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HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 81 of 2016**Judgment reserved on : 17/03/2021Judgment delivered on : 12/04/2021

1. Santosh Sharma @ Mathura, son of Hariom Sharma, aged about 28 years, resident of Camp-1, Sangram Chowk, Behind Gupta Kirana Store, P.S. Chhawani, District Durg (C.G.)
 2. Ramesh Singh, son of Parmatma Singh, aged about 20 years
 3. Rajesh Singh @ Chhotu, son of Parmatma Singh, aged about 24 years
- Both appellants 2 & 3 are resident of Quarter No. 93-94, H.S.C.L. Colony, Khursipar, Bhilai, District Durg (C.G.)

---- Appellants

Versus

- State of Chhattisgarh, Through : P.S. Khursipara, Civil and Revenue District Durg (C.G.)

---- Respondent/State

For Appellants	:	Shri Navin Shukla, Advocate
For Respondent/State	:	Shri Vimlesh Bajpai, Government Advocate

Hon'ble Shri Justice Gautam Chourdiya, J**C.A.V. Judgment**

1. This appeal arises out of the judgment of conviction and order of sentence dated 06.06.2015 passed by the First Additional Sessions Judge, Durg, District Durg (C.G.) in Sessions Case No. 61 of 2014, whereby each of the appellants stand convicted and sentence as under:-

<u>Conviction</u>	<u>Sentence</u>
Under Section 307 read with Section 34 of IPC (hereinafter referred to as the 'IPC')	R.I. for ten years and pay a fine of Rs.1,000/- each, in default of payment to further undergo R.I. for six months each

2. Facts of the case, in brief, is that on the date of incident i.e. 04.11.2013 at about 12:00 hours, complainant/victim Jeet Singh was standing in front of his

house, at that time, all the above accused/appellants came there and on account of previous enmity with the complainant, in furtherance of common intention, they abused him filthily and threatened him for his life. Appellant No.3 Rajesh Singh @ Chhotu with an intent to commit murder of the complainant gave knife blow on the abdomen and back of the complainant and appellants No. 1 & 2 Santosh Sharma @ Mathura & Ramesh Singh assaulted the complainant by hands and fists. Prompt F.I.R. (Ex.-P/7) was lodged on 05.11.2013 at about 00:15 hours by the complainant in the Police Station Khursipar, District Durg which was registered under Sections 294, 506-B & 307 read with Section 34 of IPC under Crime No. 361/2013 against all the above three accused/appellants.

3. Complainant/injured Jeet Singh (PW-5) was sent for medical examination to Government Hospital Supela. PW-5 was medically examined by PW-1 Dr. Sanjay Kumar Valwandre who gave his MLC report vide Ex.-P/1 and found following injuries on the body of PW-5:-

- i. Stab wound in size of 1 ½ inch x 1 inch x 1 ½ inch in spindle shape on the front region of abdomen & below the epigastric region;
- ii. Stab wound in size of 1 ½ inch x 1 inch x 1 ½ inch on back of trunk and below left sub scapular region. Injuries no. (i) & (ii) caused by hard & pointed to sharpened edge weapon &.
- iii. Incised wound on the left upper arm

Dr. Sanjay Kumar Valwandre (PW-1) opined that all the injuries were caused within two hours from the examination of PW-5 and the same were caused by hard and sharp object. Thereafter, PW-5 was sent for surgical opinion and X-ray of chest to District Hospital, Durg by PW-1. X-ray of Jeet Singh (PW-5) was conducted by PW-4 Dr. Rajeev Pal who gave X-ray report vide Ex.-P/6 and as per report he opined that air was present below both diaphragm which indicates that there was hole in intestines of abdomen and

X-ray of chest was normal. Sonography of Jeet Singh (PW-5) was conducted by PW-8 Dr. Rajkiran who gave his report vide Ex.-P/15 and opined that sonography was normal, but he advised for X-ray of abdomen because there was air in the abdomen due to which all the organs were not visible. Complainant Jeet Singh (PW-5) was admitted in hospital on 05.11.2013 and was discharged from hospital on 16.11.2013 vide Ex.-P/16. His bed-head tickets marked as Ex.-P/17 to Ex.-P/20.

