

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 25 of 2020**

Judgment Reserved on : 29/11/2021

Judgment Delivered on : 17/12/2021

1. Sharad Goutam, S/o Late Shri Satyaprakash Goutam, Aged About 30 Years, R/o Sarawa, Police Station Shikarpur, District Bulandshahar, Uttar Pradesh.
2. Kamal Chandra, S/o Late Shri Ganpat Chandra, Aged About 20 Years, R/o Village Sukhada, Police Station Dabhara, District Janjgir-Champa, Chhattisgarh.
3. Radheshyam Kashyap, S/o Shri Garibram Kashyap, Aged About 36 years, R/o Barbhatha, Police Outpost Pantora, Police Station Baloda, District Janjgir-Champa, Chhattisgarh.

---- Appellants

Versus

- State of Chhattisgarh Through The Station House Officer, Police Station Jaijaipur, District Janjgir-Champa, Chhattisgarh.

---- Respondent

For Appellants : Shri Rishi Rahul Soni, Advocate.

For State/Respondent : Shri Sudeep Verma, Dy. G.A.

Hon'ble Shri Justice Arvind Singh Chandel**C.A.V. Judgment**

1. This appeal has been preferred against the impugned judgment dated 21.11.2019 passed by the 2nd Additional Sessions Judge, Sakti, District – Janjgir-Champa, (C.G.) in Sessions Trial No.13/2016 wherein appellants have been convicted and sentenced as under :-

<u>Appellant</u>	<u>Conviction</u>	<u>Sentence</u>
Sharad Goutam	U/s 307/34 of the I.P.C.,1860	R.I. for 10 years and fine of Rs.10,000 with default stipulations.
	U/s 27 of the Arms Act, 1959	R.I. for 7 years and fine of Rs.10,000/- with default stipulations. (Both above sentences to run concurrently)
Kamal Chandra	U/s 307/34 of the I.P.C.,1860	R.I. for 10 years and fine of Rs.10,000 with default stipulations.
Radheshyam	U/s 307/34 of the I.P.C.,1860	R.I. for 10 years and fine of Rs.10,000 with default stipulations.

2. Prosecution case, in brief, is that on 17.02.2015 at about 8:00 PM, complainant Sanjay Kumar (PW1) was going to village Tumidih by his motorcycle bearing registration No.CG 11/C 5064. When he reached near canal situated between Odekera Kutrabod, appellants No.1,2&3 namely Sharad Goutam, Kamal Chandra and Radheshyam boarded on motorcycle came from back side and they made an attempt to commit murder of the complainant by firing gun shot and consequently, the complainant sustained gun shot injury on his back. After the incident, injured Sanjay Kumar (PW1) went to Krishna Kumar Soni (PW17) and narrated the entire story to him. On 17.02.2015, on the basis of information given by Sanjay Kumar(PW1), Dehati Nalishi (Ex.P2) and F.I.R. (Ex.P22) were registered. Statements of complainant Sanjay Kumar and other witnesses were recorded under Section 161 of Cr.P.C. After completion of the investigation, a charge-sheet was filed. Trial Court

framed the charges. To prove the guilt of the accused/appellant, prosecution has examined as many as 17 witnesses. No defence witness has been examined. Statement of appellants under Section 313 of the Cr.P.C. were recorded, wherein accused/appellants have pleaded innocence and false implication in the matter.

3. On completion of the trial, the trial Court has convicted and sentenced the appellant as mentioned in first paragraph of this judgment. Hence, this appeal.
4. Learned Counsel appearing on behalf of the appellants submits that trial Court has wrongly convicted the appellants without there being sufficient and clinching evidence against them. He further submits that in Dehati Nalishi (Ex.P1) and F.I.R. (Ex.P22), names of the assailants are not mentioned and both are lodged against unknown persons. Sanjay Kumar (PW1) in his statement recorded under Section 161 of Cr.P.C., has also not disclosed the names of any of the assailants nor he has told anything regarding the identification of the assailants. During investigation, Test Identification Parade of the assailants/appellants have also not been conducted. For the first time, complainant identified the appellants at the time of recording of his statement before the trial Court which is suspicious and not reliable. Apart from the statement of complainant Sanjay Kumar (PW1), there is no other evidence available on record on the basis of which it can be said that appellants were the assailants. Therefore, conviction of the appellants by the trial Court is not sustainable.
5. Per contra, learned Counsel appearing for the State supports the impugned judgment and submits that sentence awarded by the trial

Court is just and proper and requires no interference.

