

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 2557 of 1998**

1. Shankar, S/o Holiram Kurmi, aged 25 years
2. Chandramati, W/o Holiram Kurmi, aged 50 years (Dead),

Both are R/o village Salkhan P.S. Shivrinarayan, District Raipur

----Appellants

Versus

- State of M.P. (Now C.G.)

---- Respondent

For Appellants	Shri T.K. Jha, Advocate along with Shri Ganesh Burman, Advocate.
For Respondent/State	Shri Pawan Kesharwani, P.L.

CRA No. 282 of 1999

- Bharat Lal, S/o Rajeshwar Prasad Brahman, aged 22 years, Resident of village Salkhan P.S. Shivrinarayan, District Raipur (District Bilaspur)

----Appellant

Versus

- State of M.P. (Now C.G.)

---- Respondent

For Appellant	Shri A.K. Gupta, Advocate.
For Respondent/State	Shri Pawan Kesharwani, P.L.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

09/01/2020

1. Despite repeated calls, no one appeared on behalf of the appellant in CRA No.282/1999. Considering the long pendency of the appeal, this Court is left with no other option but to appoint a counsel through the High Court Legal Services Committee on behalf of the appellant.
2. Shri A.K. Gupta, Advocate, present in the Court, empanelled Lawyer of High Court Legal Services Committee, on being asked by this Court, is ready to argue the matter. Therefore, this Court has appointed Shri A.K. Gupta, Advocate to argue the matter on behalf of the appellant. Registry is directed to inform the High Court Legal Aid Services Committee in this regard for doing the needful.
3. Since both these appeals filed under Section 374(2) of Cr.P.C. arise out of the common judgment of conviction and order of sentence dated 26.10.1998 passed by the First Additional Sessions Judge, Baloda Bazar, District Raipur, M.P. (Now C.G.) in ST No.114/88, they are being disposed by this common judgment. By the impugned judgment, convicted and sentenced the appellants as under:-

CRA No.2557 of 1998

<u>Conviction</u>	<u>Sentence</u>
<u>Appellant No.1 Shankar</u>	

Under Section 307 of Indian Penal Code	Rigorous Imprisonment for five years and fine of Rs.5,000/-, in default of payment of fine amount to undergo additional R.I. for one year.
Under Section 120B of Indian Penal Code	Rigorous Imprisonment for five years and fine of Rs.5,000/-, in default of payment of fine amount to undergo additional R.I. for one year.
Under Section 27(2) of the Arms Act	Rigorous Imprisonment for seven years and fine of Rs.1,000/-, in default of payment of fine amount to undergo additional R.I. for 6 months.
<u>Appellant No.2 Chandramati</u>	
Under Section 447 of Indian Penal Code	Rigorous imprisonment for three months.
Under Section 379 of Indian Penal Code	Rigorous Imprisonment for one year.
Under Section 120B of Indian Penal Code	Rigorous Imprisonment for five years and fine of Rs.5,000/-, in default of payment of fine amount to undergo additional R.I. for one year.

CRA No.282 of 1999

<u>Conviction</u>	<u>Sentence</u>
<u>Appellant Bharatlal</u>	
Under Section 27(2) of the Arms Act	Rigorous Imprisonment for seven years and fine of

	Rs.1,000/-, in default of payment of fine amount to undergo additional R.I. for six months.
Under Section 120B of Indian Penal Code	Rigorous Imprisonment for five years and fine of Rs.5,000/-, in default of payment of fine amount to undergo additional R.I. for one year.

4. Case of the prosecution in brief is that on 25.11.87 at village Sanwar, accused/appellants hatched a conspiracy to commit murder of complainant Hiralal, accused Shankar shot one bullet in air from a pistol. On the date of incident i.e. 25.11.87, when accused Chandramati was bringing bundle of paddy then complainant Hiralal stopped her by saying that 'why she was carrying the bundle of paddy crop from his field'. On this, a dispute arose between them. Thereafter, complainant Hiralal snatched the bundle of paddy crop from accused Chandramati and put it in *Mahavir Chowra* and he went towards field. Thereafter, accused Shankar, who is the son of accused Chandramati, threatened the complainant Hiralal and took one bag from the accused Bharat, in which a pistol was kept. Accused Bharatlal tried to stop accused Shankar but again he took out pistol from the same bag and fired in the air. Thereafter, accused/appellants tried to escape and fled away from the spot. Seeing this, complainant Hiralal, Radheshayam, Chedilal, Kartikram and

Ramji chased them. At village Bhadra, accused appellant Bharat was caught by them and one pistol was seized from his possession and he was handed over to village Kotwar by them. Accused Shankar and Chandramati absconded from the place of incident. Thereafter, an FIR Ex.P-1 was lodged by complainant Hiralal on the same day. During Investigation, spot map Ex.P-2 was prepared in presence of witnesses by the Investigating Officer. One country made pistol and Knife were seized from accused Bharatlal vide Ex.P-7A. Empty cartridges were also seized from accused Shankar as per his memorandum vide Exs.P-4 & P-5. As per Ex.P-11, the seized country made pistol was sent for FSL examination to armourer where it was found that the empty cartridges and country made pistol were in running condition and some nitrate powder was also found on the pipe of the said pistol. After due investigation, charge sheet was filed against the accused persons namely Shankar, Bharatlal, Chandramati and co-accused Puniram under Sections 307, 120B of IPC and under Sections 25/27 of the Arms Act. The trial Court framed the charges against accused persons as under:-

<u>Charge</u>	<u>Accused</u>
Under Section 120B of Indian Penal Code	Bharatlal, Chandramati and Puniram.
Under Section 27 of the	Shankar and Bharatlal

Arms Act	
Under Sections 447 and 379 of Indian Penal Code	Chandramati
Under Section 307 of Indian Penal Code	Shankar

Accused persons denied the charges and prayed for trial.

5. So as to hold the accused persons guilty, the prosecution examined as many as 15 witnesses i.e. PW-1 Hiralal, PW-2 Chedilal, PW-3 Kartikram, PW-4 Fatkan Bai, PW-5 Radheshayam, PW-6 Samaylal, PW-7 Devprasad, PW-8 Ramlal, PW-9 Jageshwar, PW-10 Kalaram, PW-11 Nandram, PW-12 Mathura Bai, PW-13 Chowaram, PW-14 Ram Ji and PW-15 S.K. Yadav. Statements of the accused persons were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. In their defence, they examined two witnesses i.e. DW-1 Dhaniram and DW-2 Ramadhar.
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 appellants as mentioned in para-3 of this judgment. Since, the appellant No.2 Chandramati in CRA No.2557 of 1998 has died during the pendency of this appeal, the appeal in

respect of her is abated.

7. Learned counsel for the appellants submits that due to land dispute between the parties, accused appellants have been falsely implicated in this case. He also submits that disputed land belongs to the accused Chandramati, the said land was in the possession of Chandramati and was also recorded in her name as per revenue record vide Ex.D-2 where she and her family used to cultivate their crops. The same fact is also proved by DW-1 Dhaniram and DW-2 Ramadhar but during pendency of this appeal, Chandramati died. He further submits that prosecution witnesses also stated that a case regarding the disputed land was also pending in the Court. He also submits that no person was injured or targeted to cause injury and no independent witness supported the prosecution case. Therefore, the accused appellants deserve to be acquitted of the charges levelled against them.
8. On the other hand, learned counsel for the State supporting the impugned judgment submits that the trial Court considering all the relevant aspects of the matter has rightly convicted and sentenced the appellants which warrants no interference by this Court.
9. Heard both the parties and perused the material available on record.
10. PW-1 Hiralal admitted in para 8 of his deposition that when

Chandramati was bringing the bundle of paddy, at that time she was alone. He also admitted in para 5 that Chandramati sold her land situated at Sanwar after the incident. Looking to Ex.D-2 i.e. Khasra Panchshala, the land was in the name of accused Chandramati and that fact is also proved by DW-1 Dhaniram and DW-2 Ramadhar that Chandramati was cultivating the same land.

11. PW-2 Chedilal stated in para 3 of his statement that in village Sanwar, Chandramati also received the land in partition. On the date of incident, this witness also suggested to Chandramati that your case is going on in the Court, first you win it and then take the paddy crop from the field. The above fact stated by this witness shows that the disputed land belongs to Chandramati and she used to cultivate the same. The land dispute between both the parties was going on before the incident according to the prosecution witnesses, therefore, it cannot be said that the crop which was brought by Chandramati was dishonestly taken by her as per land record. She was the owner of that field and she used to cultivate crop in the said land, therefore, accused appellants entered the field for taking crop and the crop was taken by the Chandramati. The name of Chandramati was mentioned in Ex.D-2 Khasra Panchshala. According to Ex.D-2, she was the possession holder of that disputed land. According to the prosecution witnesses, no any person was injured nor any

person was targeted by gun to cause injury. Since the disputed land belongs to the accused Chandramati and she was cultivating the same as per revenue record, she has right to protect her crop. Further, no any independent witness has supported the prosecution case regarding seizure of pistol and empty cartridge, hence the same becomes doubtful. Looking to the statements of the prosecution witnesses, prosecution has failed to proved its case beyond all reasonable doubt under Sections 447 and 379 against accused Chandramati. Since the accused Chandramati has died and appeal against her is abated, therefore, there is no need to discuss this matter regarding this accused.

12. Accused/Shankar is the son of Chandramati and the offence under Sections 307 and 120B is charged against him and under Section 120B is charged against Bharatlal and Puniram on the ground that they conspired to attempt to commit murder of complainant Hiralal.

13. As per the statement of PW-1 Hiralal, he stated in para 1 that accused Shankar shot one bullet in air from a pistol. Thereafter, Kartik and Chedilal chased him but he ran away. When gun shot was fired by Shankar, only Bharat was there. He also admitted in para 8 that he has not seen the pistol in

the hand of Shankar and he only heard the noise of fire thereafter they chased Shankar and Bharat and both were caught by Hiralal. But as per the statement of Hiralal, gun shot was not targeted by Shankar at him but only air gun shot was made by Shankar.

14. PW-3 Kartikram also stated that Shankar shot one bullet in air from a pistol but no one was injured with that shot.
15. As per the statement of PW-2 Chedilal in para 3 when he along with Kartikram reached the field he saw that Hiralal and Chandramati were fighting over cutting of crops. At the same time, he heard the sound of gun shot but no one was targeted by Shankar and that no pre-meeting with Puniram, Shankar and Bharat was proved by the prosecution.
16. As per statement of PW-5 Radheshayam in his para 3 when complainant Hiralal reached the field of Chandramati, at that time dispute arose between them. At that time, Shankar and Chandramati were present in the field. Thereafter, accused Shankar shot one bullet from a pistol and targeted at him but it is not the prosecution case that accused Shankar targeted Radheshayam and fire at him, only the charge leveled against Shankar is of making an attempt to commit murder of Hiralal, therefore, a new fact is mentioned by PW-5 Radheshayam regarding the gun shot being targeted at him, which is not acceptable as a prosecution case. As per his case diary statement D-1 also, this fact is not mentioned there.

17. PW-2 Chedilal, PW-3 Kartikram and PW-5 Radheshayam are the close relatives of complainant Hiralal and they were disputing the possession of Chandramati over the land in question as per Ex.D-1 i.e. statement of Radheshayam and Ex.D-2 i.e. Khasra Panchshala. If any quarrel took place between both the parties over the issue of Chandramati bringing the paddy crop from the field and one bullet shot was made by the Shankar in the air, it cannot be said that the accused persons made an attempt to commit murder of Hiralal.

18. No injury was sustained by Hiralal or any other prosecution witnesses related to Hiralal. Looking to the facts and circumstances, the fact that the dispute arose due to cutting of paddy crop, the said disputed land belongs to Chandramati as per the defence witnesses and revenue record, at the time of incident, one bullet shot was made by Shankar in air during the course of quarrel between the parties but Shankar had not targeted any person so it cannot be said that there was any attempt to commit murder of complainant Hiralal. In this case, as discussed above, seizure of pistol and empty cartridge is also doubtful. Therefore, looking to the statements of the prosecution witnesses, this Court is of the opinion that the prosecution has failed to prove its case beyond all reasonable doubt against the appellants under Sections 307 and 120B of IPC.

19. As regard conviction under Section 27(2) of the Arms Act, for prosecution of the accused persons under the aforesaid section, sanction is not proved. No any authority of DM office and evidence is adduced by the prosecution in this regard. As per Ex.P-12 sanction was accorded by Sunil Kumar, DM Raipur but neither Sunil Kumar nor any authorised person on behalf of Sunil Kumar was examined by the prosecution before the trial Court. Only IO stated that order is received by him as per Ex.P-12 from the DM Office, therefore, for want of production of the original document of sanction before the Court and examination of the authority who gave that sanction, it is not proved that the prosecution has duly obtained sanction under the Arms Act.
20. PW-9 Jageshwar, Kotwar stated that country made pistol was seized from the accused Shankar but as per seizure memo country made pistol was seized from accused Bharat and empty cartridges were seized as the memorandum Ex.P-5. This witness also stated in para 3 that one country made pistol was put on the table of the SHO and who brought that country made pistol before the police officer he has no knowledge and he is unable to state as to from where and which place the country made pistol was brought before the police officer.
21. PW-8 Ramlal proved this fact that the empty cartridge was also shown by the police officer. He also stated in cross-

examination that when he signed the paper Ex.P-4 seizure memo, the empty cartridge was kept by the police officer. Therefore, looking to the entire evidence of the prosecution, it is clear that PW-4 Fatkan Bai, PW-6 Samaylal, PW-7 Devprasad, PW-8 Ramlal, PW-12 Mathura Bai and PW-13 Chawalal all have been declared hostile and not supporting the prosecution case.

22. Only the family members of Hiralal have stated against the accused persons, therefore, their evidence needs to be appreciated with due care and caution. Looking to the previous enmity between the parties regarding land dispute and the fact that on the date of occurrence also dispute arose between them due to crop being taken by Chandramati, who was the land owner and possession holder of the disputed land and no any injury was sustained by the complainant nor any person was targeted to be killed and that no sanction for criminal prosecution under the Arms Act is proved as required under the law, the evidence of seizure and memorandum becomes doubtful and likewise, the evidence of complainant Hiralal and his relatives does not inspire confidence of the Court. The prosecution has not been able to prove its case against the appellants beyond all reasonable doubt and therefore, they deserve to be acquitted of the charges leveled against them.

23. In the result, both the appeals are allowed. The impugned

judgment is hereby set aside, acquitting the accused/appellant Shankar of the charges under Sections 307 & 120B of IPC and under Section 27(2) of the Arms Act and also acquitting accused/appellant Bharatlal of the charges under Sections 120B of IPC and under Section 27(2) of the Arms Act. The appellants are reported to be on bail, therefore, their bail bonds shall continue for a period of six months from today in view of provisions of Section 437A of Cr.P.C.

Sd/-
Gautam Chourdiya
Judge

Akhilesh