

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1078 of 2019**

- Rajesh Kujur, aged about 35 Years, S/o Late Shri George Kujur, R/o Village Piparsot Thana Balrampur District-Balrampur-Ramanujganj, Chhattisgarh.

----Appellant

Versus

- State of Chhattisgarh, Through Police Station House Balrampur District- Balrampur-Ramanujganj, Chhattisgarh.

---- Respondent

For Appellant
For State

Shri Gajendra Sahu, Advocate.
Shri Dinesh Tiwari, Deputy G.A.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board**10/12/2020**

1. Heard on admission.
2. The appeal is admitted for hearing.
3. With the consent of the parties, the matter is heard finally.
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 12.03.2019 passed by the 2nd Additional Sessions Judge to the Court of Additional Sessions Judge, Ramanujganj, District Balrampur, C.G. in Sessions Trial No.R-72/2016,

whereby and whereunder the appellant stands convicted and sentenced as under:-

Conviction	Sentence
Under Section 307 of IPC	Rigorous Imprisonment for 7 years and fine of Rs.5,000/-, in default of payment of fine amount to undergo further rigorous imprisonment for 1 year
Under Section 25(1-a)(B)(b) of the Arms Act, 1959	Rigorous Imprisonment for 1 year and fine of Rs.1,000/-, in default of payment of fine amount to undergo further rigorous imprisonment for 3 months

(Both sentences are directed to run concurrently)

5. Case of the prosecution, in brief, is that on the date of incident i.e. 1st April, 2016 at about 10:00 am, complainant Murish Uraon along with PW-1 Shanker went to the field for grazing cattle, at that time accused/appellant came there and started abusing filthily by saying that *why are you grazing your cattle in my field* due to which quarrel took place between them and accused/appellant assaulted upon the complainant by means of sword, as a result of which complainant sustained injury on his right cheek and neck and blood was oozing from there. Seeing this, accused/appellant ran away from there. Thereafter, complainant and Shankar came back and narrated the said incident to Nicholas Uraon and other villagers. On the same

day i.e. 01.04.2016 at about 12:00 PM, PW-1 Shaker Cherwa went to the police station and lodged the FIR Ex.P-2 against the accused/appellant. Thereafter, on the same day, complainant was sent for medical examination to District Hospital, Balrampur where he was examined by PW-8 Dr. Lalit Singh and he gave his MLC report vide Ex.P-14 and found following injury on the body of the injured- PW-2 Murish:-

Incised wound and lacerated wound present on the left middle ear of pinna runs to left angle of mouth size 14 x 1 x 0.5 cm.

The Doctor has opined that injury is simple in nature and caused by hard and sharp object.

6. During Investigation, appellant's memorandum statement was recorded vide Ex.P-6, consequent to which one sword was recovered from his possession vide Ex.P-7. Plain soil & blood stained soil were seized from the place of occurrence vide Ex.P-5. Spot Map Ex.P-4 was prepared by PW-5 Shri S.K. Choubey, I.O. Accused/appellant was arrested on 11.04.2016 vide Ex.P-8 and information regarding his arrest was given to his relatives vide Ex.P-9. 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 Section 307 of IPC

and under Section 25(1-a)(B) of the Arms Act against the accused/appellant which were denied by him and he prayed for trial.

8. So as to hold the accused/appellant guilty, the prosecution examined as many as 8 witnesses i.e. PW-1 Shankar, PW-2 Murish (complainant), PW-3 Pradeep Tirkey, PW-4 Nicholas, PW-5 S.K. Choubey, PW-6 Laxman, PW-7 Ajay Tirkey and PW-8 Dr. Lalit Singh. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the incriminating circumstances appearing against him in the prosecution case, pleaded innocence and false implication. However, no witness was examined by him in his defence.
9. 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 appellant as mentioned in para-4 of this judgment.
10. Learned counsel for the appellant submits that due to previous enmity with the complainant, the appellant has been falsely implicated in this case. He also submits that no independent witness has supported the prosecution case. There are material contradictions and omissions in the statements of the complainant and other witnesses. 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 said charges.

Alternatively, he submits that as per the evidence of PW-8 Dr. Lalit Tirkey and MLC report, neither grievous injury was found on the body of the victim by the appellant nor the injury found on the body of the appellant was fatal for his life, therefore, looking to the nature of injury, he is also not liable for conviction under Section 307 of IPC but at the most, only offence under Section 324 of IPC is made out against the appellant.

11. 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.
12. Heard learned counsel for the parties and perused the material available on record.
13. PW-2 Complainant- Murish stated in his deposition that on the date of incident he went to the field for grazing cattle along with PW-1 Shankar, at that time accused/appellant came there and started abusing filthily by saying that *why are you grazing your cattle in my field* due to which quarrel took place between them and accused/appellant assaulted upon him by means of sword, as a result of which he sustained injury on his right cheek and neck and blood was oozing from

there. Seeing this, accused/appellant fled away from there. Thereafter, he along with Shankar came back and narrated the said incident to the villagers. On the same day, PW-1 Shaker Cherwa went to the police station and lodged the FIR Ex.P-2 against the accused/appellant. Thereafter, on the same day, he was sent for medical examination to District Hospital, Balrampur.

