

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 2006 of 1999**

1. Bharat s/o. Sudharam Satnami aged about 25 years.
2. Sakhiram s/o. Mohan Satnami, aged about 22 years.
3. Gopal s/o. Mohan Satnami, aged about 25 years.
4. Ram Swaroop s/o. Mangal Das Satnami, aged about 28 years.

All residents of village Sarsiva, PS Sarsiva, Dist. Raipur (CG).

---- Appellants.

Versus

- The State of Chhattisgarh

---- Respondent

For Appellants : Mr. D.N. Prajapati, Advocate
 For respondent/State : Mr. Arvind Dubey, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma

Order on Board

19-04-2018

This appeal is preferred against the judgment of conviction and order of sentence dated 27-7-1999 passed by the Second Additional Sessions Judge, Baloda Bazar, Sessions Division Raipur in Sessions Trial No. 274 of 1995, wherein the trial Court has convicted all the four appellants for commission of offence punishable under Section 307/149 and Section 147 of IPC and sentenced them to undergo RI for seven years and to pay fine of Rs.500/- each and sentenced

them to undergo RI for one year and to pay fine of Rs.200/- each with default stipulations respectively.

2. In the present case name of the victim is Jai Prakash Shukla. It is alleged that all the appellants made unlawful assembly on 1-5-1995 at about 7.30 pm at village Sarsiva and committed attempt to murder of the said Jai Prakash Shukla.

3. Learned counsel for the appellants would submit that all the injuries caused to the victim were simple in nature and there was no intention to kill the victim. He would further submit that the the appellant have already suffered more than five months jail sentence and ends of justice would be served if the jail sentence is reduced to the period already undergone by them.

4. On the other hand, learned counsel for the State would submit that judgment of the trial Court is strictly in accordance with law and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the material available on record.

6. To substantiate the charge, prosecution has examined as many as ten witnesses.

7. PW/7 Jai Prakash Shukla is the victim of the case. As per version of this witness, appellant Bharat assaulted him by one stone on head and rest of the three appellants assaulted him by hands and fists. Version of this witness is supported by version of PW/8 Santosh Kumar Upadhyay, Vineet Shukla (PW/9), Satish Shukla (PW/3) and Anil Kumar PW/5.

8. Dr. B.Chourasiya (PW/2) made physical examination of the victim on 1-5-1995 at Government Hospital, Sarsiva and noticed the following injuries on the body of the victim.

- i) Lacerated wound in the size of 4cm x 1cm x 1cm on the left side of frontal bone of scalp transversely present with suspected fracture of underlying bone and oozing of blood from the wound of excessive oozing were sought.
- ii) Lacerated wound in the size of 3 cm x 1/2 cm just away from left parietal region.
- iii) Abrasion in the size of 1 cm x 1/2 cm on the back.
- iv) Abrasion in the size of 5cm x 1 cm on the lower aspect of back of scapula.
- v) Big irregular bruise of back portion of body left side just away from the lumber region.
- vi) Dislocation of first upper mater tooth and location of jaw and slight oozing of blood from the socket of gum.

As per version of this witness, all the injuries were caused by hard and blunt object and can be cured within

seven days. He further opined that injury No.1 which is caused on head may be dangerous to life.

9. Now the point for consideration is whether the act of the appellants falls within mischief of Section 307 of IPC. For commission of offence under Section 307 of IPC, all the ingredients mentioned in Section 300 of IPC has to be established by the prosecution which may be read as under.

“300. Murder.—Except in the cases hereinafter excepted, culpable homicide is murder,

(i) if the act by which the death is caused is done with the intention of causing death, or —

(ii) if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

(iii) If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

(iv) If the person committing the act knows that it is so imminently dangerous that it must, in all

probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid”

10. From the evidence, it is clear that none of the appellants was having arms at the time of incident. The incident occurred when one Gopal made a complaint to victim that the appellants are assaulting him and thereafter he intervened in the matter. From the evidence the only thing which is to be established by the prosecution is that the assault by stone was made by the appellant Bharat and assault by hands and fists by the rest of the appellants. As per opinion of Dr. B. Chourasiya (PW/2), injuries No. 2 to 5 were simple in nature and injury No.6 is grievous in nature. Again he opined that all the injuries can be cured within seven days. It means, the injuries caused to victim were not intended to kill the victim, therefore, the offence under Section 307 of IPC is not established. The only offence which is established against the appellants is under Sections 325 & 147 of IPC. Conclusion arrived at by the trial Court regarding offence under Section 307 of IPC is not sustainable and in place of offence under Section 307 read with Section 149 of IPC, the appellants are convicted under Sections 325 and 147 of IPC.

11. Heard on the point of sentence.

From the record, it appears that the appellants suffered jail sentence from 2-5-1995 to sometime in the month of August, 1995 and again after conviction they suffered jail sentence from 27-7-1999 to 25-9-1999 which comes more than five months.

12. Considering all the facts and circumstances of the case, I am of the view that it would not be proper to send the appellants to jail again and ends of justice would be served if the appellants are sentenced to the period already undergone by them. Conviction and sentence imposed by the trial Court upon the appellants under Section 307 read with Section 149 of IPC is set aside. Now, the appellants are convicted under Sections 325 and 147 of the IPC and sentenced to undergo to the period already undergone by them. The fine amount shall remain intact.

13. Accordingly, the appeal is partly allowed to the extent indicated above.

Sd/-
(Ram Prasanna Sharma)
Judge

Raju