



मामला क्रमांक सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश HIGH COURT OF CHHATTISGARH AT BILASPUR	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	CRIMINAL APPEAL NO. 608/2005	
	<u>APPELLANTS</u>	1. Bhashkar Mahto, S/o Nitya Nand Mahto, aged 32 yrs. 2. Sandeep @ Sanjeev Mahto, S/o Nitya Nand Mahto, aged 26 yrs. Both R/o Saket Colony, Jagdalpur, Distt. Bastar C.G.
	<u>RESPONDENT</u>	State of Chhattisgarh through P.S. Bodhghat, Distt. Bastar C.G.
	Present: Mr. Vijay Kumar Pandey, Advocate for the appellants. Mr. Yashwant Singh Thakur, Govt. Advocate for the respondent-State.	
	<u>ORAL JUDGMENT</u> (29 th May, 2007)	
	<u>Dhirendra Mishra, J:</u> This appeal is directed against the judgment dated 13 th January, 2005 passed by learned 1 st Additional Sessions Judge, Bastar at Jagdalpur in S.T. No.146/2004 whereby learned Additional Sessions Judge after holding appellant No.1-Bhashkar guilty for commission of offence under Section 307 of the IPC and appellant No.2-Sandeep @ Sanjeev guilty for commission of offence under Section 307/34 of the IPC, sentenced each of the appellant to undergo R.I. for five years and to pay a fine of Rs.200/-, in default of payment of fine to further undergo R.I. for one month. Case of the prosecution, in brief, is that injured Harpal Singh was employed as Water Supplier in the Municipality. On 10.1.2004 at about 6.00 p.m., he went to purchase the eggs in Tamas shop where Sandeep & Bhaskar	

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	<p>— 2 —</p> <p>were also present. Sandeep abused Harpal with the filthy language, caught hold of his collar and slapped him once, upon which Harpal also slapped Sandeep. Accused Bhaskar enraged by the act of Harpal came there threatening that he shall murder him and took out a knife and stabbed on his stomach as a result of which his intestines came out. Injured Harpal was taken to his home by the persons of locality whereupon his wife Parwati (PW-2) took him to the Police Station on rickshaw and thereafter he was admitted in the hospital. Parwati (PW-2) lodged the report of Ex.P-3 on which offence under Section 307 of the IPC was registered against accused Bhaskar.</p> <p>During investigation the injured was sent to Maharani Hospital, Jagdalpur where Dr. Sanjay Basak (PW-1) examined the injury and gave medical examination report of Ex.P-1. Prior to lodging of F.I.R., Dehati Nalishi of Ex.P-3 was registered on the complaint of Parwati, wife of injured. Injured Harpal was admitted in the hospital as indoor patient and his bed-head ticket is Ex.P-6. In pursuance of the statement (Ex.P-4) of appellant Bhaskar, weapon of offence, Knife was taken into possession from the appellant vide Ex.P-5. Blood stained underwear & shirt of injured were taken into possession vide Ex.P-7. Spot map is Ex.P-8. Seized weapon of offence and clothing of injured were sent to the doctor for his opinion regarding presence of blood stained over the same.</p> <p>After completing investigation, charge sheet was filed in the Court of Chief Judicial Magistrate, Jagdalpur who in turn committed the same to the court of Sessions Judge, Jagdalpur and the same was received on transfer by learned Additional Sessions Judge, Jagdalpur for trial. The prosecution in order to establish the charges against the appellants examined six witnesses. Thereafter, statements of appellants were recorded under Section 313 of Cr.</p>	

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	<p>P. C. in which they denied the allegation against them and pleaded innocence and false implication. They have also examined two defence witnesses in their defence.</p> <p>Learned Additional Sessions Judge after hearing the arguments of learned counsel for the respective parties, convicted and sentenced the appellants, as mentioned above.</p> <p>Learned counsel for the appellants submits that appellant No.2 Sandeep has been convicted in this case with the aid of Section 34 of the IPC, however, there is no evidence available on record to show that the said offence was committed by both the appellants after premeditation as a result of pre-planning. From the evidence available on record it would be evident that incident occurred in a spur of moment on a trivial issue as the appellants were annoyed with the supply of municipal water. From the case of prosecution itself it is evident that initially fist blow was given by appellant Sandeep which was retaliated by injured Harpal and in this process Bhaskar all of sudden took out a knife and assaulted Harpal on his stomach with it. Thus, the Court below was not justified in convicting appellant No.2-Sandeep with the aid of Section 34 of IPC. He further submits that appellant Bhaskar has already undergone the sentence and has been released on 9.3.2007, however, appellant Sandeep has not been released because he was on bail during trial.</p> <p>On the other hand, learned Government Advocate for the State supports the impugned judgment. However, he does not dispute that appellant Bhaskar has been released from jail after completing his sentence and a written communication to this effect has also been submitted by the State counsel, which is taken on record.</p>	

