

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 755 of 2018

Judgment Reserved on : 24/02/2021

Judgment Delivered on : 17/03/2021

1. Aditya S/o Yugal Kishore Jaiswal, Aged About 28 Years, R/o Bazarpara, Narayanpur, District Narayanpur (C.G.).

---- Appellant

Versus

1. State Of Chhattisgarh, Through The Police Station Telibandha, District Raipur (C.G.).

---- Respondent

For Appellant : Mr. Dharendra Prasad Mishra, Advocate.
For Respondent/State : Dr. (Ms.) Veena Nair, Dy. Advocate General..

Hon'ble Shri Justice Gautam Chourdiya

CAV JUDGMENT

- 1) This appeal is filed under section 374(2) of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 19/04/2018 passed by 4th Additional Sessions Judge of 1st Additional Session Courts, Raipur (C.G.) in Session Trial No. 83/2017; whereby the appellant Aditya stands convicted and sentenced as under:-

Conviction	Sentence
U/s. 307 of Indian Penal Code (in short "IPC")	R.I. for 10 years and fine of Rs. 3,000/-, in default of fine additional R.I. for 1 month.
U/s. 25(1)(1-B) B of Arms Act	R.I. for 3 years and fine of Rs. 3,000/-, in default of fine additional R.I. for 1 month.
U/s. 27(2) of Arms Act	R.I. for 7 years and fine of Rs. 3,000/-, in default of fine additional R.I. for 1 month.
(All sentences were directed to run concurrently)	

- 2) Case of the prosecution, in brief, is that vide Ex. P-19 Sonu

Dubey, brother of victim Archana Dubey lodged FIR on 03/01/2017 about 13:25 hours at Police Station Telibandha and informed the Police that accused assaulted upon victim Archana Dubey on her abdomen with knife and incident was seen by Bunty @ Krishna Yadav, Pratap Sachdev, Sumeet Sachdev and others. Spot map is prepared vide Ex. P-20 by PW-12 Vipin Lakda (Inspector). Archana Dubey was examined by PW-07 Dr. Ravi Prakash Koka on the same day who found 2 stabbed injury vide Ex. P-17 i.e. over left lower chest and lower abdomen which were grievous in nature. During investigation memorandum of accused appellant was recorded vide Ex. P-1 and pursuant to it one knife was seized vide Ex. P-2 from his possession, the handle of the knife was 5 inch long, Blade was 7.9 inch long and 1.9 inch wide. From the place of incident one motorcycle and one TVS Jupiter were seized vide Ex. P-3. Vide Ex. P-4 blood stained and plain soil were seized from the place incident. The appellant was arrested on 03/01/2017 vide Ex. P-5. Dehati Naleshi vide Ex. P-6 was prepared on the same day. After recording statements of the witnesses and completing the formalities of investigation the charge sheet was filed against the appellant under Section 307 of IPC and under Sections 25 & 27 of the Arms Act.

- 3) The Trial Court framed charges under Section 307 of IPC and under Sections 25(1)(1-B)(B) & 27(2) of the Arms Act against the accused which were denied by him and he prayed for trial.
- 4) The prosecution in support of its case examined as many as 13 witnesses namely PW-01 Ku. Archana Dubey (Victim), PW-02 Pratap Sachdev, PW-03 Shyam Singh Tomar, PW-04 Sonu Dubey (brother of victim), PW-05 Rajesh Kumar Mishra, PW-06 Nagendra Kumar Singh (Patwari), PW-07 Dr. Ravi Prakash Koka, PW-08 Dr. Vishnu Gupta, PW-09 Laxman Khute (Sub Inspector), PW-10 Anand Shrivastava, PW-11 Dr. R.N. Singh, PW-12 Vipin Kumar Lakda (Inspector) and PW-13 Anubhav Sharma (Addl. Tehsildar/Executive Magistrate). The statement of the accused was also recorded under section 313 of Cr.P.C. in

which he denied the circumstances appearing against him in the prosecution case and pleaded innocence and false implication. No witness was examined by the accused in his defence.

- 5) Learned Trial Court considering the material available on record by the impugned judgment convicted and sentenced the accused appellant as mentioned above.
- 6) Learned counsel for the appellant submits that the Trial Court has not properly appreciated the evidence available on record. He submits that in this case looking to the contradiction and omission in the statement of the prosecution witness, learned Trial Court wrongly convicted the accused/appellant under Section 307 of IPC. He submits that looking to the nature of injury, the fact that no any reliable witness was produced by the prosecution to substantiate its case, no one had seen the accused holding any knife, the Trial Court has wrongly convicted the appellant under Section 307 of IPC and under Section under Sections 25 & 27 of the Arms Act.
- 7) He submits that the victim and the appellant were having love affair and since the family members of the victim were against this relationship, the appellant has been falsely implicated in this case.
- 8) Alternatively he submits that if this Court ultimately comes to the conclusion that conviction of the appellant is just and proper, considering the fact that the appellant has remained in jail for about 3 years and 6 months, he is the young offender who was 28 years at the time of incident which took place on 03/01/2017, there is no criminal antecedent of the appellant, he may be sentenced to the period already undergone by him.
- 9) On the other hand learned counsel for the respondent/State supporting the impugned judgment submits that looking to the eye witness account of the victim Archana Dubey which is duly supported by the statements of other prosecution witnesses, the promptly lodged FIR as well as the medical report, the Trial

Court has not committed any illegality in convicting and sentencing the appellant and therefore no interference is required by this Court.

