

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 707 OF 2015
(Arising out of S.L.P. (Crl.) No. 8106 of 2014)

Vipul Kumar @ Vipulesh

... Appellant

Versus

State of Chhattisgarh

...Respondent

J U D G M E N T

Prafulla C. Pant, J.

1. This appeal is directed against judgment and order dated October 3, 2013, passed by the High Court of Chhattisgarh in Criminal Appeal No. 1322 of 2003 whereby said Court has affirmed the conviction and sentence recorded by Additional Sessions Judge, Khairagarh, District Rajnandgaon, in Session Case No. 58 of 2003, against accused/ appellant Vipul Kumar

@ Vipulesh under Sections 294, 324, 326 and 506 Part II of Indian Penal Code (IPC).

2. It is pertinent to mention here that we have issued notice in this appeal only on the quantum of sentence at the time of entertaining the Special Leave Petition.

3. We have heard learned counsel for the parties and perused the papers on record.

4. Prosecution story, in brief, is that on 19.1.2003 at about 10.30 p.m., an unknown person entered in the house of PW-4 Kamal Singhaniya and PW-3 Subodh Singhaniya. Both of them, with the help of PW-12 Om Prakash Agrawal, caught the trespasser, suspecting that he had entered the house to commit theft, and took him to police station, Gandai. PW-3 Subodh Singhaniya lodged First Information Report against the person apprehended. But the present appellant Vipul Kumar @ Vipulesh Constable at the police station, instigated the person apprehended by PW-3 Subodh Singhaniya and others, and asked him to lodge report against them. When PW-3 Subodh Singhaniya protested and questioned the appellant as to why he was protecting a wrong person, he

(appellant) started hurling abuses, and used fowl and vulgar language against Subodh Singhaniya and others. The appellant did not stop there and he took up rifle, and fired shots due to which PW-4 Kamal Singhaniya and one Rajesh Motwani (PW-9) sustained injuries. As such, First Information Report (Ex. P/20) in connection with this case was lodged at the Police Station, Gandai. Injured PW-9 Rajesh Motwani and PW-4 Kamal Singhaniya were taken to hospital for medical treatment. PW-2 Dr. G.S. Thakur recorded in his report (Ex. P/16) the injuries found on the person of above named injured, and prepared injury report (Ex. P/17). Thereafter, the injured were referred from primary health centre, Gandai to Sector-9 Hospital, Bhilai where also injuries on left thigh, testis, scrotum and penis of PW-4 Kamal Singhaniya, and in respect of Rajesh Motwani gunshot injuries suffered on his right thigh, were recorded. The injuries on the person of Kamal Singhaniya were found to be grievous in nature, while injuries sustained by Rajesh Motwani were simple in nature. Three bullets were taken out from the body of above injured persons. From the possession of the appellant Rifle (SLR) and

47 cartridges with two empty magazines were seized. Recovered bullets and above mentioned armoury were examined by PW-8 Girija Shankar Shrivastava, who conducted armour examination and gave his report (Ex. P/25). Sealed Rifle, cartridge cases, recovered from the appellant, and bullets found and blood-stained clothes of the injured were sent for examination to Central Forensic Science Laboratory, Chandigarh. After completion of investigation, charge sheet was filed against accused Vipul Kumar @ Vipulesh.

5. After the case was committed to the Court of Sessions, the Additional Sessions Judge, Khairagarh, framed charge in respect of offences punishable under Sections 294, 506 Part II and 307 IPC, to which the accused pleaded not guilty and claimed to be tried.

6. On this, prosecution examined PW-1 G.P. Sharma, PW-2 Dr. G.S. Thakur, PW-3, Subodh Kumar Singhaniya, PW-4 Kamal Singhaniya, PW-5 Dr. M.G. Tiwari, PW-6 Narayan Prasad Sharma, PW-7 Roop Lal Patel (Patwari), PW-8 Girija Shankar Shrivastava, PW-9 Rajesh Motwani, PW-10 Amit

Agrawal, PW-11 Dr. Jogesh Chandra Maruhal, PW-12 Om Prakash Agrawal and PW-13 S.I. T.R. Sahu.

7. The oral and documentary evidence was put to the accused, in reply to which he took the defence that on 19.1.2003, he was on duty to guard the police station between 9.00 p.m. to 11.00 p.m., and the Station In-charge had instructed him not to allow more than two persons to enter the police station. The accused further took the plea that since more than two persons attempted to enter the police station and started quarreling with him, he had to open fire in air. He further submitted that the police station is in Naxalite area. In defence, DW-1 Uttamchandra Rao was examined. The trial court, after hearing the parties, found that the prosecution has successfully proved the charge of offences punishable under Sections 294, 506 Part II, 324 and 326 IPC. After hearing the parties on sentence, the trial court sentenced the appellant to rigorous imprisonment for a period of three months under Section 294 IPC, rigorous imprisonment for a period of one year under Section 506 Part II, rigorous imprisonment for a period of three years under Section 324

IPC, and rigorous imprisonment for a period of seven years under Section 326 IPC.

8. Aggrieved by said judgment and order dated 15.12.2003, passed by the Additional Sessions Judge, Khairagarh in Sessions Case No. 58 of 2003, convict Vipul Kumar @ Vipulesh filed Criminal Appeal No. 1322 of 2003 before the High Court. The High Court, after hearing the parties, concurred with the view taken by the trial court that the charge in respect of offences punishable under Sections 294, 506 Part II, 324 and 326 IPC stood proved on the record and declined to interfere with the sentence awarded against him, as such, the criminal appeal was dismissed. Hence, this appeal through special leave.

9. Only point argued before us, in this appeal, is that the courts below have erred in law in not considering the fact that the appellant was posted at the police station in Naxalite area and the act committed by him was due to sudden fight and provocation. It is further pointed out that the appellant had already spent more than one year in jail. It is pleaded before us that the sentence awarded by the trial court and affirmed

by the High Court, is too harsh in the facts and circumstances of the case.

10. It is undisputed fact that the appellant was constable on duty posted at the police station. It is also not disputed that the incident has occurred in the night in a Naxalite area. It is also evident from the record that it is a case of sudden quarrel and heated exchange of words between the injured and the appellant, who was armed with rifle. Considering all the facts and circumstances of the case in totality, though we find no error committed by the courts below in convicting the accused in respect of charge of offences punishable under Sections 294, 506 Part II, 324 and 326 IPC, but, in our opinion, in the present case, reducing the period of sentence to already undergone (which is more than one year) would meet the ends of justice.

11. Accordingly, we partly allow this appeal. The conviction recorded against the appellant is not interfered with. However, the sentence awarded by the trial court is reduced to the period already undergone in respect of offences found to have

been proved against him. He shall be set at liberty, if not required in connection with any other crime.

.....J.
[Dipak Misra]

New Delhi;
April 28, 2015.

.....J.
[Prafulla C. Pant]



JUDGMENT