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HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 584 of 2002

- Sajid Khan, S/o Salim Khan, Aged about 18 years, R/o Bhartiyanagar, Camp-1 Near Saksharta Chowk Camp-1, P.S. Chhawani, Distt. Durg, Chhattisgarh. ---- **Appellant**

Versus

- State of Chhattisgarh, through Police Station- Chhawani Distt. Durg, Chhattisgarh. ---- **Respondent**

CRA No. 570 of 2002

- Hurdanand, S/o Ganesh Orria, Aged about 17 years, R/o Simplex Colony, Saksharta Chowk, Camp-1, P.S., Chhawani, Distt. Durg, Chhattisgarh. ---- **Appellant**

Versus

- State of Chhattisgarh, through the District Magistrate, Durg, Chhattisgarh. ---- **Respondent**

CRA No. 668 of 2002

- Mohd Aarif, S/o Umar Sharif, Aged about 19 years, R/o Qr. NO. 190, Tata Line Camp-1 Chawni, P.S. Chawni, District Durg, Chhattisgarh. ---- **Appellant**

Versus

- State of Chhattisgarh, through Police Station Chhawani District Durg. ---- **Respondent**

CRA No. 689 of 2002

1. Sheikh Hussain alias Hussaini, S/o Sheikh Chandshah, aged about 22 years.
2. Sheikh Malang, S/o Sheikh Chandshah, Aged about-25 years, both are R/o base No.1 Majar, Police Station Chhawani Distt. Durg, Chhattisgarh. ---- **Appellants**

Versus

- State of Chhattisgarh, through P.S. Chhowni, Durg, Distt. Durg, Chhattisgarh.

---- Respondent

(Cause-title taken from Case Information System)

For Appellant (CRA/584/2002 & CRA/668/2002) : Mr. Rahil Arun Kochar, Advocate

For Appellant (CRA/570/2002) : Ms. Indira Tripathi, Advocate

For Appellants (CRA/689/2002) : Mr. Shobhit Koshta, Advocates

For Respondent/State : Mr. H. S. Ahluwalia, Deputy Advocate General

Hon'ble Shri Justice Rakesh Mohan Pandey

Order on Board

30.06.2023

- 1) Since all the criminal appeals arise out of the judgment of conviction and order of sentence dated 15.05.2002, therefore, they were clubbed together, heard together and are finally decided by this common judgment.
- 2) These criminal appeals have been preferred by the appellants challenging therein the judgment of conviction and order of sentence recorded by the learned Additional Sessions Judge, Durg, District Durg in Criminal Sessions Trial No. 26/2001 dated 15.05.2002 whereby the appellants have been convicted and sentenced as under:-

S/No	Conviction	Sentence	Sentence on non-payment of fine
1.	U/s 148 IPC	3-3 months R.I. with fine of Rs. 500-500/-	15-15 days R.I.
2.	U/s. 307/149 IPC	2-2 years R.I. with fine of Rs. 1,000-1,000/-	3-3 months R.I.

- 3) It is informed that during the pendency these appeals, one of the accused, Bhupendra Ram, has expired and vide order dated 24/06/2016, Criminal Appeal No. 580 of 2002 was concluded as abated due to demise of the accused.
- 4) As per the case of the prosecution, on April 17, 2000, around 3:30 PM, on instance of Ravindra Kumar Dubey (PW/2) *Dehati Nalisi* was registered vide Ex.P/3 where he stated that on April 15, 2000, at around 8 PM, while he was near Deedar Photo Studio, the appellants arrived in a Jeep bearing registration number MP-24W-2368. They inquired about the whereabouts of his brother, Sunny. As he couldn't provide any information, they restrained him and the appellants Sheikh Malang and Sheikh Hussain assaulted him with a knife. Consequently, he sustained multiple stab injuries on various parts of his body. Other accused individuals were present with these two appellants. The injured party, Ravindra Kumar Dubey (PW/2), was

examined by Dr. O. P. Singh (PW/5) on April 15, 2000, the same day as the incident. The doctor noted the following injuries:

