

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 112 of 2016

- Raja Singh Thakur S/o Raghuveer Singh Aged About 24 Years R/o Pipra, Police Station Seepat, Tehsil Bilaspur, Civil And Rev. District Bilaspur, Chhattisgarh.

---- Appellant

In Jail

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station Civil Line, Bilaspur, Civil And Rev. District Bilaspur, Chhattisgarh.

---- Respondent

For Appellant : Shri Pawan Kesharwani and Shri Sunny Agrawal, Advocates.

For Respondent/State : Shri Neeraj Mehta, P.L.

Hon'ble Shri Prashant Kumar Mishra, &

Hon'ble Shri Gautam Chourdiya, JJ

JUDGMENT ON BOARD BY JUSTICE GAUTAM CHOURDIYA

06/01/2020:

01. The matter is listed for hearing on IA No.02/2019, application for urgent hearing. However, as the appellant is in jail since 24.11.2012 for the offence under Section 307 of IPC, we have heard the appeal itself finally with the consent of learned counsel for the parties. Consequently, the application IA No.02/2019 is allowed.

02. In this appeal filed under Section 374(2) of CrPC, the appellant

challenges the legality, validity and propriety of the judgment of conviction and order of sentence dated 9.12.2015 passed by III Additional Sessions Judge, Bilaspur in ST No.60/2013 whereby he stands convicted under Sections 307 of IPC, 25(1)(1B)(a) & 27 of the Arms Act and sentenced to undergo imprisonment for life, pay a fine of Rs.1,000/-; RI for two years, fine of Rs.1,000/- & RI for seven years, fine of Rs.1,000/- with default stipulations respectively.

03. Case of the prosecution, in brief, is that complainant/victim Kamal Prasad Dhuri, his uncle Pardesi and other co-accused were being tried for commission of murder of Vivek Singh Thakur, brother of the appellant about five months prior to the date of present incident i.e. 24.11.2012. On the date of incident 24.11.2012 when Kamal Prasad Dhuri was produced before the trial Court of III Additional Sessions Judge, Bilaspur at around 3.45 pm, accused/appellant Raja Thakur due to previous enmity fired a gunshot from country made pistol at Kamal Prasad Dhuri which hit above his right eye and he started bleeding. Thereafter, the accused/appellant along with other co-accused Shekhar Singh and Vishram Sahu fled from the place of occurrence. The incident is said to have been witnessed by victim PW-9 Kamal Prasad Dhuri, PW-20 NP Banjare, PW-28 Ashok Kumar and others. Immediately thereafter, injured Kamal Prasad Dhuri was taken to Chhattisgarh Institute of Medical Sciences (CIMS), Bilaspur for treatment vide bedhead ticket Ex.P/6. Vide Ex.P/39, FIR was registered against accused/appellant Raja Thakur and Shekhar under Section 307/34 of IPC and Sections 25 & 27 of the Arms Act. In the hospital, statement of the victim Kamal Prasad Dhuri as dying

declaration was recorded by the Executive Magistrate vide Ex.P/2 after obtaining certificate from the treating doctor regarding his fitness for giving statement wherein he stated that he has been caused gunshot injury by appellant Raja Thakur due to previous enmity.

Vide Ex.P/7, the victim was referred to Raipur Medical College for further neurosurgical opinion after primary treatment. The victim was discharged from CIMS vide Ex.P/8 on 24.11.2012. As per Ex.P/10, medical report of the victim, given by Dr. Dharmendra Kumar (PW-6), the victim suffered firearm injury. On 25.11.2012 the victim Kamal Prasad Dhuri was admitted in Dr. BR Ambedkar Memorial Hospital, Raipur vide admission ticket Ex.P/24 where the doctors found gunshot injury over his head in lateral right orbital region, and he was discharged on 27.11.2012 vide Ex.P/28. As per CT Scan report Ex.P/29, gun shot injury with a bullet in the base of skull with pneumocerebrii with the right orbital injury was noticed.