4. During investigation, blood stained shirt of complainant (PW-5) was seized from him vide Ex.-P/3, after scratching plain concrete and blood stained concrete were seized from the place of occurrence vide Ex.P/9, and spot map was prepared vide Ex.-P/10. On 07.11.2013 all the appellants/accused were arrested by the police vide arrest memos Ex.-P/12, Ex.-P/13 & Ex.-P/14. Memorandum statement of accused Rajesh Singh @ Chhotu was recorded vide Ex.-P/4 consequent to which a knife was seized from his possession vide Ex.-P/5. Seized articles were sent for examination to Forensic Science Laboratory, Raipur, from where FSL report was received vide Ex.-P/21. As per FSL report, blood was found on Articles 'A', 'B' & 'C' i.e. knife, shirt of PW-5 Jeet Singh & blood stained concrete articles and it also mentioned in that report that in Article 'B' human blood was found.
5. After recording the statements of the witnesses and completion of the investigation, charge-sheet was filed against all the appellants/accused under Sections 294, 506-B & 307 read with Section 34 of IPC and while framing the charge, the First Additional Sessions Judge, Durg framed the charge against all the appellants/accused under Sections 294, 506-B & 307 read with Section 34 of IPC which were denied by them and they prayed for trial.
6. So as to hold the appellants/accused guilty, the prosecution examined 10 witnesses namely PW-1 Dr. Sanjay Kumar Valvandre, PW-2 Dilbagh Singh,

PW-3 Ravinder Singh, PW-4 Dr. Rajeev Pal, PW-5 Jeet Singh, PW-6 Hardeep Singh, PW-7 Mahendranath Singh, PW-8 Dr. Rajkiran, PW-9 Dr. Parag Gupta and PW-10 Yaswant Shrivastava in support of its case. Statements of appellants were also recorded under Section 313 Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. No defence witness examined by appellants.

7. The First Additional Sessions Judge, Durg after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment while acquitting the appellants of the charges under Sections 294 & 506-B of IPC, convicted and sentenced them as mentioned in para-1 of this judgment, hence this appeal.
8. Learned counsel for the appellants has not disputed the incident, injuries and weapon used by the appellants. His submission was that the injuries sustained by complainant Jeet Singh (PW-5) were neither grievous in nature nor fatal for life. He submitted that due to previous enmity of PW-5 with the appellants, they were falsely implicated in this case. He also submitted that no any independent witness has supported the prosecution case and there are major contradictions and omissions in the statement of the witnesses. The trial Court has committed grave error and illegality by recording conviction of the appellants under Section 307 of IPC.

Lastly, learned counsel for the appellants submitted that if this Court finally comes to the conclusion that the appellants have rightly been convicted by the trial Court for offence under Section 307 of IPC, considering the fact that the appellants are the first offender aged about 28, 20 & 24 years at the time of incident, the incident took place on 04.11.2013, sentence imposed upon appellants was ten years of R.I. with default sentence and the appellants remained in jail for about seven years, four

months & ten days, they have no criminal antecedents, they may be given the benefit of Probation of Offender Act, and sentenced to the period already undergone by them.

9. On the other hand, learned counsel for the State supporting the impugned judgment submitted that the trial Court considering the overall evidence available on record has rightly convicted and sentenced the appellants/accused by the impugned judgment which calls for no interference by this Court.
10. Heard learned counsel for the respective parties and perused the material available on record including the impugned judgment.
11. PW-5 Jeet Singh, victim, has stated in his deposition that on the date of incident at about 11:30 pm, all the above three accused/appellants came in front of his house using filthy language against him. He has stated that there was dispute between him and Satosh @ Mathura regarding house. PW-5 has further stated that when he objected to the appellants abusing him, all the appellants went from there, then after half an hour, they again reached in drunken conditions and there was scuffling between him (PW-5) and appellant Mathura, at that time appellant Rajesh Singh @ Chhotu also assaulted him by hands. PW-5 has stated that during scuffle, appellant Santosh gave knife in the hands of appellant Ramesh and Ramesh gave one knife blow to him on his back, and PW-5 fell down and again Ramesh gave second knife blow on his back. PW-5 has further stated that when he shouted, Ravinder Singh (PW-3) came there and rescued him from Ramesh and Chhotu. When PW-5 was running from there, appellant Chhotu assaulted him by knife as a result of which he sustained injury on his left hand. PW-5 has stated that thereafter, the father of Chhotu namely Parmatma Singh reached on the place of occurrence and he (PW-5) ran from there towards Khursipar Police Station for lodging the report. He has

stated that he was admitted in Sector-9 Hospital for about 15 days. Looking to the evidence of Jeet Singh (PW-5), there are no major contradictions or omissions in his court evidence and in the F.I.R. (Ex.-P/7) which was lodged by him.