1. Three stab wounds on the chest, two on the left arm, one on the right arm, and two on the left thigh. The wounds were sharp and elliptical, about 1.5" x 0.5" in size. There were also some smaller wounds, approximately 0.2" x 0.25" in size.
 2. A sharp cut wound.
 3. A linear abrasion on the upper back.
- 5) The injuries appeared on the chest, arms, thigh, scalp (specifically, the occipital region of the head), and upper back.
- 6) Based on the *Dehati Nalisi* and the medical report, the police registered an FIR against six accused persons including the appellants. The charges filed against them were under Section 307/34 of the Indian Penal Code (IPC), which pertains to the offence of attempt to murder with common intention.
- 7) During the investigation, the Police arrested the appellants and recorded their memorandum statements. As a result, a knife (*gupti*) was seized from Sheikh Hussain (Ex.P/12), and

an iron spear (*Lohe ka Bhala*) was seized from the appellant Sheikh Malang (Ex.P/13). The Jeep with registration number MP-23-W-2368, which was in the possession of Sheikh Hussain, was also seized (Ex.P/14). Additionally, a spot plan was prepared (Ex.P/15).

8) After completion of investigation, the police submitted the charge sheet before the competent court. The trial court then framed charges against all the appellants under Sections 147, 148, 307, and 307/149 of the Indian Penal Code (IPC). The appellants denied the charges and pleaded not guilty. To establish the guilt of the appellants, the prosecution exhibited 21 documents and examined 10 witnesses. Under Section 313 of the Criminal Procedure Code (Cr.PC), the court recorded statements of the appellants. In the aforesaid statement, the appellants claimed that they were falsely implicated and asserted their innocence. However, it is important to note that the appellants did not examine any defence witness to support their claims or refute the prosecution's case.

9) After carefully evaluating the oral and documentary evidence, the learned trial court found the appellants guilty of the offenses mentioned in the opening para of this judgment.

10) Mr. Rahil Arun Kochar, learned counsel representing the

appellants in CRA Nos. 584 of 2002 and 668 of 2002, argues that while the names of the appellants are mentioned in the *Dehati Nalisi* Ex.P/3 and FIR Ex.P/11, however the injured party, Ravindra Kumar Dubey (PW/2), did not name these appellants in his court statement. Additionally, there are no specific allegations against these individuals regarding their involvement in the assault. Learned counsel asserts that the appellants have been falsely implicated in this case and that no concrete evidence has been adduced to attribute any overt act to them in commission of offence.

11) Ms. Indira Tripathi, learned counsel representing the appellant in CRA No. 570 of 2002, agrees with the previous argument. She emphasizes that the injured witness Ravindra Kumar Dubey (PW/2) did not make any allegation against the present appellant in his court statement.

12) Mr. Shobhit Koshta, learned counsel representing the appellants in CRA No. 689 of 2002, points out that a knife was seized from the possession of appellant Shekh Hussain. However, he notes that even the injured witness Ravindra Kumar Dubey (PW/2) did not make any specific allegations against the present appellants. Mr. Koshta further highlights that the iron spear and Jeep used in the commission of the crime were seized based on Sheikh Malang's memorandum statement.

13) On the contrary, learned State counsel argues that the appellants were part of an unlawful assembly and, with a common intention, they assaulted the injured party Ravindra Kumar Dubey (PW/2) using a deadly weapon. As a result, Dubey sustained serious injuries and was hospitalized for three days. The medical report from Dr. O. P. Singh (PW/5) indicates a puncture wound on the lungs, which was dangerous for his life. The learned State counsel contends that the appellants' act falls within the purview of Section 307 of the Indian Penal Code (IPC), which deals with attempt to murder. Therefore, appeals filed by the appellants deserve to be dismissed.

14) I have heard learned counsel for the parties and perused the record.

15) Based on the contents of the *Dehati Nalisi* Ex.P/3, it is evident that there was a longstanding enmity between the injured party's brother and the appellants. On the day in question, the appellants encountered the injured party near Deedar Photo Studio. They surrounded him, and Sheikh Hussain and Sheikh Malang assaulted him using a deadly weapon - knife and an iron spear, causing grievous injuries, including a punctured lung.