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	<p>I have heard learned counsel for the respective parties and perused the evidence available on record as also the impugned judgment.</p> <p>As far as the injury sustained by injured Harpal is concerned, Dr. Sanjay Basak (PW-1), who has examined injured Harpal and given his report Ex.P-1, has stated that one stabbed injury of size 4"x3" stomach deep was present, omentum & intestines had come out and blood was oozing from the place of injury. 3 feet long intestine was came out. The complainant was conscious, pulse rate was 70 per minute, blood pressure was 100/60 and rate of respiration was 20 per minute. He had advised admission and immediate surgery by surgical specialist and had also directed blood transfusion. Accordingly, injured was admitted in the hospital and remained there for 15 days.</p> <p>Thus, from perusal of the report of Ex.P-1 and statement of Dr. Sanjay Basak (PW-1), the injury sustained by Harpal is established.</p> <p>As far as the involvement of the appellants in the crime in question is concerned, Parwati Bai (PW-2), who has lodged Dehati Nalishi (Ex.P-3), has stated that at the time of incident she was at her residence, at that time two boys namely Kailash & Rinku brought her husband, her husband told her that he had quarrel with Bhaskar and he has stabbed him. Thereafter, she went to the Police Station along with her husband and had lodged Dehati Nalishi Ex.P-3. Her husband was admitted in the Maharani Hospital.</p> <p>PW-3 Harpal Singh has also stated that he had gone to the egg shop situate in front of his house to purchase the eggs. Bhaskar & Sandeep were consuming liquor at that place. He was engaged in water supplying work for Municipality. Both the brothers said that he is not supplying the water and saying so Sandeep caught him and Bhaskar assaulted him with the knife on</p>	

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	<p>- 5 -</p> <p>his stomach as a result of which his intestines came out and he felt down. Thereafter, the accused persons fled from there. Kailash & Rinku were coming at that time and both of them took him to his house. They told his wife that Bhaskar had assaulted with the knife and she should take him to the Police Station, whereupon his wife took him to the police station and thereafter, he was admitted in the hospital, where he underwent treatment for 15 days. In the cross-examination this witness has stated that he met the accused persons in the shop by-chance and when after purchasing the articles he was returning, he was involved in verbal dual with the accused persons regarding supply of water. On being asked, he replied that on that day he was on leave and therefore, he was not in a position to supply water on that day. He has further stated that is correct to say that when he was returning towards his home, he all of sudden felt pain and when he look downward, he found that blood was oozing and thereafter he heard the commotion that Bhaskar has assaulted him.</p> <p>Thus, from the evidence of above two witnesses, the involvement of appellant Bhaskar in the crime in question is established beyond reasonable doubt, as both these witnesses have categorically stated that Bhaskar had assaulted Harpal with the knife.</p> <p>So far as the statement of defence witness Kailash (DW-1) is concerned, he has stated that no quarrel took place between Harpal and Bhaskar & Sandeep before him. He has further stated that crowd had gathered there, Harpal was lying on the ground and thereafter he does not know what happened. Thus, from his evidence it is clear that he not the witness of incident. Similar is the statement of DW-2 Ramashray, who is owner of grocery shop situate near the place of incident and has stated that he</p>	

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	<p>does not recognize Harpal. However, Harpal came to his shop on the date of incident for purchasing oil and there was no quarrel between Harpal and Sandeep & Bhaskar before his shop. Thus, it is clear that he is also not the witness of incident.</p> <p>So far as the involvement of appellant Sandeep @ Sanjeev in the crime in question is concerned, learned trial court on the basis of statement of injured Harpal that Sandeep caught him and Bhaskar dealt a knife blow on his stomach has convicted Sandeep under Section 307/34 of the IPC, however, from the evidence available on record and from the statement of injured Harpal himself it is evident that the incident occurred in the spur of moment without premeditation and the incident initially started when Sandeep slapped Harpal for not supplying water and in retaliation Harpal also slapped Sandeep and seeing this Bhaskar all of sudden reached there and dealt a knife blow on his stomach. From the evidence available on record it is evident that Harpal himself has admitted in the cross-examination that injury was caused to him while he was returning towards his home, therefore, in the considered opinion of this Court the trial court was not justified in holding appellant Sandeep guilty of offence under Section 307/34 of the IPC.</p> <p>In the result, the appeal preferred by appellant Bhaskar being devoid of substance is hereby dismissed and his judgment of conviction is maintained. However, the appeal preferred by appellant Sandeep alias Sanjeev is allowed and his conviction under Section 307/34 of the IPC and sentence imposed thereon, are hereby set aside and he is acquitted of the above charge. He be set at liberty forthwith, if not required in any other case.</p>	<p>Sd/- Dhirendra Mishra Judge</p>