

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 793 of 2001**

- Manish Kumar Lee S/o Benjamin Lee aged about 24 years, Student of B.A. 1st year, R/o Village Sargawa (Ambikapur), District - Sarguja, Chhattisgarh.

---- Appellant**Versus**

- State of Chhattisgarh, Through : State House Officer, Police Station, Ambikapur, Sarguja, Chhattisgarh.

---- Respondent

For Appellant : Mr. Sourabh Sharma, Advocate.
For Respondent/State : Ms. Subha Shrivastava, PL.

Hon'ble Smt. Justice Rajani Dubey**Order On Board****20/09/2021**

1. The present appeal arises out of the impugned judgment of conviction and order of sentence dated 09.08.2001 passed by the learned 1st Additional Sessions Judge, Ambikapur, District Sarguja (C.G.), in Session Trial No. 184/1996 whereby, the learned 1st Additional Sessions Judge convicted the appellant and sentenced him as under :-

Conviction	Sentence
U/s 307 of IPC	R.I. for 7 years and fine of Rs. 2000/- in default of payment additional R.I. for One year.

2. Brief facts of the case are that on 21.03.1996 at 7 o'clock in the morning Ravindra Vishwas (PW-2) went to Dasai Uraon's house along with his elder brother for formation of the Fishery Committee and to sign the form when were returning home by bicycle after signing the form, as soon as they reached in front of Goya's house, the accused came out of his house carrying a sword and with intention to hit him on the head, hands and right leg from behind.

Vishwajeet, Parasram and Goya have witnessed the incident. Report was lodged by Vishwajeet (PW-1) at Police Station, Ambikapur.

3. H.N. Singh (PW-7) registered the FIR vide Ex.-P/1 and thereafter Ravindra Vishwas (PW-2) was sent for medical examination vide Ex.-P/7. Blood Sample and Soil were collected from the place of incident vide Ex.-P/8. Spot map was prepared before the witnesses vide Ex.-P/9. Dr. J.K. Jain (PW-9) medically examined the victim and gave his report vide Ex.P/7'A' and advised for x-ray. Which was done by Dr. M.K. Jain (PW-10) who gave his report vide Ex.P/12. He opined that there were multiple fractures on the bone of left shoulder, left hand, right hand and right leg. The sword seized from the accused vide Ex.P/6, was sent for medical examination. Dr. J.K. Jain examined the seized sword and gave his report vide Ex.-P/11'A'. After completion of investigation, charge-sheet was filed and charges were framed by the trial Court.

4. So as to hold the accused/appellant guilty, the prosecution has examined as many as 11 witnesses. Statement of the accused/applicant was also recorded under Section 313 of the Cr.P.C. in which he denied the charges levelled against him and pleaded innocence and false implication in the case.

5. After hearing the parties, vide impugned judgment of conviction and order of sentence dated 09.08.2001, learned 1st Additional Sessions Judge, Ambikapur has convicted and sentenced the appellant for the offence under Section 307 of IPC and sentenced him to undergo R.I. for 7 years and fine of Rs. 2000/- with default stipulation. Hence, the present appeal.

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

7. Counsel for the appellant submitted that the learned trial Court has committed an error in relying upon the testimony of Ravindra Vishwas (PW-2) and as well as upon Vishwajeet Vishwas (PW-1). Kristo Rai (Pw-3) ought to have held that PW-1 being brother of complainant is not reliable and interested witness. He next submitted that the prosecution has failed to examine material

witnesses, Shanker, Lambu, Kalpana, Shanti, Parasram etc. they could have stated the correct scene of the incident if any, this fact goes against the prosecution and makes the case of the prosecution doubtful. He also submitted that the findings of conviction is based on surmises and conjectures and there is no legal evidence available on the record to sustain the conviction and finding are perverse. He lastly submitted that the incident is said to have taken place in the year 1996, and thereby more than 25 years have rolled by since then, the appellant is aged about more than 45 years has remained in jail more than five months, 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.

8. Learned counsel for the State has no objection to this proposition.

9. Having gone through the material on record and the evidence of the witnesses Vishwajeet Vishwas (PW-1), Ravindra Vishwas (PW-2), Kristo Rai (PW-3), Pancho Vishwas (PW-4), Subhash Rai (PW-5), Harendra (PW-6), H.N. Singh (PW-7), Mukteshwar Singh Chandel (PW-8), Dr. J.K. Jain (PW-9), Dr. M.K. Jain (PW-10) and R.N. Singh (PW-11), it's establish that the involvement of the accused/applicant in the crime in question stands proved beyond reasonable doubt.

10. Vishwajeet Vishwas (PW-1), Ravindra Vishwas (PW-2), Kristo Rai (PW-3) and Pancho Vishwas (PW-4) have stated in their statements about the assault with sword by the appellant. Dr. J.K. Jain (PW-9) has specifically stated that the injuries were likely to cause death, this opinion is not based on any specific medical report because Dr. M.K. Jain (PW-10) has not found any fracture on skull bone, he found fracture on left shoulder, left hand, right hand and on right leg, and not on vital organs. It is proved from the testimony of the eye-witnesses that the victim was assaulted with sword by the appellant. Looking to the medical evidence on record, the injuries cannot be said to be of the nature which was likely to cause death.

11. However, considering that the appellant assaulted the victim with sword which is a dangerous weapon, and in this case commission of offence under Section 326 IPC is certainly made out. It has been submitted that the appellant has already undergone more than five months of imprisonment and the appellant is more than 45 years; middle aged person the conviction of appellant under Section 307 of IPC is set aside and instead of it he is convicted for the offence punishable under Section 326 of IPC.

12. Taking into consideration that the incident has taken place in the year 1996, the appellant had undergone the agony of long drawn trial and has remained for at least a period of five months in jail, I consider the present to be a fit case for awarding sentence to the period which he has already undergone. Apart from that, he shall pay fine of Rs. 20,000/-. In default of the payment of fine, he shall be liable to undergo R.I. for a period of six months. On recovery of the fine, the entire amount shall be paid to the victim. Earlier the appellant has paid Rs. 20,000/- therefore, now appellant has to pay Rs. 80,000/-.

13. Accordingly, the appeal is partly allowed.

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