04. As per Ex.P/44, the accused/appellant was arrested on the same day 24.11.2012 at 22:30 hours. Pursuant to memorandum of the appellant Ex.P/34, one country made pistol with .315 bore cartridge were seized vide Ex.P/35. From the place of incident, plain and bloodstained soil were seized vide Ex.P/36. Spot maps Ex.P/16 & P/38 were prepared. Spot inspection report Ex.P/13 was prepared by the Scene of Crime Mobile Unit, Bilaspur. As per Ex.P/3, the seized country made pistol and the cartridge sent by the police in sealed condition were examined by the Armourer and it was reported that .315 bore country made pistol was in working condition. Vide Ex.P/5 sanction for prosecution of the appellant under the Arms Act was

granted by the District Magistrate, Bilaspur under Section 39 of the Arms Act. Statements of the witnesses were recorded and after completion of investigation, initially charge sheet was filed against accused/appellant Raja Thakur and co-accused Vishram Sahu under Section 307/34 of IPC and Sections 25 & 27 of the Arms Act as co-accused Shekhar was absconding. After arrest of co-accused Shekhar, charge sheet under the aforesaid sections was also filed against him.

The trial Court framed charges under Sections 307/34 of IPC, 25(1)(1B)(a) & 27 of the Arms Act against all the accused persons, which were abjured by them and they pleaded for trial.

05. In order to prove its case, the prosecution examined as many as 28 witnesses. Statements of the accused persons were recorded under Section 313 of CrPC in which they denied the incriminating circumstances appearing against them in the prosecution case, pleaded innocence and false implication. In their defence, they stated that since their brother Vivek Singh was murdered by complainant/victim Kamal Prasad Dhuri and in the said case, their family members have given evidence against him, therefore, due to previous enmity they have been falsely implicated in this crime.

06. The trial Court after hearing counsel for the respective parties, considering the overall material available on record, by the impugned judgment while acquitting co-accused Shekhar Singh and Vishram Sahu of all the charges leveled against them, convicted and sentenced accused/appellants as mentioned in para-2 of this judgment.

07. Learned counsel for the appellants submits that in this case no

eyewitness has supported the prosecution case and other co-accused Shekhar Singh and Vishram Sahu have been acquitted of all the charges leveled against them on the same set of evidence. Even the complainant/victim Kamal Prasad Dhuri has not identified the person who caused gunshot injury to him. Other important witnesses of the prosecution have also turned hostile. The trial Court has convicted the appellant on the basis of evidence of PW-19 Bhagwati Prasad Shukla who chased the appellant but he has also not identified the appellant. The trial Court has held the appellant guilty against settled principle of law as there is neither any direct evidence nor circumstantial evidence proving the complicity of the appellant in the crime in question. He submits that the trial Court has also committed an illegality by not appreciating the defence of the appellant that due to previous enmity he has been falsely implicated in this case.

Alternatively he submits that if this Court ultimately comes to the conclusion that conviction of the appellant is just and proper, then looking to the facts and circumstances of the case, age of the appellant i.e. 24 years, the fact that he has no criminal antecedents, his brother was murdered by complainant/victim Kamal Prasad Dhuri and his uncle Pardesi, the appellant is languishing in jail since 24.11.2012 i.e. for last more than seven years, the sentence of life imprisonment imposed upon the appellant under Section 307 of IPC is very harsh and the same may be reduced to the period already undergone by him.

08. On the other hand, learned counsel for the State supporting the impugned judgment submits that the trial Court considering all the relevant aspects of the matter, after due appreciation of the entire

evidence, oral and documentary available on record, has rightly convicted and sentenced the accused/appellant which needs no interference by this Court.

