

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 2611 of 2000**

- Vikas Das, S/o Balak Das, aged about 25 years, R/o Maharani Ward Jagdalpur.

---- Appellant**Versus**

- State of M.P. (now Chhattisgarh), Through: District Magistrate Jagdalpur, District- Bastar.

---- Respondent

For Appellant : Mr. Keshav Dewangan, Advocate

For Respondent/State : Ms. Ishwari Ghritlahre, P.L.

Hon'ble Smt. Justice Rajani Dubey**Order On Board****23/09/2021**

1. The present appeal arises out of the impugned judgment of conviction and order of sentence dated 30.09.2000 passed by the Second Additional District Judge, Jagdalpur, in S.T. No. 329/1998 whereby, the learned Second Additional District Judge, Jagdalpur, convicted the appellant and sentenced him as under :-

S. No.	Conviction	Sentence
01.	U/s 307/34 of the IPC	R.I. for 5 years and to pay fine of Rs. 5000/-, in default R.I. for 1 year

2. Brief facts of the case are that on 09.06.1998 at about 11:30 A.M., Sub-inspector G.S. Dehari and the police force went to arrest the appellant. When the police force was searching, they found some movements in a house. The appellant along with his companions was in that house and on seeing the police party, appellant threw a sword towards the S.I. G.S. Dehari, which got missed. Thereafter, the complainant in self protection fired one shot with his service pistol but

the appellant fled away. However, one of his associate Raja was arrested. Thereafter, FIR (Ex. P/2) was lodged against the appellant for the offence punishable under Section 307 of IPC. After investigation, charge-sheet was filed against the appellant and charges were framed against him under Section 307 of IPC.

3. So as to hold the accused/appellant guilty, the prosecution has examined as many as 6 witnesses. Statement of the accused/appellant was also recorded under Section 313 of the Cr.P.C. in which he denied the charges leveled against him and pleaded his innocence and false implication in the case.

4. After hearing the parties, vide impugned judgment of conviction and order of sentence dated 30.09.2000 passed by the Second Additional District Judge, Jagdalpur, the appellant has been convicted and sentenced as mentioned in paragraph 1. Hence, the present appeal.

5. Learned counsel for the appellant submits that learned trial court has erred in holding the appellant guilty for the offence as aforementioned. He further submits that the impugned judgment of conviction and sentence is contrary to law and the evidence available on record. Learned sessions Judge ought to have considered the fact that Subhash Singh (PW-1), Rajesh (PW-3), Dwarika Yadav (PW-4) and G.S. Dehari (PW-5) have not supported the prosecution case. Learned trial court has failed to consider that the seizure of sword has not been established and that too, the sword did not hit anybody, therefore, no offence under Section 307 of IPC is made out against the appellant. The prosecution has failed to prove its case beyond reasonable doubt. He further submits that the incident is said to have taken place in the year 1998, and thereby more than 22 years have rolled by since then, appellant has already remained in jail for 1 year and 8 months and no useful purpose would be served in again sending him to jail, appellant is found guilty of the aforesaid offence and deserves to be acquitted from the charges levelled against him, therefore, in the interest of justice, it would be appropriate if the sentence

imposed upon him may be reduced to the period already undergone by him.

6. Learned counsel for the State has no objection to this preposition.

7. Heard learned counsel for the parties and perused the material available on record including the impugned judgment.

8. Having gone through the material on record and the evidence of the witnesses, it is established that the involvement of the accused/appellant in the crime in question has been proved beyond reasonable doubt. This Court does not see any illegality in the findings recorded by appellate court below as regards conviction of the appellant under Section 307 of IPC.

9. As regards sentence, keeping in view the facts that the incident had taken place in the year 1998, the appellant had already remained in jail for 1 year and 8 months, I am of the view that ends of justice would be served, if the sentence imposed on him is reduced to the period already undergone by him.

10. In view of the above, the appeal is partly allowed. While maintaining the conviction of the appellant, he is sentenced to the period already undergone by him. The appellant is reported to be on bail. His bail bonds shall stand discharged.

**Sd/-
(Rajani Dubey)
JUDGE**