

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1409 of 2016**Judgment reserved on : 27/10/2021Judgment delivered on : 17/11/2021

- Suryakant @ Surya Bhatriya S/o Sumanlal Bhatriya, Aged about 19 years, R/o- Kundrapara, Near Shiv Mandir, Behind Holy Cross School, P.S. - Kotwali, Raipur, District - Raipur (C.G.)

---- Appellant

Versus

- State of Chhattisgarh, Through : Police Station – Kotwali, Raipur, District Raipur (C.G.)

---- Respondent/State

For Appellant : Shri Naveen Shukla, Advocate

For Respondent/State : Shri Anand Verma, Deputy 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 08.11.2016 passed by IX Additional Sessions Judge, Raipur, District Raipur (C.G.) in Sessions Trial No. 87/2016, whereby the appellant stands convicted and sentenced as under:-

<u>Conviction</u>	<u>Sentence</u>
Under Section 307 of IPC aggravated form of offence under Section 324 of IPC	R.I. for five years and pay a fine of Rs.500/-, in default of payment to further undergo additional R.I. for three months

2. Facts of the case in brief are that on 24.01.2016 at 10:30 pm when complainant/victim- T.K. @ Tilak @ Tilak Kumar @ Chhedu (PW-2) was sitting in his *basti* with his friend namely Daud Harpal (PW-1) and talking with each other, the appellant came there saying that why they were sitting

here and started abusing the victim filthily and threatened him for his life. Thereafter, the appellant took out a pointed weapon like knife and assaulted on the right side of abdomen of the victim as a result of which his intestine came out from the abdomen. Prompt F.I.R. (Ex.-P/3) was lodged by the victim on the same day which was registered under Sections 294, 506 & 324 of IPC against the appellant under Crime No. 15/16 in Police Station Kotwali, Raipur. The incident was witnessed by Lalubagh, Suhan Bagh, Dinesh Tandi.

3. Complainant T.K. @ Tilak @ Tilak Kumar @ Chhedu (PW-2) was sent for medical examination to Government Hospital Raipur vide Ex.-P11. PW-2 was medically examined by PW-7 Dr. Santosh Bhandare who gave his MLC report vide Ex.-P/5 and found following injuries on the body of PW-2:-

- i. Incised wound in size of 1½ cm x 1 cm over lower part of abdomen, blood was oozing from it;

Dr. Santosh Bhandare (PW-7) opined that the injury was caused within 0-8 hours from the examination of PW-2 and the same was caused by hard and sharp object. Thereafter, PW-5 was sent for surgery department of MCHR for further examination, expert opinion.

4. During investigation, blood stained clothes of the victim were seized vide Ex.-P/1. Spot map was prepared by PW-10 Dilip Kumar Sahu, Assistant Sub-Inspector vide Ex.-P/2. *Nazrinaksha* (Ex.-P/4) was prepared by PW-6 Patwari M.K. Pandey.
5. On 25.01.2016 the appellants/accused was arrested by the police vide arrest memo Ex.-P/09. Memorandum statement of the appellant was recorded vide Ex.-P/7 consequent to which a knife was seized from his possession vide Ex.-P/8. 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' & 'D' i.e. clothes of victim (PW-2) and Article 'E' knife seized from the appellant. It also

mentioned in that report that in Article 'C' human blood was found.

6. After recording the statements of the witnesses and completion of the investigation, charge-sheet was filed against the appellant/accused under Sections 294, 506, 324 & 307 of IPC and Section 25 & 27 of the Arms Act. While framing the charges, IX Additional Sessions Judge, Raipur framed the charges against the appellant/accused under Sections 294, 506 (Part-II), 324 & 307 of IPC and under Section 25 (1) (1-a) & 27 (1) of the Arms Act which were denied by him and prayed for trial.
7. So as to hold the appellant/accused guilty, the prosecution examined 11 witnesses namely PW-1 Daud Harpal, PW-2 Tilak Kumar Tandi, PW-3 Dinesh Tandi, PW-4 Sudama, PW-5 Lalu Bagh, PW-6 M.K. Pandey, PW-7 Dr. Santosh Bhandare, PW-8 Surtaz Harpal, PW-9 Ashish Nayak, PW-10 Dilip Kumar Sahu and PW-11 Dr. S.N. Gole in support of its case. Statement of appellant was also recorded under Section 313 Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. No defence witness examined by appellant. The appellant stated that he lodged the report against the complainant, therefore, the complainant and his friend falsely implicated him.
8. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment while acquitting the appellant of the charges under Sections 25 (1) (1-a) & 27 (1) of the Arms Act, convicted and sentenced him as mentioned in para-1 of this judgment, hence this appeal.
9. Learned counsel for the appellant submitted that the appellant has been falsely implicated in this case by the complainant. He submitted that the case is not made out under Section 307 of IPC because the case has been compromised between the parties. He further submits that appellant also lodged the report against the complainant on 24.01.2016 which is counter

case and the appellant and the complainant has compromised in the trial Court. Copy of F.I.R. No. 16/2016 and compromise application are collectively filed herewith as Annexure-A/2. The prosecution has failed to prove its case beyond all reasonable doubt and the trial Court has committed grave error and illegality by recording conviction of the appellant under Section 307 as an aggravated form of offence under Section 324 of IPC.

