

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 314 of 2011

1. Aashish Badaik @ Rahul, S/o Domar Badaik, aged about 26 Years, Caste Cheek, Occupation Labour, R/o Village Munjhbeda, P.S. and District Simdega (Jharkhand) {wrongly written as (C.G.).

---- Appellant

Versus

1. State of Chhattisgarh, Through S.H.O. Police Station Aasta, District Jashpur (C.G.)

---- Respondent

For Appellant	:	Shri Shrikant Kaushik, Advocate on behalf of Shri A.K. Prasad, Advocate.
For Respondent/State	:	Shri Vimlesh Bajpai, Govt. Advocate.

Hon'ble Justice Shri Gautam Chourdiya

Judgment On Board

01/10/2020

- 1) The matter is heard through video conferencing.
- 2) This appeal is filed under section 374(2) of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 28/03/2011 passed by Sessions Judge, Session Divison Jashpur (C.G.) in Session Trial No. 75/2009; whereby the appellant Aashish Badaik @ Rahul stands convicted and sentenced as under:-

Conviction	Sentence
U/s. 307 of Indian Penal Code (in short "IPC")	R.I. for 7 years & fine of Rs. 100/- in default of fine additional R.I. for 1 month.
U/s. 25(1B)(b) of the Arms Act, 1959	R.I. for 2 years & fine of Rs. 100/- in default of fine additional R.I. for 1 month.
U/s. 27(1) of the Arms Act, 1959	R.I. for 3 years & fine of Rs. 100/- in default of fine additional R.I. for 1 month.
(All sentences were directed to run concurrently)	

- 3) Case of the prosecution in brief is that on 18/05/2009 Sarpanch of village Kesra informed the Police that one person namely Commander was demanding Rs. 2 lakh from him over telephone or else he would kill him and his family. Since in this matter investigation was being conducted under Crime No. 154/2009 for the offence under Sections 458, 384, 506B of IPC and Sections 25 and 27 of Arms Act, on the information of the Sarpanch namely Jagjeevan Ram Bhagat, the Police party proceeded for village Sakardih. When the Police reached village Sakardih, near a well they found five persons and asked them to surrender. However, instead of surrendering these persons started firing on Police party. Out of those five persons, three persons managed to scape from there towards forest but Aashish Badaik @ Rahul and Arles @ Arnes Ekka were arrested. FIR (Ex. P-9) under zero number was registered at Police Station Jashpur against five persons namely Rahul @ Aashish Badaik, Raju, Dilip, Arles and Sukhsai under Sections 307, 147, 148 & 149 of IPC and Sections 25 & 27 of Arms Act and later it was registered under Crime No. 5/2009 at Police Station Asta, District Jashpur against the said accused persons. On the same date 18/05/2009 Dehati Naleshi Ex. P-10 was recorded by PW-11 Gopal Viashya, S.H.O/Inspector of City Kotwali, Jashpur. On the memorandum of accused appellant Rahul @ Aashish Badaik Ex. P-11, one country made Pistol of 9 MM with magazine and one pocket diary were seized vide Ex. P-2. From the spot 1 Hero Honda CD Delux motorcycle, 3 empty cartridges of 9 MM Pistol and 2 live cartridges of 315 bore were seized vide Ex. P-3. Accused appellant was medically examined vide Ex. P-7 by PW-10 Dr. Manju Minz who found the mark of bullet injury over both legs and a cut wound on the parietal one of the head. She advised for X-Ray regarding the injury on both the knees. As per X-Ray report she found fracture of tibia bone of left leg vide Ex. P-8. Spot map Ex. P-13 was prepared by Patwari.

