

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1096 of 2007**

- Mukund Lohar, S/o Mahesh Ram Lohar, aged about 30 years, Occupation Labourer, R/o Kaya, Police Gharghoda, District Raigarh, C.G.

----Appellant**Versus**

- State of Chhattisgarh, Through Station House Officer, Police Station Gharghoda, District Raigarh, C.G.

---- Respondent

For Appellant	Shri A.K. Gupta, Advocate.
For Respondent/State	Shri Siddharth Dubey, Dy. G.A.

Hon'ble Shri Justice Gautam Chourdiya
Judgment

09/07/2020

1. The matter is heard through Video Conferencing.
2. Despite repeated calls, no one appeared on behalf of the appellant. 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.
3. Shri A.K. Gupta, Advocate, one of the empanelled Lawyers 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.

4. In this appeal filed under Section 374(2) Cr.P.C., the appellant has challenged the legality, validity and propriety of the judgment of conviction and order of sentence dated 31.10.2007, passed by the 4th Additional Sessions Judge (FTC), Raigarh, C.G. in S.T. No.78/2007, whereby and whereunder the appellant stands convicted and sentenced as under:-

Conviction	Sentence
Under Section 307 of Indian Penal Code	Rigorous Imprisonment for seven years and fine of Rs.200/-, in default of payment of fine amount to undergo additional rigorous imprisonment for one month.
Under Section 25 of the Arms Act	Rigorous Imprisonment for one year.

(All sentences were directed to run concurrently)

5. Case of the prosecution, in brief, is that on 23.05.2007 at about 10:00 pm at village Kaya near Mardana Naka, complainant / Basant Kumar Shrivastava was returning to his home from one Ghuraaram Rathiya's home, on the way accused/appellant met him with an intention to commit his murder and after threatening him of life, assaulted upon him by Knife, as a result of which, he suffered injuries on his chest and abdomen. Thereafter, FIR Ex.P-1 was lodged by complainant on 24.05.07 i.e. next day of the incident against the accused/appellant under Crime

No.128/07 in police station Gharghoda, Raigarh. Injured person was sent for medical examination who was examined by PW-11 Dr. S.N. Keshari vide Ex.P-19. The injuries sustained by the injured person are as under:-

1. One stab wound elliptical shaped 3 cm x 0.5 cm which was on the right side chest and under side of nipple.
2. One stab wound 0.5 cm x 0.5 cm which was on the upper abdomen.

According to the Doctor, injuries were caused by Hard, sharp and pointed object.

6. During investigation, spot map was prepared vide Ex.P-3 by PW-4 Pila Babu Nagwanshi, Patwari. Clothes of the complainant were seized vide Ex.P-4. Spot Map was prepared by PW-8 H.P. Singh, I.O. vide Ex.P-5. According to the memorandum of accused/appellant vide Ex.P-6, one knife was seized from him vide Ex.P-7. One black stone, *beshrum leaves* and one *Gudaku Box* were seized vide Ex.P-8. Accused/appellant was arrested on 24.05.2007 vide Ex.P-11. The seized articles were sent for chemical examination vide Ex.P-22. After recording statements of the witnesses, charge sheet was filed against the accused/appellant under Section 307 of IPC and under Section 25 of the Arms Act.
7. The trial Court framed charges under Sections 307 of IPC and under Section 25 of the Arms Act against the accused person which were denied by him and he prayed for trial. The prosecution examined 11 witnesses in support of its case i.e.

PW-1 Basant Kumar Shrivastava/complainant, PW-2 Hulas Ram, PW-3 Lokpal, PW-4 Pila Babu Nagwanshi, PW-5 Dhurau Ram, PW-6 Jaipal, PW-7 Hirawar, PW-8 H.P. Singh, PW-9 Dr. Anil Kumar Tirki, PW-10 Cheblal Patel and PW-11 Dr. S.N. Keshri. Statement of accused/appellant was recorded under Section 313 Cr.P.C. in which he denied the incriminating circumstances appearing against him in the prosecution case, pleaded innocence and false implication. However, no defence witness was examined by him.

8. The trial Court after hearing counsel for the parties and considering the material available on record, convicted and sentenced the accused/appellant as mentioned above.
9. Learned counsel for the appellant submits that due to previous enmity with the complainant, the appellant has been falsely implicated in this case. Looking to the statement of PW-1 Basant Kumar Shrivastava/complainant, the prosecution has failed to prove its case beyond all reasonable doubt. He also submits that no independent witness has supported the prosecution case. No cogent evidence is available on record against the appellant. Therefore, the impugned judgment of conviction and order of sentence deserves to be set aside and the appellant be acquitted of the aforesaid charges.
10. 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.