- 10.** 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 right convicted and sentenced the appellant/accused by the impugned judgment which calls for no interference by this Court.
- 11.** Heard learned counsel for the respective parties and perused the material available on record including the impugned judgment.
- 12.** PW-2 Tilak Kumar Tandi has specifically stated that on the date of incident i.e. 24.01.2016 at about 10-11:00 pm, when he alongwith his friend Daud Harpal (PW-1) was coming toward Shiv Mandir, the accused/appellant abusing him filthily, assaulted him by knife on his abdomen and his intestine came out from the abdomen. The incident was witnessed by nearby persons who took him (victim) to the Police Station City Kotwali, and he lodged prompt F.I.R. (Ex.-P/3) against the appellant. Thereafter, the police took him to Medical College Hospital, Raipur where he was treated for 15 days. PW-2 further stated that he could not say that the police has prepared spot map (Ex-P/2) in his presence. He stated that thereafter the police has seized his clothes worn by him at the time of incident, the seizure of cloths is Ex.-P/1. There is no reason to disbelieve the evidence of PW-1 because he is the victim/complainant. The evidence of PW-2 is supported by PW-1 Daud Harpal who is the eyewitness of the incident and has duly proved seizure (Ex.-P/1) & spot map (Ex.-P/2) and he also remained firm in his cross-

examination.

- 13.** The version of PW-2 Tilak Kumar Tandi has been duly supported by the evidence of PW-3 Dinesh Tandi, PW-4 Sudama and PW-5 Lalu Bagh. PW-6 M.K. Pandey is the Patwari who prepared the *Nazrinaksha* vide Ex.-P/4 and has duly proved the same.
- 14.** PW-7 Dr. Santosh Bhandare conducted MLC of Tilak Kumar Tandi (PW-2) and gave his report vide Ex.-P/5 as mentioned in para-3 of this judgment and has duly proved Ex.-P/5.
- 15.** PW-8 Surtaz Harpal and PW-9 Ashish Nayak are witnesses of memorandum statement (Ex.-P/7) of the appellant, they have not supported the prosecution case and have been declared hostile by the prosecution.
- 16.** PW-10 Dilip Kumar Sahu, Assistant Sub-Inspector, has stated that he prepared the spot map (Ex.-P/2) and recorded memorandum statement (Ex.-P/7) of appellant consequent to which he seized one knife from appellant in the presence of witnesses PW-8 Surtaz Harpal and PW-9 Ashish Nayak vide seizure memo Ex.-P/8. PW-10 has admitted his signature on the documents of Ex.-P/2, Ex.-P/7 & Ex.-P/10 and has duly proved the same.
- 17.** PW-11 Dr. S.N. Gole is the Associate Professor in Dr. Bhimrao Ambedkar Hospital, Raipur. PW-11 has stated that Tilak Kumar Tandi (PW-2) was admitted in hospital on 24.01.2016 and there was injury on the right side of abdomen of PW-2 and surgery of PW-2 was conducted. During surgery, he noticed that there was a hole in one intestine and mizioapedics was also torn which was operated. PW-11 has duly proved bed-head tickets vide Ex.-P/19. He also stated that PW-2 was discharged from the hospital on 09.02.2016.
- 18.** In the present case, the incident happened on 24.01.2016 at about 10:30 pm and the F.I.R. (Ex.-P/3) was lodged by Tilak Kumar Tandi (PW-2) at about

11:15 pm. Looking to the entire evidence available on record, it appears to this Court that on the basis of statement/evidence of victim Tilak Kumar Tandi (PW-2) and other witnesses namely PW-1 Daud Harpal, who is the eyewitness, Dinesh Tandi (PW-3) , Sudama (PW-4) & Lalu Bagh (PW-5) duly supported and corroborated by MLC report (Ex.-P/5) and bed-head tickets (Ex.-P/19) of the victim (PW-2), the prosecution has fully proved its case against the appellant beyond all reasonable doubt. The injuries sustained by PW-2 being on his abdomen, it was definitely dangerous to life in the ordinary course of nature and the accused/appellant assaulted in such a manner that the death of human being was attempted and it can safely be inferred that the accused/appellant voluntarily caused such injury with intent to commit murder of the victim. Therefore, the offence under Section 307 which is aggravated form of offence under Section 324 of IPC is duly made out against the appellant. The trial Court has rightly convicted the appellant for the offence under the aforementioned Section of IPC.

19. As regards the sentence, in the matter of **George Pon Paul Vs. Kanagalet and Others, (2009) 13 SCC 478** the Hon'ble Supreme Court considering the fact that fine amount has been deposited and paid to the victim as also the long passage of time, sentence the accused to the period already undergone by him. In the matter of **Nasir Vs. State of Uttar Pradesh** reported in **2010 (13), SCC 251** the Hon'ble Supreme Court considering the fact that the appellant was sentenced to 5 years imprisonment under Sections 399 and 402 of IPC, occurrence took place 29 years ago, the appellant remained in custody for period of 6 months, allowed the appeal in part and reduced the sentence to the period already undergone by the appellant. In the present case, considering the fact that the incident took place 2016, the appellant at that time was 19 years old, as per recent report dated 11.11.2021 received from the Office of Jail Superintendent, Central

Jail Raipur (C.G.), appellant was in jail from 26.01.2016 to 07.11.2016; from 25.01.2020 to 10.11.2021; from 08.11.2016 to 03.02.2018 for about three years, nine months & 26 days and presently he is in jail, further that though the offence is not compoundable, victim Tilak Kumar Tandi and the appellant have filed the compromise petition before the trial Court and compromise taken place between them, keeping in view the decisions in the matter of *George Pon Paul* (supra) & *Nasir* (supra), in the considered view of this Court, ends of justice would be served if the appellant is sentenced to the period already undergone by him while keeping the fine sentence with default sentence imposed by the trial Court intact.

20. Consequently, the appeal is allowed in part. While maintaining the conviction of appellant under Section 307 which is aggravated form of offence under Section 324 of IPC, he is sentenced to the period already undergone by him. However, the fine amount with default sentence imposed by the trial Court shall remain as it is. The appellant is in jail and therefore, he be set free forthwith if not required in any other case.

Sd/-

(Gautam Chourdiya)
Judge