16) Based on the memorandum given by Sheikh Hussain and Sheikh Malang, the police recovered the knife and the iron

spear, which are documented as Ex-13 and Ex-14, respectively. The injured party, Ravindra Kumar Dubey (PW/2), underwent a medical examination conducted by Dr. O. P. Singh (PW/5). Dr. Singh has stated that there were multiple incised and stab wounds on vital parts of the injured party's body. The medical report, Ex.P/7, further indicates a sharp incised wound on the occipital region of the injured party's head. Dr. Singh expressed his opinion that if prompt medical treatment had not been provided, the injured party's life could have been at risk. These details from the *Dehati Nalisi*, the seizure of weapons, and the medical examination report provide substantial evidence supporting the prosecution's argument that the appellants assaulted the injured party, resulting in serious injuries.

- 17) Ravindra Kumar Dubey (PW/2), injured witness stated that on the date of the incident, he was standing near Deedar Photo Studio, then and there, the appellants came on a Jeep and Sheikh Malang inflicted knife injuries over his left chest and other parts of the body. He has further stated that Bhupendra Ram also inflicted knife injuries. But he has not made any allegations or overt-act against any of the appellants. He stated that the incident was witnessed by Hridaynarayan (PW/7), Ishwar (PW/3), Satpal Singh (PW/6) and Methi.

- 18) Ishwar (PW/3) has stated that Purdanand inflicted knife injuries whereas Sheikh Malang, Sajid, Arif also assaulted by knife on the thigh, chest, and hands of the injured party.
- 19) Santosh Kumar Bhardwaj (PW/4) stated that Sheikh Malang caused injury by means of a sharp edged weapon and thus, he has made allegation against Sheikh Malang.
- 20) Satpal Singh (PW/6) has stated that two persons were assaulting the injured party but he could not identify the assailants nor he could identify the weapon and has been declared hostile.
- 21) Hriday Narayan (PW/7) has stated that he could not see the incident.
- 22) S. N. Yadav, A.S.I. (PW/8) and R. K. Mishra, S.I. (PW/9) have investigated the offence.
- 23) Eye witnesses have made divergent allegations against the accused persons, but all of them have made allegations regarding assault against Sheikh Hussain, Sheikh Malang and Bhupendra Ram. There is allegation of assault against other appellants that they were present at the time of the incident but the evidence of injured Ravindra Dubey (PW/2) who categorically stated that the deadly weapon was used by Bhupendra and Sheikh Malang and fatal injuries were inflicted by both these persons.

24) Unfortunately, Bhupendra Ram one of the accused died during the pendency of appeal. The six witnesses who have been examined have not made any allegations against any of the appellants except Sheikh Malang and Bhupendra Ram and on the instance of Sheikh Malang one knife has been seized vide Ex.13. There is allegation against Sheikh Malang that he inflicted knife blow over the left side of the chest of the injured and resultantly, he sustained grievous injuries over his lungs and Dr. O. P. Singh (PW/5) found the injuries dangerous for life.

25) The learned trial court, considering a lenient perspective, has sentenced the appellants to undergo R.I. for 2 years under Section 307 read with 149 of the IPC and for 3 months R.I. under Section 148 of the IPC. However, it is important to note that, apart from Sheikh Malang, there are no specific allegations against the other appellants regarding causing grievous harm. Additionally, the prosecution could not prove common object of the appellants in commission of crime therefore this Court holds the view that the appellants should be discharged from the charges under Section 307/149 and Section 148 of the IPC.

26) However, the conviction of Sheikh Malang under Section 307 of the IPC is upheld. As he is currently on bail, his bail bonds are discharged, and he is directed to surrender before

the concerned court.

27) In the result, appeals preferred by the appellants are allowed, except for the appeal filed by appellant Sheikh Malang and the judgment and order of the lower Court is set-aside in favor of the appellants, except for Sheikh Malang.

Sd/-
(Rakesh Mohan Pandey)
Judge

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