14. PW-1 Shankar has supported the statement of PW-2 Murish and stated the same facts as stated by PW-2 Murish.
15. PW-3 Pradeep Tirkey stated in his deposition that when he heard the hue and cry of complainant, he immediately went to the spot and saw that the complainant was lying in injured condition and blood was oozing from his mouth and ear and appellant was pressing his neck. Then, he (this witness) saved the complainant from appellant and thereafter they went to the police station and lodged the FIR against the accused/appellant.
16. PW-4 Nicholas stated in his deposition that complainant told him about the incident that appellant assaulted upon him by sword.
17. PW-6 Laxman stated in his deposition that he had only seen the injury on the body of the victim.
18. PW-5 Shri S.K. Choubey, Sub-Inspector, who investigated the case, has supported the prosecution case.
19. PW-8 Dr.Lalit Singh medically examined the complainant

vide Ex.P-14 and gave his report as mentioned in the preceding paragraph. He has duly proved the said report. He has also examined the seized sword vide Ex.P-11A and opined that the injury suffered by the complainant could be caused by seized sword.

20. Thus, in the totality of facts and circumstances of the case, considering the evidence of complainant-PW-2 Murish, PW-1 Shankar, PW-3 Pradeep Tirkey and PW-4 Nicholas, duly corroborated by the medical evidence in the form of MLC of Ex.P-4 as also corroborated by the prompt & named FIR Ex.2, it stands proved beyond all reasonable doubt that it is the accused/appellant who assaulted upon the complainant by sword, as a result thereof, PW-2 Murish suffered injury on his middle ear of pinna and left angle of mouth.

21. So far as submission of learned counsel for the appellant that due to previous enmity the complainant has falsely implicated the appellant is concerned, 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.

22. Now this Court has to see whether the injury found on the body of the complainant was fatal for his life or not?

23. As per the evidence of PW-8 Lalit Singh, he admitted in paras 7 & 8 of his deposition that injury found on the body of the complainant was simple in nature and not fatal for his life but it is not in dispute that the appellant caused injury to the complainant at middle ear of pinna and left angle of mouth of size 14 x 1 x 0.5 cm. In the present case, the evidence goes to show that on the date of incident, when complainant was grazing his cattle near the field of appellant, some dispute arose between them, accused/appellant got angry and assaulted upon him by sword, as a result of which complainant sustained the above injury. Thus, it appears that there was no premeditation or pre-planning on the part of the appellant to cause injury on the body of the complainant. It so happened on the spur of moment, upon a sudden quarrel in the heat of passion when complainant was grazing his cattle near his field. As per oral as well as medical evidence, it is clear that the appellant assaulted only once with sword on the body of the complainant and did not repeat the assault or act in a cruel or unusual manner. In these circumstances, the appellant cannot be held responsible for attempting to commit murder of the complainant. However, admittedly the assault made by the appellant on the victim resulted in an incised wound and lacerated wound on left middle ear of pinna running to the left angle of mouth of size 14 x 1 x 0.5 cm. As such the injury caused by the appellant to the victim has

resulted into permanent disfigurement of his face and, therefore, it falls in the category of grievous hurt as defined in sixthly of under Section 320 of IPC. In the given facts and circumstances of the case and the over all evidence available on record, this court is of the opinion that the appellant voluntarily caused grievous hurt by a dangerous weapon i.e. sword to the complainant which makes him liable for conviction under Section 326 of IPC.

24. As regards the conviction of the appellant under Section 25(1-a)(B)(b) of the Arms Act, this Court finds no illegality or perversity in the findings recorded by the trial Court in this regard as the same is based on just and proper appreciation of the oral and documentary evidence available on record.

25. As regards the sentence, considering the facts and circumstances of the case, the fact that the appellant was the first offender of 35 years on the date of incident, he has no criminal antecedent, he has remained in jail for 2 years, 5 months and 22 days, the incident took place around 4 years back, keeping in view of the judgment of the Hon'ble Supreme Court in the matter of **George Pon Paul Vs. Kanagalet and Others, (2009) 13 SCC 478** wherein considering the fact that *fine amount has been deposited and paid to the victim as also the long passage of time, the accused was sentenced to the period already undergone*, this Court is of the opinion that

in the present case the ends of justice would be served if he is sentenced to the period already undergone by him.

26. In the result, the appeal is allowed in part. Conviction of the appellant under Section 25(1-a)(B)(b) of the Arms Act is hereby maintained. However, conviction of the appellant under Section 307 of IPC is hereby set aside and instead, the appellant is held guilty under Section 326 of IPC. The appellant is sentenced to the period already undergone by him. The appellant is directed to pay a fine of Rs.5,000/- for offence under Section 326 of IPC or else he shall suffer additional R.I. for one year. The fine amount with default sentence imposed by the trial Court under Section 25(1-a)(B)(b) of the Arms Act shall remain intact. The fine amount already deposited by the appellant shall be adjusted accordingly. On fine amount being deposited, a sum of Rs.5,000/- shall be paid to the victim/injured PW-2 Murish as compensation under Section 357 of CrPC by the trial Court after due verification.

27. The appellant is reported to be in jail, therefore, he is directed to be released forthwith, if not required to be detained in connection with any other offence, on his furnishing bail bonds for a sum of Rs.25,000/- with two equivalent sureties to the satisfaction of the trial Court for his appearance before the higher Court as and when required. The bail bonds so furnished shall remain in force for a period

of six months from today in view of provisions of Section 437A
Cr.PC.

28. Registry to send back the record to the concerned trial Court
forthwith for prompt compliance.

Sd/-
Gautam Chourdiya
Judge

Akhilesh