- 12.** The version of PW-5 has been duly supported by the evidence of PW-3 Ravinder Singh and as per MLC report (Ex.-P/1), injuries were found on the body of PW-5 which have also been duly proved by PW-1 Dr. Sanjay Kumar Valvandre, therefore, there is no reason to disbelieve the evidence of PW-5, PW-3 and Ex.-P/1 MLC report.
- 13.** PW-4 Dr. Rajeev Pal conducted X-ray of Jeet Singh (PW-5) and gave X-ray report vide Ex.-P/6 and as per report, PW-4 opined that air was present below both diaphragm which indicates that there was hole in intestines of abdomen and X-ray of chest was normal. PW-4 has duly proved Ex.-P/6.
- 14.** PW-8 Dr. Rajkiran conducted the sonography of Jeet Singh (PW-5) and gave his report vide Ex.-P/15 and opined that sonography was normal, but he advised for X-ray of abdomen because there was air in the abdomen due to which all the organs were not visible. PW-8 has duly proved Ex.-P/15.
- 15.** PW-9 Dr. Parag Gupta is the Senior Medical Officer in Sector-9 Hospital, Bhilai. PW-9 has stated that Jeet Singh (PW-5) was admitted in hospital on 05.11.2013 at about 02:45 hours, he found the stab injury on the stomach of PW-5 and conducted the surgery of PW-5 and duly proved bed-head tickets vide reports Ex.-P/17, Ex.-P/18, Ex.-P/19 & Ex.-P/20.
- 16.** PW-7 Mahendranath Singh, Assistant Sub-Inspector, has stated that as per memorandum statement (Ex.-P/4) of appellant Rajesh Singh @ Chhotu, he (PW-7) seized one knife from Rajesh Singh in the presence of witnesses Dilbagh Singh (PW-2) and Hardeep Singh (PW-6) vide seizure memo Ex.-P/5. Thereafter, PW-7 arrested the appellants vide Ex.-P/12, Ex.-P/13 & Ex.-P/14. Dilbagh Singh (PW-2) has admitted his signature on the documents of

Ex.-P/3, Ex.-P/4 & Ex.-P/5. Therefore, there is no reason to disbelieve the evidence of Mahendranath Singh (PW-7).

17. In the present case, the incident happened on 04.11.2013 about 12:00 hours and the prompt F.I.R. (Ex.-P/7) lodged by Jeet Singh (PW-5) at about 00:15 hours within 15 minutes. Looking to the entire evidence available on record, it appears to this Court that on the basis of statement/evidence of victim Jeet Singh (PW-5) and other witnesses duly supported and corroborated by MLC report (Ex.-P/1) and other documents i.e. Ex.-P/6, Ex.-P/15, Ex.-P/17, Ex.-P/18, Ex.-P/19 & Ex.-P/20, the prosecution has fully proved its case against the appellants. The injuries sustained by PW-5 being on his abdomen, it was definitely dangerous to life in the ordinary course of nature, therefore, the offence under Section 307/34 of IPC is duly made out against the appellants. The trial Court has rightly convicted the appellants for the offence under Section 307/34 IPC

18. As regard the sentence, considering the facts and circumstances of the case, the fact that due to previous enmity regarding house, the dispute arose between the appellants and victim Jeet Singh (PW-5) in which PW-5 sustained stab injury on his abdomen which was fatal to his life, the fact that the appellants remained in jail for about seven years & five months, the incident took place in the year 2013, this Court is of the opinion that the ends of justice would be served if they are sentenced to the period already undergone by them for the offence under Section 307/34 of IPC while maintaining the fine amount each as awarded by the trial Court with default stipulation and the same is paid as compensation under Section 357 Cr.P.C. to the complainant/victim.

19. In the result, the appeal is allowed in part. While confirming the conviction of the appellants awarded by the trial Court under Section 307 read with Section 34 of IPC, they are sentenced to the period already undergone by

them. However, the fine amount Rs.1,000/- imposed on each of the appellants with default sentence by the trial Court shall remain intact which would be payable to victim Jeet Singh (PW-5) by the trial Court after due verification. Since the appellants are in jail, they be set free forthwith if not required in any other case.

Sd/-

(Gautam Chourdiya)
Judge

vatti