

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 884 of 2003**Order reserved on : 27/09/2021Order delivered on : 03 /12/2021

- Amit @ Pappu Soni, S/o Deendayal Soni, aged about 23 Years, R/o Lily Chowk, Purani Basti, Raipur (C.G.).

---- Appellant**Versus**

- State of Chhattisgarh, P.S. Purani Basti, Raipur (C.G.).

---- Respondent

For Appellant	:	Mr. Alok Kumar Dewangan, through Legal Aid
For Respondent/State	:	Ms. Subha Shrivastava, P.L.

Hon'ble Smt. Justice Rajani DubeyCAV Order**03.12.2021**

1. Present appeal is preferred against the impugned judgment of conviction and order of sentence dated 07.08.2003 passed by IXth Additional Sessions Judge [FTC], Raipur, (C.G.) in Sessions Trial No. 438/2002 whereby, the trial court has convicted the appellant and sentenced him as under:-

S.No.	Conviction	Sentence
1.	U/s 307 of IPC	R.I. for 5 years and to pay fine of Rs. 1000/- and in default 6 months R.I.
2.	Section 25(1) (ख-क) of Arms Act	R.I. for 1 year and to pay fine of Rs. 500/- and in default 3 months R.I.

2. Brief facts of the case are that on 01.05.2002 at about 9:00 PM, complainant Pankaj Sharma lodged a report alleging that at about 8:30 PM, some quarrel took place between the appellant and

Vinay Pansari, on account of which, appellant inflicted knife injuries on his neck and stomach with an intention to kill him. As a result of which, Vinay Pansari sustained severe injuries on his body. After some time, co-accused- Bharat Soni came abusing Binay and this witness caught him from behind, however, he resisted and ran away. Thereafter, he was taken to hospital. FIR (Ex.P/1) was registered against the appellant. Spot-map was prepared vide Ex. P/13. Dr. M.P. Pujari (PW-8) and Dr. Pradeep Pandey (PW-10) medically examined the injured and gave their reports vide Ex. P/14 & Ex. P/25 respectively. After investigation, charge-sheet was filed against the appellant and charges were framed against him under Section 307 of IPC r/w Section 25(1)(ख-क) of Arms Act.

3. So as to hold the accused/appellant guilty, the prosecution has examined as many as 10 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 innocence and false implication in the case.

4. On the basis of oral and documentary evidence, trial court has convicted the appellant under Section 307 of IPC r/w Section 25(1)(ख-क) of Arms Act and sentenced him as mentioned in para 1. Hence, this appeal filed by the appellant.

5. Learned counsel for the appellant submits that the learned trial judge committed error in law regarding appreciation of evidence. The statement of complainant is not reliable. His statement is full of exaggeration and contradictory to the facts and circumstances of the case. The learned trial judge should have considered the fact of non-examination (giving up) of 8 witnesses from the list of charge-sheeted witnesses, against the alleged eye-witnesses and that they were not present at the spot at the time of incident and they reached on the spot later, hence, the learned court has committed error while giving undue weightage to their statements.

6. Manoj Pansari (PW-6) has admitted in his cross-examination

that he had seen two persons running from the spot from the back. Statement of injured witness is not required after unexplained delay. The learned trial Judge acted contrary to the principles of settled law and, therefore, conviction of the appellant are liable to be set aside.

7. Per contra, learned counsel appearing for the State supported the impugned judgment and submits that the sentence awarded by the trial Court is just and proper and requires no interference.

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

9. In this case, prosecution has examined two medical expert Dr. M.P. Pujari (PW-8) and Dr. Pradeep Kumar Pandey (PW-10). Dr. M.P. Pujari examined the victim on 01.05.2002 on the date of incident and Dr. Pradeep Kumar Pandey was victim's treating doctor and he opined that there were four injuries on victim's abdomen and all the injuries were grievous in nature and in absence of operation, appellant could die. It is clear from the medical evidence that injuries of the victim were dangerous to life.

10. Vinay Pansari (PW-4) has stated that appellant and other accused persons assaulted the victim with knife and in his cross-examination, he denied all the suggestions of defence. FIR (Ex.P/1) was lodged against both the accused persons on the same day without any delay. One knife was seized from the appellant.

11. Pankaj Sharma (PW-3) and Shivendra Kumar (PW-5) did not state anything against accused persons but brother of injured person Manoj Kumar Pansari (PW-6) has stated against both the accused persons.

12. Under these circumstances, it can be held that the prosecution has proved his case beyond reasonable doubt. The learned trial court after appreciating oral and documentary evidence convicted the appellant under Section 307 of IPC and Section 25 (ख-क) of Arms Act. The findings of learned trial court are based on proper

appreciation of oral and documentary evidence.

13. On the above discussion, the findings of learned trial court are based on true facts and accordingly, the appeal has no merits and the same is liable to be and is hereby dismissed.

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

Ruchi/-