- 4) After recording the statements of witnesses and complainant charge sheet was filed under Sections 307, 147, 148, 149, 212, 216, 114, 186 and 153 of IPC and under Sections 25 & 27 of the Arms Act, 1959 against accused Aashish Badaik @ Rahul and Arles @ Arnes Ekka as well as against other absconding six accused persons.
- 5) The Trial Court framed charges against the accused/appellant Aashish Badaik @ Rahul under Sections 148, 307 read with Section 149 of IPC and U/s. 25(1)(B) & 27(1) of the Arms Act, 1959 and against accused Arles @ Arnes Ekka under Sections 148, 307 read with Section 149 of IPC, which were denied by them and they prayed for trial.
- 6) The prosecution in support of its case examined as many as 13 witnesses namely PW-01 Ku. Amina, PW-02 Baijnath Ram, PW-03 Shanti Bhagat, PW-04 Jagjeevan Ram Bhagat (Sarpanch), PW-05 Dr. R. S. Paikra (Medical Officer), PW-06 Dilip Kumar Bhagat, PW-07 Ratan Lal Tamrakar, PW-08 Ajay Singh Thakur (Steno to Collector), PW-09 Amar Tigga (Armourer), PW-10 Dr. Manju Minz (Medical Officer), PW-11 Gopal Vaishya (Inspector), PW-12 Chandra Prakash Bhagat (Constable) and PW-13 Santosh Kumar Swarnkar (Patwari). The statements of the accused 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. No witness was examined by the accused in their defence.
- 7) Learned Trial Court considering the material available on record by the impugned judgment convicted and sentenced the accused/appellant as mentioned in para 2 of this judgment. However, accused Arles @ Arnes Ekka was acquitted by the Trial Court of all the charges.
- 8) Learned counsel for the appellant submits that in this case no any independent witness supported the prosecution case nor it is proved that any injury was caused to the Police party by the

appellant. Therefore, offence under Section 307 of IPC and Sections 25 & 27 of Arms Act is not proved by the prosecution beyond all reasonable doubt.

- 9) He further submits that in this case on the same set of evidence, the other co-accused Arles @ Arnes Ekka was acquitted of all the charges but appellant is wrongly convicted by the learned Trial Court.
- 10) Lastly he submits that the prosecution has failed to prove its case beyond all reasonable doubt and only on the basis of evidence of seizure witnesses, appellant was convicted. Other independent witnesses Ku. Amina and Baijnath have not supported the prosecution case, therefore, the Trial Court was not justified in holding the appellant guilty under the aforesaid sections and the impugned judgment is liable to be set aside and the appellant be acquitted of the charges.
- 11) On the other hand learned counsel for the respondent/State supporting the impugned judgment submits that the Trial Court considering the overall evidence available on record has rightly convicted and sentenced the appellant by the impugned judgment which calls for no interference by this Court.
- 12) Heard counsel for the parties and perused the material available on record.
- 13) PW-11 Gopal Vaishya, Inspector and SHO of Police Station City Kotwali states that he received information from Village Sarpanch PW-04 Jagjeevan Ram Bhagat that Aashish Badaik @ Rahul and their associates were demanding money from him and then PW-11 Gopal Vaishya alongwith the Police staff reached village Sakardih and surrounded the place of incident. When accused party was firing at the Police, then in self defence Police party also fired at the accused persons. Three persons successfully fled from place of occurrence and Aashish Badaik @ Rahul and Arles @ Arnes Ekka were caught by the Police. During firing Aashish Badaik @ Rahul sustained injury on his

knee. Just after the incident Ex. P-9 FIR and Ex. P-10 Dehati Naleshi were recorded. Vide Ex. P-11 on the memorandum statement of accused Aashish Badaik @ Rahul, one 9 MM Pistol and one pocket diary were seized vide Ex. P-2. From the place of occurrence one Hero Honda Motorcycle and empty cartridge and two live cartridges were seized vide Ex. P-3 and accused/appellant was sent for medical examination vide Ex. P-7. He also supported the story of prosecution in para 13 of his deposition that the firing took place near the house of Baijnath Lohar and when accused persons were firing at Police party, then Police party started firing at them in their defence. There is no reason to disbelieve the statement of PW-11 Gopal Vaishya as there is no contradiction or omission in his evidence.

- 14) PW-12 Chandra Prakash Bhagat, Constable, went to Police Station Asta with unnumbered FIR (Ex. P-9) and unnumbered Dehati Naleshi (Ex. P-10) of Police Station Jashpur for its registration and got the same registered vide Ex. P-12. His statement remained uncontroverted in the cross-examination.
- 15) PW-01 Ku. Amina identified both the accused before Trial Court as Aashish and Arnes and also stated that on the date of incident Police reached Village Sakardih and arrested accused persons. She also proved that the accused persons were present near the well of her village but she states that she has no knowledge about the firing incident.
- 16) PW-02 Baijnath Ram also turned hostile and not supported the prosecution case but he admitted in para 10 of his deposition that the Police arrested the accused persons and alongwith PW-02 Baijnath Ram took the accused persons to Police Station.
- 17) Looking to the entire statement of PW-01 Ku. Amina and PW-02 Baijnath Ram it is clear that the accused persons were present near the well on the date of incident, on the same day Police arrested both the accused persons and took them to Police Station.