09. Heard learned counsel for the parties and perused the material available on record.

10. On the date of incident i.e. 24.11.2012 at around 3.45 pm complainant/victim Kamal Prasad Dhuri and other co-accused persons were present in the Court premises of II Additional Sessions Judge, Bilaspur in connection with trial for murder of Vivek Singh Thakur, brother of the appellant. This fact is duly proved by PW-9 Kamal Prasad Dhuri, PW-10 Manjit Goyal, PW-11 Tijau, PW-13 Pardesi Ram Dhuri and PW-19 Bhagwati Prasad Shukla. They have stated that at the relevant time they heard the sound like bursting of firecracker/tubelight and soon thereafter they found blood oozing from near the eye of Kamal Prasad. PW-10 Manjit Goyal and PW-19 Bhagwati Prasad Shukla saw one person running away from the place of incident. PW-19 Bhagwati Prasad chased the said person, who entered Sales Tax Office and then after deploying constable Arun on the main gate of the said office for keeping guard on that person, he telephonically informed the police about the same. Thereafter, R.I. and other police staff reached Sales Tax Office. Thus, from the evidence of the above witnesses it stands proved that on the date of incident 24.11.2012 the complainant Kamal Prasad was present at the place of occurrence where he suffered injury above his right eye caused by someone.

11. PW-5 Dr. Rahul Bhargav, Assistant Professor in Surgery

Department of CIMS, Bilaspur has stated that on 24.11.2012 victim Kamal Prasad was brought to hospital and on examination he found lacerated wound of size 2 x 2.5 cm over right eyebrow and after getting his CT Scan done he was referred to Neurosurgeon of Raipur Medical College vide Ex.P/6.

12. PW-6 Dr. Dharmendra Kumar, Medical Officer, CIMS, has stated that victim Kamal Prasad was admitted in CIMS on 24.11.2012 at 4 pm with history of firearm injury and on examination he found incised wound of size 2.5 cm x 2.5 cm bone deep above the right eyebrow. After primary treatment, x-ray of the skull was advised. He has proved his report Ex.P/10.

13. PW-14 Dr. SN Gole, Assistant Professor (Neurosurgeon), Pt. Bheemrao Ambedkar Medical College Hospital, Raipur has stated that on 25.11.2012 the victim Kamal Prasad Dhuri was admitted in hospital at about 2 am with lacerated wound on right side of his forehead of size 3 cm x 2 cm from which blood was oozing. Looking to the nature of injury, CT scan was got done and as per CT scan report, frontal bone fracture of right side of forehead was found. On further CT scan of the victim the doctors noticed following injuries/symptoms on the body of the victim:

“There is 2 x 0.5 cm hyperdense area with HU > 3000 and surrounding streak artefact noted in body of sphenoid s/o metallic foreign body. Few tiny fragments with HU > 1000 also noted in right frontal, medial wall of right orbit and ethmoid sinus s/o foreign body.

Diffuse soft tissue edema noted in frontal, nasal, periorbital and eyelid in right side with surgical

emphysema.

Hypodense collection with HU 20-25 noted in all sinuses except left frontal sinus s/o hemosinus.

Communitied fracture of right frontal, medial wall of right orbit and body of sphenoid. Contusion noted in frontal lobe.”

PW-14 has duly proved admission ticket Ex.P/24,CT scan report Ex.P/25, Indoor Patient Summary Sheet Ex.P/26, NCCT Head report Ex.P/27 and discharge ticket Ex.P/28.

14. PW-15 Dr. Smt. Archana Singh, Associate Professor, CIMS, Bilaspur, states that on 24.11.2012 she did CT scan of head of injured Kamal Prasad Dhuri and noticed gun shot injury with a bullet in the base of skull with pneumocerebrii with the right orbital injury vide Ex.P/29.

15. Dr. Anil Baghel, Medical Officer, Bheemrao Ambedkar Hospital, Raipur, has proved the bedhead ticket of Ex.P/30 and likewise, Dr. Ajay Khandekar, Medical Officer, Central Jail, Raipur has proved the referral slip of Ex.P/32 whereby the complainant/victim was referred to Dr. Bheemrao Ambedkar Memorial Hospital, Raipur.

16. The evidence of the aforesaid witnesses remain unrebutted in the cross-examination. They have duly proved the admission of the victim in the respective hospitals and discharge therefrom as well as the nature and gravity of the injury suffered by him. Thus, from the direct evidence of the eyewitnesses of the incident including the complainant, his injury reports and evidence of the treating doctors, it stands proved that the complainant suffered gunshot injury in the said

incident above right eyebrow.

