

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1927 of 2000

Judgment Reserved on 29-8-2017

Judgment delivered on 13-9-2017

1. Kalindribai d/o. Sharasaram aged 30 years.
2. Hemant Kumar s/o. Nemram Sahu, aged about 30 years,
Both r/o. Indira Chowk, Station Maroda, P.S. Nevai, District Durg (CG).

---- Appellants.

Versus

- The State Of Madhya Pradesh (Now C.G.) through PS Nevai, District Durg (CG).

---- Respondent

For Appellant	:	Mr. S.C. Verma, , Advocate.
For Respondent/State	:	Mr. Ravindra Agrawal, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 6-7-2000 passed by the 6th Additional Sessions Judge, Sessions Division Durg (CG), in Sessions Trial No. 371 of 1999 whereby the trial Court after holding guilty the appellants for commission of offence convicted them under Section 307 read with Section 34 of the IPC and sentenced them to undergo RI for seven years and to pay fine of Rs.500/- each with default stipulations.
2. As per the prosecution case, appellant Kalindri Bai was residing with the complainant Raj Kumar at village Moroda. On 2-7-1999 in the evening when Raj Kumar returned from village Dallirajhara, he found the appellants Kalindri Bai, Hemant Sahu and one Narmada Bai in his house. The complainant enquired from the appellant Kalindri Bai as to where are his Deck and bicycle. On being

enquired, she replied that the same articles had been given to appellant No.2 Hemant Kumar. On this issue some hot words were exchanged between Kalindri Bai and complainant Raj Kumar and at the same time Kalindri Bai poured kerosene on the body of the complainant and appellant Hemant Kumar who was smoking Beedi, lit the match stick and threw the same on the body of Raj Kumar and that caught fire as a result of which right side of neck, skull, back of neck and chest of the complainant Raj Kumar were burnt. However, complainant removed burning shirt from his body and saved his life.

3. The matter was reported by the complainant to Police Station Nevai as per Ex.P/5 and after registration of first information report, Police swung into action and started investigation. One jerry-can having capacity of two liters of kerosene, six burnt match sticks, one burnt shirt were seized from the spot at village Maroda as per Ex.P/2 and one full pant was seized from the complainant as per Ex.P/6. Complainant was sent for medical examination to District Hospital.
4. During investigation, the statements of the witnesses were recorded under Section 161 of the Cr.P.C. After completion of investigation, charge-sheet was filed before the court of Judicial Magistrate First Class, Durg who in turn committed the case to the court of Sessions where the appellants were charge-sheeted under Section 307 read with Section 34 of the IPC to which they did not plead guilty and tried for the said offence. After recording the evidence of prosecution witnesses, the statements of the

appellants under Section 313 of the Cr.P.C., were recorded and after hearing both parties, the trial Court convicted and sentenced the appellants as mentioned above.

5. Learned counsel appearing for the accused/appellants submits as under:

- (i) That the statement of complainant Raj Kumar (PW/8) cannot be accepted because he himself caused burn injuries on his body and falsely implicated the appellants;
- (ii) That his version cannot be accepted as he deposed that Narmada Bai (acquitted accused) caught hold him, appellant Kalindri Bai poured kerosene on him and then appellant Hemant Kumar put the fire with the help of match stick;
- (iii) That when the co-accused Narmada Bai has been acquitted on the same set of evidence, appellant cannot be convicted. There are contradictions and omissions in the statements of the prosecution witnesses; Anil Kumar (PW/1), Fharuq Khan (PW/2), Lakhani Lal (PW/3) and their version is not reliable.
- (iv) That the Doctor who treated the complainant Raj Kumar in the burn unit has not been examined by the prosecution and the Doctor who made MLC report alone has been examined whose statement cannot be accepted under the law and even if the entire prosecution story is accepted as it is, then also appellant cannot be convicted under Section 307 of the IPC.
- (v) That the trial Court while convicted and sentenced the appellants has not considered the relevant aspect of the matter and thereby committed illegality

He placed reliance in the matter of **Sachin Jana Vs. State of West Bengal**, reported in 2008(3) SCC 390.

6. Per contra, State counsel supporting the impugned judgment has submitted that the impugned judgment is strictly in accordance with law and there is no illegality or infirmity in it warranting any interference by this Court.
7. Heard counsel for the parties and perused the material on record.

8. PW/8 Raj Kumar, complainant is the victim of the case who has deposed that the appellant Kalindri Bai was residing with him since last eight years as his wife. On the date of incident he returned from Dallirajhara at night and found that the appellants Hemant Kumar, Kalindri Bai and one Narmada Bai (acquitted accused) were present in his house. When he asked Kalindri Bai as to where is his Deck and bicycle, she replied that same articles have been sold to Hemant by her. When he objected as to why she sold the said articles, at the same time Narmada Bai caught hold him and Kalindri Bai poured kerosene on his body, appellant Hemant lit the match stick and burnt his body as a result of which he received burn injuries on various parts of his body and thereafter he reported the matter to Police Station Nevai as per Ex.P/5 on the same day. Version of this witness is supported by the first information report vide Ex.P/5 in which names of the appellants are mentioned and their act is also mentioned. Version of this witness is firm after lengthy cross examination and nothing could be elicited against him. Version of this witness is also supported by the version of PW/2 Fharuq Khan and Lakhanlal Sahu (PW/3) to whom the complainant informed about the incident just after the incident. Version of this witness is again supported by the version of PW/9 Dr. A.S. Mandavi who medically examined the complainant on the date of incident at about 10.00 pm and after examination noticed burn injuries as mentioned above and he deposed that it was 40% burn. Version of this witness is again supported by the version of PW/11 R.P. Yadav, Sub-Inspector, who

is Investigating Officer. He deposed about seizure of articles from the spot and seizure of pant from the complainant and the same was sent for chemical examination to FSL and a report thereof has been received vide Ex.P/13 and as per report kerosene was found in the full pant seized from the complainant and jerry-can which was seized from the spot.

9. There is nothing on record to remotely suggest that the complainant himself caused burn injuries on his body and the witnesses are firm on material aspect of the case but for minor contradiction which is worthless. Complainant alone is real witness of the incident and other witnesses are the persons who received information after the incident. Version of the complainant is supported by first information report (Ex.P/5), statement of medical expert and report of FSL and there is nothing on record to disbelieve the same.
10. Hon'ble the Supreme Court in the matter of **Sachin Jana and another (supra)**, has observed as under:

“To justify a conviction under this section, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person

assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof”.

11. Determinative question is the intention or knowledge that will be caused by the act of the accused irrespective of the result. In the case on hand, pouring of kerosene on the body and burning by match stick can be termed as brutality and it can be easily inferred that the appellants have knowledge that death will be caused by their act. The case of the appellants cannot be compared with the acquitted accused as the evidence regarding acquitting accused was shabby and does not inspire confidence.
12. When the evidence on record is analysed, it is clear that Section 307 read with Section 34 of the IPC has clear application and burns caused disfigurement. on the body of the complainant. The case law cited by counsel for the appellant is distinguishable on the facts and circumstances of the present case. Conclusion arrived at by the trial Court is not liable to be interfered with and the conviction of the appellants under Section 307 read with Section 34 of the IPC is hereby affirmed.

13. Considering the facts and circumstances of the case and further considering the act of each of the appellant, sentence awarded by the trial Court cannot be termed as harsh, disproportionate or unreasonable. Accordingly, the appeal is liable to be and is hereby dismissed.
14. The appellants are reported to be on bail. Their bail bonds stand cancelled. The trial court will issue non-bailable warrant against them for sending them to jail to serve out the remaining part of the sentence.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju