

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1911 of 1999

Order reserved on 14.11.2019

Order pronounced on 20.02.2020

Ashish Dubey @ Pintu, aged about 24 years, S/o. Chandra Hash Dubey, R/o. Choubey Colony, Raipur, District Raipur, MP (Now CG)

---- Applicant

Versus

State of Madhya Pradesh (Now CG).

---- Respondent

For Appellant	:	Shri Praveen Dhurandhar, Advocate
For State	:	Ms. Shriya Mishra, PL

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V Order

Case of the prosecution goes to show that on 16.11.1991 at about 7 PM, when injured Sunil (PW-3) was coming to his house along with his friend Narendra Dubey (PW-9) whose scooter had developed some mechanical fault, near Choubey Colony, the accused/appellant and other accused persons came there, and on account of some previous dispute, the acquitted accused persons caught hold of his hand whereas the present appellant dealt a knife blow on his stomach. It is alleged that when the blow was to be repeated by the appellant, the victim tried to ward off the same by his right hand, as a result of which he suffered injury on his right palm also. Thereafter the victim was taken to the hospital for treatment. Subsequently, at the instance of Sudhir (PW-5), Dehati Nalsi (Ex. P-5) was registered against the accused/appellant and two others for the offence under Section 307/34 IPC, which led to registration of FIR

(not exhibited). After completion of investigation, charge sheet was filed against them under the same section followed by framing of charge accordingly.

2. By the judgment impugned dated 09.07.1999 passed by Additional Sessions Judge, Raipur, co-accused Gudda and Bultu Pathak came to be acquitted of the charge levelled against them, but the accused/appellant herein has been convicted and sentenced as described above. Hence this appeal.

3. Counsel for the accused/appellant submits that the judgment impugned convicting the accused/appellant under Section 307 IPC is contrary to the evidence of the witnesses examined by the prosecution. He further submits that the other accused persons have been acquitted on the same set of evidence and therefore, the present appellant should also have got the same treatment. According to him, the judgment impugned being not based on proper appreciation of the material on record is liable to be set aside particularly when the weapon said to have been used in the incident has not been seized.

4. State counsel however supports the judgment impugned and submits that the findings recorded by the Court below are strictly in accordance with law and do not call for any interference in this appeal.

5. From the evidence of injured Sunil (PW-3), his brother Sudhir (PW-4) and his friend Narendra Dubey (PW-9) it is manifest that on the date of incident when the victim was returning home along with his friend, the accused/appellant along with the acquitted persons came there and when the acquitted persons held his hand, the

accused/appellant herein inflicted knife injury on his stomach. Their evidence also shows that when the victim tried to stop the further attack with the help of his right hand, he suffered injury on his right palm as well. Though the evidence of PW-9 does not indicate about his being an eye witness yet from the evidence of PW-3 and PW-4 it is clear that PW-9 joined the company of the victim prior to the occurrence and thus he too was an eye witness. Even Vibhuti Singh Thakur (PW-6) - the father of the victim has stated that when his son (the injured) returned home along with his friend, his stomach was bleeding profusely, and on being asked he told him about being assaulted by the accused/appellant herein with the help of knife. The corresponding injuries on the belly of the victim and the cut injury on his index finger resulting in protrusion of intestines, caused by some sharp edged weapon which were noticed by Dr. Subhash Pandey (PW-2) who medically examined the injured and gave his reports Ex. P-2 also supports the case of the prosecution. Seizure of blood stained clothes of the victim made under Ex. P-8 also supports the case of the prosecution. This Court does not find any substance in the argument of the counsel for the appellant that the present appellant should also be treated alike the acquitted accused persons because they appear to have been acquitted for the reason that Dehati Nalsi Ex-P.5 does not specifically mention their names, but as the accused/appellant herein has been very much named by the victim, on facts their cases are quite distinguishable. Similarly, the non seizure of knife alone would not be of any benefit to the accused/appellant herein particularly when the injured has narrated the incident in detail clearly naming the accused/appellant to be the culprit and the role assigned to him. The record also shows that there

was some previous animosity between both the parties for which a report was also lodged by the injured side herein, and therefore, the possibility of accused/appellant taking a revenge by assaulting the victim cannot be ruled out. Thus, this court does not find any illegality or irregularity in the findings recorded by the Court below in holding the accused/appellant guilty as mentioned above, and being so, his conviction under Section 307 IPC is hereby maintained.

6. As regards sentence, looking to the facts and circumstances of the case, that the incident had taken place about 29 years back and that the accused/appellant had already remained in jail for about 24 days and has thereby suffered a lot for his folly, this Court thinks it proper and in the interest of justice to reduce the sentence imposed on him to the period already undergone. Order accordingly.

7. Appeal is thus allowed in part.

Sd/-

(Vimla Singh Kapoor)

Judge