

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 534 of 2001**

- Babloo@Jakir Hussan, aged about 26 years, S/o. Mukkadar Ali, R/o. Irani Dera, Kela Badi, PS Tahsil Durg, district Durg CG

---- Appellant**Versus**

- State Of C.G. Through Police Station Durg (CG)

---- Respondent

For Appellant	: Shri Azad Siddiqui, Advocate
For Respondent/State	: Shri Vikas Bhaskar, PL

Hon'ble Smt. Justice Rajani Dubey**Order On Board By Virtual Hearing****28/07/2021**

This appeal arises out of a common judgment dated 25.04.2001 passed by the Third Additional Sessions Judge, Durg in Sessions Trial No. 180/2000 whereby the appellants have been held guilty of commission of the offence under Section 307/34 IPC and sentenced to undergo rigorous imprisonment of five years and to pay fine of Rs. 500/- with default stipulation, which is being disposed of by this common judgment.

2. Prosecution story as revealed from the records of the case is that on the date of incident i.e. 31.03.1999 at about 10.00 p.m., at Durg Bus Stand, when the complainant had gone to take the charge of

cycle stand of bus stand Durg from the old contractor namely Sanjay Tiwari, he asked him as to why he has beaten the appellant No.2 Kasam Ali (since deceased). Thereafter Sanjay Tiwari and the appellant No.2 caught hold of the complainant and appellant No.1 gave a knife blow on the abdomen as a result of which he sustained one incised wound and abrasion on his right hand as also on the shoulder and chin. He resisted and lodged report at police station Durg. After completion of usual investigation, charge sheet was filed before the Judicial Magistrate First Class Durg who, in turn, committed for trial and the appellants were tried for commission of alleged offence under Section 307/34 IPC. The trial court on the basis of material contained in the charge sheet framed charges against the appellants for the offence under Section 307/34 IPC alleging that there was common intention shared by the appellants to assault the complainant. The appellants abjured guilt and were subjected to trial. However, co-accused Sanjay Tiwari has been acquitted of the charges under Section 307/34 by the trial court.

3. Prosecution, in order to prove its case, examined as many as 10 witnesses. The appellants were examined under Section 313 Cr.PC and they denied having committed any offence and said that they have been falsely implicated.

4. Learned trial court, relying on the evidence of the witnesses has held the appellants guilty of commission of offence. During pendency of this appeal, appellant No.2 Kasam Ali died and therefore the present appeal is against the appellant Babloo @ Jakir Hussain.

5. Assailing correctness and validity of the impugned judgment of

conviction and sentence, counsel for the appellant argued that the prosecution has failed to bring home the charges by reliable and clinching evidence. It is argued that the trial court has not appreciated the evidence in its proper perspective and therefore, the impugned judgment of conviction and order of sentence is bad in the eye of law and may be set aside. Counsel for the appellant however, submits that the accused/appellant the incident took place about 23 years back, appellant has already remained in jail for about more than one year and therefore his sentence be reduced to the period already undergone by him.

6. On the other hand State counsel supports the impugned judgment and submits that the conviction of the accused/appellant is in accordance with law and there is no infirmity in the same.

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

8. Considering the nature of injuries sustained by the victim, offence under Section 307/34 IPC is made out against the appellant. However, looking to the act of appellant and the evidence adduced by the prosecution, his conviction under Section 307/34 IPC appears to be justified.

9. So far as the sentence part is concerned, taking into consideration the fact that the incident occurred in the year 1999, appellant by now must be a middle aged person, he remained in jail for about more than four months, I am of the view that ends of justice would be served if the sentence imposed on him is reduced to the

period undergone by him.

10. Consequently, the appeal is partly allowed. Accused/appellant is reported to be on bail and therefore no further order is required. His bail bond stands discharged.

Sd/-

(Rajani Dubey)
Judge