

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 5-12-2018
Judgment delivered on 12-12-2018

CRA No. 141 of 2010

- Anil Kumar Nirmalkar, s/o. Bishat Ram Nirmalkar, aged about 40 years, occupation Service, r/o. Nehru Chowk, near Vishwabhari School, Camp-I, Chawni, Durg (CG).

---- Appellant

Versus

- State of Chhattisgarh through District Magistrate, Durg (CG).

---- Respondent

For Appellant : Mr. Atanu Ghosh, Advocate
For respondent/State : Mr. Vivek Sharma, Govt. Adv.

Hon'ble Shri Justice Ram Prasanna Sharma**CAV Judgment**

1. This appeal is preferred against the judgment of conviction and order of sentence dated 29-1-2010 passed by the Additional Sessions Judge, Durg, District Durg in Sessions Trial No. 111 of 2006 wherein the said Court has convicted the appellant for commission of offence under Section 324 read with Section 34 of the IPC and sentenced him to undergo rigorous imprisonment for three years.

2. As per version of the prosecution, complainant/victim Anil Kumar Gond who is a resident of Indira Nagar, Hathkhoj and was having old animosity with the co-accused namely Ferharam and due

to that when he was returning to his home on 17-12-2006 at about 10.00 pm., the appellant caught hold him from back side and then co-accused Ferharam stabbed the victim with knife seven times as a result of which he sustained a number of injuries on vital part of the body and was admitted in hospital. The matter was reported and investigated. After completion of trial, the trial Court convicted and sentenced him as aforementioned.

3. Learned counsel for the appellant would submit as under:

- i) Name of the appellant did not find place in the FIR lodged by Ku. Sangeeta (PW/1) and test identification parade was not conducted in the instant case, therefore, conviction of the appellant is bad-in-law.
- ii) PW/3 Sahdev turned hostile and did not support the version of prosecution and again complainant Anil Kumar (PW/10) has not identified the appellant in identification parade, therefore, finding of the trial Court is not sustainable
- lii) Vehicle used in the crime in question is in red colour whereas the Police has seized the vehicle which is in black colour.
- iv) The trial Court failed to appreciate the factual aspect of the matter, therefore, finding arrived at by the trial Court is liable to be set aside.

4. On the other hand, learned counsel for the State supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshaling of the evidence 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 record of the court below in which impugned judgment is passed.

6. In the present case, victim is Anil Kumar (PW/10). As per version of this witness, he was standing near grocery shop of one D.K. Pandey at about 10.00 pm and when was returning to his home accompanied by mother of one Sahdev, at the same time, co-accused Ferharam assaulted him by knife seven times whereas appellant pressed her mouth and after incident both appellant and co-accused fled away from the spot by one motorcycle. As per version of this witness, As per version of this witness, his sister Sangeeta and father Deep Narayan came to the spot and they have been informed about the incident by Sahdev and thereafter he was admitted in hospital at Bhilai. PW/9 Janaki Bai is eye-witness account to the incident. As per version of this witness, on hearing cries of victim Anil Kumar she rushed to the spot where one person caught hold him and another was having knife. From the version of this witness, it is established that the appellant caught hold the victim and other co-accused assaulted him by knife. Version of this witness is supported by version of Dr. H. Shah (PW/13) who

examined the victim on 17-2-2006 at Sector-9 Hospital, Bhilai and noticed the following injuries on his body.

- i) Deep incised wound in the size of 4cm x 1/2 cm. Bleeding present in the right side of neck.
- ii) Incised wound over left chest about 1.5cm x 1/2 cm – bleeding.
- iii) Incised wound in infro axilling area left about 2 cm x 1`/2 cm bleeding.
- iv) Incised wound over right hypo chondrium. In the size of 1.5 cm x 1/2 cm.
- v) Sup. Lacerated wound over right fore arm in the size of 1 cm x 1/2 cm slight bleeding.
- vi) Incised wound over right thigh in the size of 6 cm x skin deep – bleeding.
- vii) Lacerated wound over left ingrained area in the size of 1.5 cm x 1/2 cm – bleeding.

7. As per version of this witness, injury Nos. 3, 4 and 7 were grievous in nature and on query he replied that if the instant treatment was not provided to the victim, he could have succumbed to those injuries. Version of this witness is unshaken during cross

examination and there is no other medical evidence in contradiction to that. Therefore, it is established that due to participation in the said crime by the appellant, the victim suffered multiple injuries on vital parts of his body i.e., throat and chest. True it is that the name of the appellant is not mentioned in the FIR, but his name is mentioned in the statement of the victim recorded under Section 161 of the Cr.P.C.

8. In the present case, victim has not lodged the FIR and Janaki Bai (PW/9) who is also eye-witness account to the incidence has not lodged FIR but the FIR is lodged by a person who is not an eye-witness, therefore, veracity of the victim and Janaki Bai (PW/9) is not shaken on this count. It is not a case where identification of the appellant was required because the appellant is known to the victim and his name is mentioned in earlier statement of the victim. Again, FIR is not encyclopedia of the entire case. FIR is lodged for cognizable offence to set the machinery into machine. Argument advanced on behalf of the appellant is not sustainable. Causing injury by sharp object like knife is offence under Section 324 of the IPC and acting infurtherance of common intention for the said offence is an offence under Section 324 read with Section 34 of the IPC for which the trial Court has convicted the appellant and same is hereby affirmed.

9. Heard on the point of sentence,

The trial Court awarded sentence of 3 years and looking to the facts and circumstances of the case and gravity of the offence, the same cannot be termed as harsh, disproportionate or unreasonable. Sentence part is also not liable to be interfered with

10. Accordingly, the appeal being devoid of merits is liable to be and is hereby dismissed. The trial Court will prepare super-session warrant and issue non-bailable warrant against the appellant and after his arrest he be sent to jail for serving out remainder of the sentence. The trial Court to submit its compliance report on or before 6-3-2019.

Sd/-

(Ram Prasanna Sharma)

Judge

Raju