17. Though PW-9 Kamal Prasad Dhurri, PW-10 Manjit Goyal and PW-11 Tijau have not supported the prosecution case on the point of identification of the assailant but according to them soon after the incident one person was seen running away from the place of incident who was chased by PW-19 Bhagwati Prasad Shukla and that person entered the nearby Sales Tax Office. Thereafter, PW-19 having deployed one constable Arun Jaiswal on the main gate of the Sales Tax Office, immediately informed about the said incident to Police Line, on which R.I. and Constable Ram Patel along with other police personnel reached the Sales Tax Office and subsequently PW-19 came to know that the person who fired was Raja Thakur. PW-20 NP Banjare also states that after the incident he came to know that the person named Raja who had fired has been arrested. As per Ex.P/44, the accused/appellant was arrested on the same day 24.11.2012 by PW-26 DR Yadav.

On the memorandum of the accused/appellant Ex.P/34, one country made pistol with .315 bore empty cartridge were seized vide Ex.P/35. Witnesses to the memorandum & seizure namely PW-20 NP Banjare and PW-28 Ashok Kumar Wakde have fully supported the prosecution case. Supporting the prosecution case, the investigating officer PW-26 has also categorically stated as to the manner in which memorandum of the accused/appellant was recorded and seizure was effected. As per Ex.P/3, after examination of the seized country made pistol PW-17 Jugal Kishore Singh found the same in working condition. He has proved the report of Ex.P/3. PW-4 Jataram Verma, Licence

Clerk in the office of Collector, Bilaspur has duly proved sanction Ex.P/5 for criminal prosecution of the accused/appellant under the Arms Act which has been discussed in detail by the trial Court. There is no reason to disbelieve the statements of the aforesaid witnesses.

18. Thus, considering the overall evidence, oral and documentary available on record including the medical evidence, seizure of weapon of offence from the possession of the appellant, strong motive with the appellant due to previous enmity with the victim, his bald denial to all the proved incriminating circumstances appearing against him in the prosecution case, this Court has no hesitation in affirming the findings recorded by the trial Court holding him guilty under Section 307 of IPC and Sections 25(1)(1B)(a) & 27 of the Arms Act.

19. As regards the sentence, the sentence imposed under the Arms Act being just and proper and commensurate with gravity of the offence needs no interference by this Court. However, so far as life imprisonment under Section 307 of IPC is concerned, in the given facts & circumstances of the case giving rise to the incident where the appellant fired gunshot at the complainant as he had allegedly committed murder of his brother, the fact that the appellant is a young offender of 24 years having no past criminal record and is behind the bars since 24.11.2012 till date i.e. for last more than 07 years; that the complainant remained hospitalized only for four days i.e. from 24.11.2012 to 27.11.2012, this Court is of the opinion that sentence of life imprisonment is too harsh and ends of justice would be served if the appellant is awarded jail sentence to the period already suffered by him and the fine amounts are directed to be given to the complainant

as compensation under Section 357 of CrPC.

20. In the result, the appeal is allowed in part. While maintaining conviction of the appellant under Section 307 of IPC, Sections 25(1) (1B)(a) & 27 of the Arms Act and the sentence imposed under the Arms Act, his jail sentence under Section 307 of IPC is reduced to the period already suffered by him. However, the fine sentences imposed upon him under the aforesaid sections shall remain intact. The fine amount deposited by the appellant under the aforesaid sections shall be disbursed to the complainant/victim Kamal Prasad Dhuri as compensation under Section 357 of CrPC after due verification by the trial Court.

The appellant is directed to be released from jail, if not required to be detained in connection with any other offence, on his executing a personal bail bond of Rs.25,000/- with one surety of the like amount to the satisfaction of the trial Court for his appearance before the higher forum as and when required, which shall remain in operation for a period of six months from today in view of provisions of Section 437A of CrPC.

Sd/
(Prashant Kumar Mishra)
Judge

Sd/
(Gautam Chourdiya)
Judge