

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 1119 of 2003

Ritu @ Ritesh Kumar Sen, aged about 21 years, S/o. Deoprasad Sen, occupation Barber, R/o. Camp No. 2 Tata Line, Surya Nagar, Bhilai, Police Station Chhawani, District Durg (CG)

---- Appellant

Versus

State of Chhattisgarh, through the Police Station Chhawani District Durg (C.G.)

---- Respondent

For Appellant : Mr. Vishnu Koshta, Advocate.
For Respondent : Mr. Sameer Sharma, Dy. Govt. Advocate

Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment on Board

18.09.2020.

As per prosecution story, on 22.10.2000 at about 10.45 AM when injured Shravan (PW-2) was coming out of the house of his aunt, the accused/appellant herein along with absconded accused Santosh reached there and attacked him with chopper and sword by keeping themselves behind. It is alleged that there was a long standing dispute and resultant personal vengeance between them which stood as a probable cause of the incident. On account of assault the victim (PW-2) is said to have suffered injuries on his neck, head and hands. Not only

this, the accused persons continued to chase and assault PW-2 even after he went in hiding in the nearby houses. Subsequently, the report (Ex.P-2) came to be lodged under Sections 307/34 IPC, and allegedly after lodging the report he became unconscious in the police Station and regained the same in the Govt. Hospital Durg where he took treatment by remaining admitted for 4-5 days. Investigation culminated in filing of the charge sheet against the appellant herein and one Santosh who went absconding, under Section 307/34 and 25/27 Arms Act. Charge however, was framed against them under Sections 307/34 and 323 IPC.

2. Learned Court below vide judgment impugned dated 20.12.2002 passed in Sessions Trial No. 269/2001 acquitted the accused/appellant under Section 307/34 and 323 but has held him guilty under Section 324 IPC with imposition of sentence of two years RI and to pay fine of Rs. 1000/-, plus default stipulation. Hence, this appeal.

3. Apart from advancing strenuous arguments on merit, learned counsel for the appellant eventually slackened his stand and confined his prayer for reduction of sentence to the period already undergone, which in this case comes to about 11 months.

4. On the other hand, state counsel supporting the impugned judgment has submitted that the judgment of the trial Court is strictly in accordance with law and well founded and there is no illegality or infirmity in it warranting any interference by this Court.

5. Having heard counsel for the parties and considered the evidence of the victim (PW-2), Santosh Kumar Gupta (PW-3) and PW-10, involvement of the accused/appellant in the crime in question where he along with accused Santosh assaulted the victim, is fully established. Number of injuries have been noticed by Dr. V.K. Sao (PW-4) but as none of them was on the vital part of PW-2 and further that the nature of injuries did not prove to be dangerous to life to make it appear that two persons together had caused the same, the Court below was justified in acquitting the accused/appellant of the charge under Section 307/34 IPC. However, from the evidence of victim, (PW-3) and (PW-10) it is apparent that the accused/appellant opened an assault on the victim with sword but fortunately the injuries did not turn out to be fatal ones. Investigating officer has also narrated the procedure followed by him while carrying out the investigation and thus supported the case of the prosecution. More importantly, evidence of PW-4- the doctor clearly rules out the possibility of injuries received by the victim, on account of fall. PW-3 while deposing in the Court remained stood by the prosecution right from the beginning and in the cross examination also he put the things very consistently.

6. The Court below thus did not go wrong in convicting the accused/appellant under Section 324 IPC for causing injury to the victim with a deadly instrument used for cutting. The finding of conviction recorded by the Court below is hereby maintained.

7. However, looking to the incident being of the year 2000, and that since then the accused/appellant has already faced a long drawn prosecution and even he remained inside for about 11 months, interest of justice, in the opinion of this Court, would be served if his sentence is reduced to the period already undergone. Order accordingly.

8. Appeal is thus allowed in part to the extent indicated above. As the appellant is already on bail, no further order to set him free etc. is necessary.

Sd/-
(Vimla Singh Kapoor)
JUDGE

Jyotishi/ Santosh