

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 434 of 2011**

Rajendra Kumar, S/o Ram Gopal Baghel, aged about 32 years, R/o village-Ghuru, Police Station- Chakarbhata, District-Bilaspur (C.G.)

---- Appellant

Versus

The State of Chhattisgarh, through the Station House Officer, Police Station- Chakarbhata, District- Bilaspur (C.G.)

---- Respondent

 For Appellant : Mr. Vinod Kumar Tekam, Advocate.
 For State/respondent : Mr. Suryakant Mishra, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board

28/09/2018

1. This appeal is preferred under Section 374(2) of the Code of Criminal Procedure, 1973 against judgment dated 25.04.2011 passed by Third Additional Sessions Judge, Bilaspur (C.G.) in Session Trial No. 04/2010, wherein the said court convicted the appellant for commission of offence under Section 307 of IPC and sentenced to R.I. for 7 years and fine of Rs. 100/- with further default stipulations.
2. As per version of the prosecution, the appellant and his wife Mamta Baghel were removing garbage near electric pole and due to some burning, the victim intervened there and altercation took place. The appellant assaulted the victim on her head by axe (Rapa) resulted in severe injuries on her body. Matter was reported and investigated and after completion of trial, the trial court convicted the appellant as mentioned above.

3. Learned counsel for the appellant submits as under:-
 - (i) Evidence of victim Snehlata is contradictory in nature and the same is not reliable piece of evidence. There is material contradiction and omission in statement of other witnesses and the offence as charged is not proved.
 - (ii) The trial court has not evaluated the evidence in its true perspective and the same is liable to be reversed.
4. On the other hand, learned State counsel opposing the argument submits that the finding arrived at by the trial court is based on proper appreciation of evidence and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.
5. To substantiate the charge, the prosecution examined as many as 18 witnesses. FIR was lodged on the date of incident in which the appellant is named as culprit of the offence. Snehlata (PW-1) is victim and as per version of this witness, at the time of removing garbage there was altercation and at the same time the appellant assaulted her by axe on her head. Version of this witness is supported by version of Vivek (PW-2), Vikas (PW-3), Chhotu @ Avinash (PW-4), Pawan Kumar (PW-5), Mukesh (PW-6) & Dikesh Dahariya (PW-7). All these witnesses were subjected to searching cross-examination, but nothing could be elicited in favour of appellant.

6. Version of direct evidence is supported by version of Medical Officer (PW-9) who examined the victim and found depressed fracture on left side of head on temporal bone. He again noticed contusion on cord No. 5 & 6 of spinal cord. Dr. P. Soni (PW-10) also supported version of other witnesses and noticed fracture and internal injuries on head of the victim and he was found unconscious when brought for treatment.
7. Version of direct evidence and medical expert is supported by version of investigating officer who seized axe from the appellant. In overall, it is established that the appellant caused grievous injuries on head of the victim and injuries were deep upto brain and again fracture was also found.
8. To constitute an offence under Section 307 of the IPC, two ingredients of the offence must be present.

(a) an intention of or knowledge relating to commission of murder; and

(b) The doing of an act towards it.

The essential ingredients required to be proved in the case of an offence under S. 307, IPC are:

- (i) That the death of a human being was attempted;
- (ii) That such death was attempted to be caused by, or in consequence of the act of the accused;
- (iii) That such act was done with the intention of causing death; or that it was done with the intention of causing such bodily injury as; (a) the accused knew to be likely to cause death; or (b) was sufficient in the ordinary course of nature to cause death, or that the accused attempted to cause death

by doing an act known to him to be so imminently dangerous that it must in all probability cause (a) death, or (b) such bodily injury as is likely to cause death, the accused having no excuse for incurring the risk of causing such death or injury.

9. From the evidence, it is established that the appellant did everything in his control to eliminate the victim, but allured because of proper treatment in time. The case falls within mischief of Section 307 of IPC for which the trial court convicted the appellant and this Court has no reason to substitute contrary finding and the same is not liable to be interfered with. Conviction of the appellant for offence punishable under Section 307 of the IPC is hereby affirmed.

Also heard on point of sentence.

10. The trial court sentenced R.I. for 7 years and fine of Rs. 100/- to the appellant for commission of offence under Section 307 of IPC. The offence is punishable with imprisonment for life and the trial court awarded sentence for 7 years, which cannot be termed as harsh, disproportionate or unreasonable.
11. It is reported that the appellant has suffered full jail sentence and has been released from jail on 27.08.2014 after getting benefit of remission, therefore, no warrant of arrest be issued against the appellant for his arrest.

Sd/-
(Ram Prasanna Sharma)
Judge