6. I have heard learned Counsel appearing for the parties, perused the statement of witnesses and other annexed documents available on record minutely.
7. There is no dispute on the point that except the complainant Sanjay Kumar (PW1), there is no other eye-witness in this case. On perusal of statements of Dr.S.L. Banjare (PW9), Dr. Y.R. Krishna (PW15), Dr. Ravishekhar (PW16) and medical examination report of the complainant i.e. Ex.P22, 25,26,27 and Ex.P33 and discharge summary i.e. Ex.P30, it is well-established that Sanjay Kumar (PW1) sustained one gun shot injury on his left lung. He was admitted in the hospital from 18.02.2015 to 23.02.2015 and during that period, his operation was also conducted by the Doctor. During course of arguments also, learned counsel for the appellants does not make any dispute about these facts.
8. Now, the question for consideration is that whether injury sustained by complainant Sanjay Kumar (PW1) is caused by the present appellants. Earlier, it has been discussed that except the complainant Sanjay Kumar (PW1), there is no other eye-witness in this case. Therefore, statement of the complainant Sanjay Kumar (PW1) has to be examined minutely.
9. Sanjay Kumar (PW1), who is a Siksha Karma, Grade-1, posted as Principal in a Higher Secondary School, Kutrabor has deposed that on the date of incident, at around 8:30 PM, he went to an ATM and withdrew Rs.10,000/-. From there, he went to a shop in his motorcycle and then went to a wine shop. Thereafter, he again went

to a shop and purchased some item, there he saw appellant No.3 Radheshyam in the shop, there he also saw, Appellant No.1 Sharad Goutam and appellant No.2 Kamal Chandra, who were standing near shop with a motorcycle. Then he (complainant) went towards his village. On the way, when he reached near a pond, appellants blew loud horn of motorcycle, then he gave side to the appellants. Thereafter, he heard a sudden loud sound, upon which he realized that he sustained gun shot injury on his back. Then appellants overtook him and while overtaking, he saw that appellant No.3 Radheshyam was riding the motorcycle, appellant No.2 Kamal Chandra was sitting in the middle and appellant No.1 Sharad Goutam was sitting in the back lashed with a gun. He further deposed that, thereafter, he had gone to his uncle Krishna Kumar Soni (PW17) who admitted him in the hospital. During cross-examination, in paragraph 8, he has stated that on the date of incident, when appellants overtook him, then he identified them with the help of head light of his motorcycle. In paragraph 9, he again deposed that after the gun shot, speed of his motorcycle decreases and appellants overtook him and then he saw the appellants.

10. On bare perusal of Dehati Nalishi (Ex.P2) and F.I.R. (Ex.P22), it is clear that both are registered against unknown persons and names of the assailants are also not mentioned. It is also not mentioned that there were three assailants. Complainant Sanjay Kumar (PW1) in his statement recorded under Section 161 of the Cr.P.C. on 18.02.2015, has not disclosed the name of the assailants. However, first time he disclosed that there were three assailants, but he has not stated that he knew them or would identify them on seeing. He has also not

stated that while overtaking of the motorcycle, he had identified them with the help of head light of the motorcycle. Prosecution has also not conducted any Test Identification Parade of the appellants. On 12.04.2016, the complainant informed the S.H.O, Jaijaipur through a letter vide Ex.P7 regarding his treatment. On the said letter also, complainant has not stated anything regarding the identification or names of the assailants. The complainant herein, is a well-educated person. He is a Siksha Karmi, Grade-1, posted as Principal in a School. If he had seen the assailants or known them, then he had several opportunities to disclosed their names but he had not disclosed the same. Rather, for the first time, at the time of recording of his statement in the trial Court, he has identified the appellants, therefore, the identification made in the Court is suspicious. On the basis of the said identification, it cannot be concluded that the appellants were the assailants. Thus, conviction of the appellants under Section 307/34 of the I.P.C. is not sustainable and they are entitled to get benefit of doubt.

11. With regard to the conviction of the appellant No.1 Sharad Goutam under Section 27 of the Arms Act, 1959, on perusal of evidence adduced by the prosecution, it is established that on the basis of discloser statement i.e. Ex.P9 and seizure memo i.e. Ex.P10, one countrymade gun, 7 cartridge of 315 bore were seized from his possession. For carrying the aforesaid arms and ammunition, he did not possess any legal licence. In the present case, prosecution has failed to submit the ballistic expert report. Thus, on the absence of the said report, it cannot be established that on the date of incident, appellant No.1 Sharad Goutam had used the countrymade gun.

Therefore, conviction of the appellant No.1 Sharad Goutam under Section 27 of the Arms Act, 1959 is also not sustainable. Since, it has been established that one countrymade gun, 7 cartridge of 315 bore were seized from his possession and for carrying the aforesaid arms and ammunition, he did not possess any legal licence, and, therefore, he is liable to be punished under Section 25(1A) of the Arms Act, 1959.

12. Resultantly, appellant No.2 and 3 namely Kamal Chandra and Radheshyam Kashyap respectively, are acquitted of the charge under Section 307/34 of the Indian Penal Code. It is reported that they are in jail, therefore, it is directed that they be released forthwith, if not required in any other case. Further, Appellant No.1 Sharad Goutam is also acquitted of the charge for the offence punishable under Section 307/34 of the Indian Penal Code. He is also acquitted of the charge under Section 27 of the Arms Act, 1959 and instead of that he is convicted under Section 25(1A) of the Arms Act, 1959 and sentenced for rigorous imprisonment for 6 years and to pay fine of Rs.10,000/-. Ordered accordingly. In default of payment of fine, he is liable to undergo additional rigorous imprisonment for further three months.
13. Consequently, the appeal is allowed in part to the extent indicated above. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)

Judge