11. Heard learned counsel for the parties and perused the material available on record.
12. PW-1 Basant Kumar Shrivastava/complainant has specifically and categorically stated that on the date of incident i.e. 23.05.2007 at about 8 pm, he was returning from Gharghoda to his village, on the way he stopped near the brook and washed his feet, at that time accused/appellant came there with an intention to commit his murder and after threatening him of life, assaulted upon him by knife, as a result of which, he sustained injuries on his chest and abdomen. After reaching home in injured condition, he narrated the said incident to his parents. Then, his parents called vehicle and took him to the hospital for treatment and thereafter, FIR Ex.P-1 was lodged against the accused/appellant.
13. PW-2 Hulas Ram, father of the complainant, stated in his deposition that after the incident complainant reached at home in injured condition and narrated the said incident to him. Then, he called the vehicle and took the complainant to hospital for treatment. This witness has also proved the seizure memo Ex.P-4.
14. PW-3 Lokpal has proved the seizure memo Ex.P4. PW-4 Pila Babu Nagwanshi is the Patwari. He has prepared the spot map Ex.P-3.
15. PW-5 Dhurau Ram has duly supported the statement of complainant and PW-2 Hulas Ram. This witness has also proved

the spot map Ex.P-5, memorandum statement Ex.P-6 & seizure memo Exs.P-7 & 8.

16. PW-6 Jaipal has also supported the prosecution case. He has proved the memorandum statement Ex.P-6 and seizure memo Ex.P-7.

17. PW-7 Hiradhar is the village Kotwar. He stated in his deposition that on the date of incident complainant's mother came to his house and told him about the incident that the accused had assaulted upon the complainant by knife. This witness proved the arrest memo Ex.P-9.

18. PW-8 H.P. Singh, Inspector, stated in his deposition that he lodged the FIR Ex.P-1, prepared the spot map Ex.P-5, recorded the memorandum statement vide Ex.P-6, proved seizure memo Exs.P-7 & 8, arrested the accused vide Ex.P-11, informed the incident to village Kotwar vide Ex.P-9, prepared query report vide Ex.P-12, wrote application regarding query report to surgeon vide Ex.P-13 & sent the seized articles for FSL vide Ex.P-14.

19. PW-11 Dr. S.N. Keshri medically examined the injured complainant vide Ex.P-19 and noticed certain injuries as mentioned in the preceding paragraph. He has duly proved the said injury report. He also examined the seized knife and opined that the injuries suffered by the victim could be caused by seized knife.

20. PW-9 Dr. Anil Kumar Tirki also proved the injuries found on the body of the complainant and bed head ticket vide Ex.P-17.

21. There is no reason to disbelieve the evidence of injured witness and other supporting witnesses i.e. PW-2 Hulas Ram, PW-5 Dhurau Ram, PW-6 Jaipal and PW-7 Hiradhar. They have specifically stated that the accused/appellant assaulted upon complainant by knife as a result of which he sustained injuries on his chest and abdomen. The evidence of complainant and other supporting witnesses are fully corroborated by the medical evidence in the form of MLC of injured and the evidence of PW-11 Dr. S.N. Keshri and PW-9 Dr. Anil Kumar Tirkey, who have duly proved that the injuries found on the body of the complainant were dangerous to his life.
22. Learned counsel for the appellant submits that due to previous enmity of the complainant with the appellant over village politics, he has falsely implicated the appellant. However, no evidence has been adduced by the defence to substantiate the plea of previous enmity. There is no such complaint or evidence showing previous enmity between the appellant and complainant. Therefore, the argument of learned counsel for the appellant in this regard has no substance and is hereby rejected.
23. Looking to the statement of the complainant which is duly supported by the evidence of PW-2 Hulas Ram, PW-5 Dhurau Ram PW-6 Jaipal and PW-7 Hiradhar and the medical evidence, the prompt FIR, as per FSL report Ex.P-22, blood was found on the knife seized from accused/appellant which remained unexplained by the appellant and further considering the fact that there is no major contradiction or omission in his statement and

other supporting witnesses statements affecting the creditability of his version, no any evidence was adduced by the defence for false implication of the appellant, this Court finds no reason to disbelieve complainant'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 and sentencing the appellant by the impugned judgment and as such no interference is called for by this Court.

24. In the result, the appeal being without any substance is liable to be dismissed and is, accordingly, dismissed. As per report dated 18.06.2020 submitted by Jail Superintendent, Central Jail Bilaspur, the appellant having completed the jail sentence has been released from jail on 18.12.2010. Therefore, there is no requirement of passing any order in respect of arrest, surrender etc. of the appellant.

Sd/-
Gautam Chourdiya
Judge