- 18) PW-03 Shanti Bhagat, wife of Village Sarpanch PW-04 Jagjeevan Ram Bhagat has stated that on the date of incident one person namely Sukhlal came to her house and inquired about her husband and then pointing the Pistol at her, gave her a letter (Parchi). In para 2 she states that in the said letter it was written that if no contact was made within 24 hours, her husband and family would be killed. She further states that appellant Rahul @ Aashish Badaik was also present with Sukhlal. In para 3 she states that when both Sukhlal and appellant Rahul @ Aashish Badaik were going out from her house, her husband came back and on being asked by him, she informed him the above facts and thereafter the Police was informed about the same. She states that when her husband contacted on number written in the said letter, he started getting threatening.
- 19) PW-04 Jagjeevan Ram Bhagat, Village Sarpanch has also stated that accused appellant Aashish Badaik @ Rahul and one Sukhlal left a letter with his wife and one mobile number was also mentioned in that letter (Parchi). It was written in the said letter that if no contact was made within 24 hours, the entire family would be shot dead. He states that he informed about the above to the Police.
- 20) PW-05 Dr. R. S. Paikra (Medical Officer) medically examined accused appellant Aashish Badaik @ Rahul vide Ex. P-1 and proved the same. In his report Ex. P-1, this Doctor has mentioned that no other injury was found on the body of the accused Aashish Badaik @ Rahul except the injuries as mentioned in MLC dated 18/05/2009 prepared by PW-10 Dr. Manju Minz.
- 21) PW-10 Dr. Manju Minz (Medical Officer) medically examined accused Aashish Badaik @ Rahul vide Ex. P-7 and proved the same. As per Ex. P-7 she noticed firearm injury on both the legs of the appellant. She advised for X-Ray of both knee and upon X-Ray found fracture of tibia bone of left leg vide Ex. P-8.

Though the appellant was medically examined on the same day of incident at 10:30 PM by PW-10 and he has admitted in his statement under Section 313 of Cr.P.C. the injuries noticed on his person by PW-10 Dr. Manju Minz, but has not given any explanation as to how such injuries were sustained by him. The defence has failed to prove on record anything which could suggest of false implication of the appellant in the crime in question. Therefore, the evidence of PW-11 Gopal Vaishya stands corroborated with the medical evidence of PW-10 Dr. Manju Minz, the prompt FIR Ex. P-9, Dehati Naleshi Ex. P-10, memorandum statement of the appellant Ex. P-11, seizure Ex. P-2 as well as the spot map Ex. P-13.

- 22) PW-06 Dilip Kumar Bhagat has not supported the seizure Ex. P-2 & Ex. P-3 but he admitted his signature on both the documents.
- 23) PW-08 Ajay Singh Thakur, Steno in the office of Collector, Jashpur states that he received a letter dated 13/08/2009 from Superintendent of Police vide Ex. P-4 regarding grant of sanction for prosecution of accused persons under Section 25 & 27 of Arms Act. In para 2 he states that the District Magistrate after perusal granted sanction under Section 39 of the Arms Act for criminal prosecution of the accused persons under Sections 25 & 27 of Arms Act vide Ex. P-5. He has proved the signature of the District Magistrate on the sanction letter Ex. P-5.
- 24) PW-09 Amar Tigga, Armourer, has stated that he received one 9 MM Pistol, two number of 315 ball round, three number of 9 MM empty cartridge, three ball round (live cartridges) of 9 MM, one number of case magazine of 9 MM for examination. He states that upon examination he found that 9 MM Pistol was country made Pistol and fire can be made from it and that the 9 MM cartridges were of the said Pistol.
- 25) PW-13 Santosh Kumar Swarnkar, Patwari, has also proved the Spot Map Ex. P-13, Inquest Ex. P-14 and report Ex. P-15.

- 26) Considering the overall facts and circumstances of the case, the evidence adduced by the prosecution, ocular and documentary, the prosecution has successfully proved that the appellant by making fire at the Police party attempted to commit murder and he was found in illegal possession of the firearms. As such the Trial Court has rightly convicted and sentenced the appellant for offence under Section 307 of IPC and Sections 25(1B)(b) & 27(1) of the Arms Act, which needs no interference by this Court.
- 27) In the result, the appeal being without any substance is liable to be dismissed and is, accordingly dismissed. As per Jail Report of Superintendent, Kara Board, Simdega (Jharkhand) dated 16/09/2020, the appellant has been released from jail on 22/06/2016 after completion of the sentence. Therefore, there is no need to pass any further order.

**-Sd/-
(Gautam Chourdiya)
Judge**

Chandrakant