Bahadur in injured condition. PW-6 A. Damyanti has not supported the prosecution case.
12. PW-7 Sant Bahadur/Injured has specifically and categorically

stated in his deposition that on the date of incident i.e. 5th October, 2004 at about 7:30 pm, when he was returning from his friend's house, on the way accused/appellant along with one juvenile (S) met him with an intention to commit his murder and after threatening him of life, assaulted upon him by sword, as a result of which he sustained grievous injuries on his both hands. Hearing his screams, his friend Bhanu came there to save him, and on seeing him accused persons fled away from the spot. Then, Bhanu took him to the police station and thereafter called ambulance and sent him to Government Hospital, Durg for treatment.

13. PW-8 A. Bhanumurti is the witness who has lodged the FIR Ex.P-3 against the accused persons. This witness has though admitted his signatures on the FIR Ex.P-3 and his statement recorded under Section 161 Cr.P.C. Ex.P-4 but he has not supported the prosecution case and turned hostile.

14. PW-9 Dr. V.R. Meshram medically examined the injured- Sant Bahadur vide Ex.P-5 and gave his report as mentioned in the preceding paragraph. He has duly proved the said report.

15. PW-10 I.R. Sahu is the Sub-Inspector who has lodged the FIR Ex.P-3, sent the injured for medical examination Ex.P-5A, prepared the spot map Ex.P-7, recorded the memorandum statements of accused persons Exs.P-1 and P-8 respectively, seized the swords from accused persons vide Exs.P-2 and P-9 respectively, seized the one white colour hosier (*baniyaan*) of injured Sant Bahadur, sent the seized articles to FSL for

examination Exs.P-10 and P-11, recorded the statements of the witnesses and arrested the accused persons Exs. P-12 and P-13 respectively, received the FSL report Exs. P-15 and P-16 and sent the seized articles to Doctor for examination.

16. PW-13 Dr. Vinod Kumar Chouhan has proved the bed head ticket vide Exs. P19 and P-20. PW-14 Dr. Rajeev Kumar Pal has proved the fractures in the right radius and ulna bone Exs. P-22 and P-23 of the injured and also proved the X-ray report vide Ex.P-24.

17.The defence witness DW-1 Manoj Kumar Singh has stated that only juvenile (S) had assaulted upon the injured-Sant Bahadur by sword but he stated in para 6 of his cross-examination that he never disclosed the said fact to anybody prior to this statement recorded before the trial Court as a defence witness. He has also not stated about the incident to police or any other person. Therefore, his statement has no legal value.

18.Thus, in the totality of facts and circumstances of the case, considering the evidence of injured- PW-7 Sant Bahadur, duly corroborated by the medical evidence in the form of MLC Ex.P-5, the evidence of PW-9 Dr. V.R. Meshram, PW-13 Dr. Vinod Kumar Chouhan and PW-14 Dr. Rajeev Kumar Pal as also corroborated by named FIR Ex.P-4, it stands proved beyond all reasonable doubt that it is the accused/appellant who voluntarily caused grievous hurt by sword to PW-7 Sant Bahadur. Further, considering the fact that there is no major contradiction or omission in his/injured statement affecting the creditability of his

version, the evidence of the defence witness, as discussed above, is of no help to the appellant as he has not stated anything specific in favour of the appellant and has not seen the incident and no other evidence was adduced by the defence to substantiate the plea of previous enmity or false implication of the appellant. Therefore, this Court finds no reason to disbelieve injured- Sant Bahadur's statement or to arrive at a conclusion that he has falsely implicated the appellant. Being so, the trial Court was fully justified in convicting the appellant by the impugned judgment and as such no interference is called for by this Court.

19.As regards the sentence, considering the facts and circumstances of the case, the fact that the appellant was the young offender of 22 years on the date of incident, he has no criminal antecedent, he has remained in jail for more than 6 months, the incident took place around 16 years back, keeping in view the judgment of Hon'ble Supreme Court in the matter of ***George Pon Paul vs. Kanagalet and Others, (2009) 13 SCC 478*** wherein considering the fact that the fine amount has been deposited and paid to the victim as also the long passage of time, the accused was sentenced to the period already undergone, this Court is of the opinion that no useful purpose would be served in sending the accused/appellant back to jail at this stage and the ends of justice would be served, if he is sentenced to the period already undergone by him while enhancing the fine sentence with default stipulation.

20. In the result, the appeal is allowed in part. While maintaining the conviction of the appellant under Section 326 of IPC and under Section 25 (1-B)(b) of the Arms Act, his jail sentence is reduced to the period already undergone by him. However, the appellant is directed to pay a fine amount of Rs.4,000/- under Section 326 of IPC and Rs.1,000/- under Section 25 (1-B)(b) of the Arms Act within a period of three months from today, failing which he shall have to undergo rigorous imprisonment for three months and one month respectively. On depositing the total fine amount of Rs.5,000/-, a sum of Rs.4,000/- shall be payable to injured- PW-7 Sant Bahadur as compensation under Section 357 Cr.P.C. by the trial Court after due verification. The fine amount already deposited by the appellant shall be adjusted accordingly. The appellant is reported to be on bail, therefore, his bail bonds shall continue for a period of six months from today in view of provisions of Section 437-A of Cr.P.C.

Sd/-
Gautam Chourdiya
Judge

Akhilesh