- 10) Heard counsel for the parties and perused the material available on record.
- 11) It is not disputed by both the counsel that as per MLC report vide Ex. P-17 proved by PW-07 Dr. Ravi Prakash Koka the victim Archana Dubey had suffered 2 stabbed injuries over her left lower chest and lower abdomen of size 4cmx3cmx8cm and 5cmx3cmx5cm respectively which were grievous in nature. PW-08 Dr. Vishnu Gupta examined the injuries of the victim and opined that if timely treatment had not been given to the victim, the injuries could have been fatal to her life vide Ex. P-12.
- 12) PW-01 Archana Dubey, victim has categorically stated in her deposition that on 03/01/2017 she was going by her Jupiter motorcycle, on the way the appellant who was on motorcycle stopped her and proposed her for marriage on the threat that if she refused, he would kill her. When she objected, the appellant assaulted on her abdomen and thereafter below her chest. At that time Anand Shrivastava reached there and rescued her from the appellant. By that time the people of the vicinity reached there and caught the appellant. She was taken to Hospital by one Uncle. In her cross-examination she has stated that the appellant assaulted with knife on her abdomen with intention to kill her. In her cross-examination she has reiterated the manner in which the incident took place and she was assaulted by the appellant. The defence could not elicit anything from her to make her evidence untrustworthy or doubtful.
- 13) Soon after the incident the prosecutrix informed about the same to her brother Sonu Dubey PW-04 who promptly lodged FIR vide Ex. P-19 and Dehati Naleshi vide Ex. P-6. The FIR and Dehati Naleshi have been duly proved by PW-02 Pratap Sachdev and PW-12 Vipin Kumar Lakda (I.O.).

- 14) Though there are some contradictions and omissions in the dairy statements of PW-01 Archana Dubey i.e. Ex. D-1, PW-02 Pratap Sachdev i.e. Ex. D-2 and PW-10 Anand Shrivastava i.e. Ex. D-3 but they are not of such nature which could affect credibility of the prosecution case which finds due corroboration from the deposition of the victim, the promptly lodged FIR, her medical reports as well as the evidence of the treating Doctors i.e. PW-07 Dr. Ravi Prakash Koka, PW-08 Dr. Vishnu Gupta.
- 15) On the memorandum of accused appellant Vide Ex. P-1, the weapon of offence i.e. knife was seized from the possession of the appellant vide Ex. P-2. PW-02 Pratap Sachdev, a witness to the memorandum and seizure has duly supported the prosecution case. Thus, from the above oral and documentary evidence it stands proved beyond all reasonable doubt that it is the appellant who caused fatal injuries to the victim PW-01 Archana Dubey with knife.
- 16) The accused has taken a defence in his statement under Section 313 of Cr.P.C. that the victim herself inflicted injury on her body but there is no evidence to this effect adduced by the appellant to prove that the injuries suffered by the victim are self inflicted. No such suggestion was given by the defence to the eye witnesses.
- 17) Considering the facts and circumstances of the case, the evidence of eye witnesses, FIR, medical reports of the victim and the evidence of the Investigating Officer, the seizure of weapon of offence i.e. knife from the possession of the appellant, its length and width, the notification dated 22/11/1974 issued by the State Government under Section 4 of the Arms Act, this Court is of the opinion that the Trial Court has not committed any illegality or perversity in convicting the appellant under Section 307 of IPC and under Section 25 & 27 of the Arms Act.
- 18) As regards the sentence part, considering the facts and circumstances of the case, the fact that the incident took place

on 03/01/2017 i.e. 4 years ago, the age of the accused appellant at the relevant time i.e. 28 years who is first offender, prior to the incident the victim and the accused were having friendly relation, the appellant has till date remained in jail for about 3 years and 6 months, this Court is of the opinion that the ends of justice would be served if the jail sentence of the appellant under Section 307 of IPC and Section 27(2) of the Arms Act is reduced from 10 years R.I. and 7 years R.I. respectively to 5 years R.I. on each count by enhancing the fine amount under Section 307 of IPC suitably with default sentence.

- 19) In the result, the appeal is **allowed in part**. Conviction of the appellant under Section 307 of IPC and Section 25(1)(1-B) B & 27(2) of the Arms Act is hereby maintained. While maintaining the substantive jail sentence and fine sentence of the appellant under Section 25(1)(1-B)B of the Arms Act and the fine sentence under Section 27(2) of the Arms Act, his substantive jail sentence under Section 307 of IPC and Section 27(2) of the Arms Act is **reduced to 5 years** on each count. All the jail sentences are directed to run concurrently. Fine amount under Section 307 of IPC of Rs. 3,000/- imposed by the Trial Court is enhanced to **Rs. 10,000/-**. In default of payment of fine of Rs. 10,000/-, the appellant shall suffer additional R.I. for 2 months.
- 20) The fine amount, if any, already deposited by the appellant shall be adjusted accordingly. The Trial Court has already awarded the total fine amount of Rs. 9,000/- imposed by it on the appellant to the victim. Therefore, there is no need to grant any further compensation to the victim in this case.

**-Sd/-
(Gautam Chourdiya)
Judge**