

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 120 of 2010

Judgment Reserved on 10-9-2018

Judgment delivered on 11-10-2018

- Uday Nath S/o Manglu Ram aged about 45 years, R/o Village Chidapara, Police Station Sitapur, District Surguja (CG).

---- Appellant

Versus

- State of Chhattisgarh through PS Sitapur, District Surguja (CG).

---- Respondent

For Appellant	:	Mr. Aditya Chopda, Advocate.
For Respondent/State	:	Mr. Suryakant Mishra, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1) This appeal is directed against the judgment of conviction and order of sentence dated 8-1-2010 passed by 4th Additional Sessions Judge (FTC), Ambikapur, District Surguja (CG) in Sessions Trial No. 329 of 2008, wherein the said Court convicted the appellant for the commission of offence under Section 324 of the Indian Penal Code, 1860 and sentenced him to undergo rigorous imprisonment for three years.

2. In the present case, the appellant was charge-sheeted under Section 307 of the IPC alleging that on 13-7-2008 at about 11.30 am at village Chidapara, Sitapur, District Surguja, he assaulted the complainant/victim Ku. Kalista by means of sharp

axe on her neck for multiple times and in this way he attempted to commit her murder.

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

- i) There is no reliable evidence warranting conviction of the appellant, especially when independent witnesses namely Fulo Bai (PW/4) and Sukha Bai (PW/7) have not supported the prosecution story.
- ii) The trial Court has not evaluated the statement of hostile witnesses and based its conviction on the statement of Ku. Kalista (PW/8), but there are material discrepancies in her statement.
- lii) Seizure and memorandum witnesses have not supported the version of prosecution story and therefore, conviction is based on surmises and conjectures which is liable to be set aside.

4. On the other hand, learned State counsel supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshaling of evidence which is not liable to be interfered while invoking jurisdiction of the appeal.

5. In the present case, date of incident is 13-7-2008 and FIR (Ex.P/1) was lodged on the same day naming the appellant as culprit. Ku. Kalista (PW/8) is victim of the case who is aged 7 years. As per version of this witness, on the date of incident her parents went to field for cultivation and at that time she was playing with her friends where the appellant reached and enquired about her father. When she informed that her father had gone to field, the appellant assaulted her by an axe thrice and fled away. As per version of this witness, she got unconscious and regained conscious in the hospital at Sitapur. Version of this witness is unshaken during cross examination. Version of the victim is supported by version of Tej Kumari (PW/1) who is mother of the victim and as per her version the victim sustained injury on her neck, shoulder and upper part of back. She has further deposed that victim informed her about the appellant assaulting her. PW/2 Matbai, PW/3 Thakur Ram and PW/7 Sukha Bai have supported the version of these witnesses.

6. Dr. S.N. Painkra (PW/12) examined the victim Ku. Kalista (PW/8) and noticed the following injuries on her body.

- I) Lacerated wound over back 1 cm x .5 cm x.5cm with shocking.
- ii) Lacerated wound over neck i.e., left side in the size of 1 cm x $\frac{1}{2}$ cm x $\frac{1}{2}$ cm with bleeding.

7. As per version of S.R. Bhavat (PW/11), Sub Inspector, one axe was seized from the appellant and same was sent for examination to Dr. S.N. Paikra (PW/12) who opined after examination of the axe that the injuries caused to Ku. Kalista may be caused by this axe. Dr. Arvind (PW/10) has also supported the version of Dr. S.N. Paikra (PW/12).

8. Looking to the injuries caused to the victim, it is clearly established that the appellant has inflicted the injuries on the neck of the victim for more than one time which is caused by sharp object which is an instrument of cutting and if it is used as weapon of offence, the same is likely to cause death. The trial Court has convicted the appellant for commission of offence under Section 324 of the IPC which is based on the evidence of eye-witness, medical evidence and FIR. Again, it is supported by version of the Investigating Officer. PW/4 Fulo Bai, PW/5 Hano and Sukha Bai (PW/7) have not stated that they were informed about the assault by the appellant, but these witnesses are not eye-witnesses of the incident. The case of the prosecution is based on the evidence of eye witnesses and these witnesses are not eye-witnesses. As they were not present on the spot during the course of offence, they are not the real witnesses, and therefore, their testimony is not the basis of prosecution, therefore, their version is not affecting the version of

the witnesses who were present on the spot or who have been informed about the incident just after the incident. Victim Ku. Kalista (PW/8) is firm to her statement from day of the incident and report was lodged on the same day and her version/deposition before the trial Court remained intact. There is nothing on record to say that there is material discrepancy in the statement of the victim Ku. Kalista (PW/8). Minor discrepancies which do not go to the root of the case are insignificant and will not effect the fate of the prosecution. Seizure of axe is supportive piece of evidence and the same is substantiated by the evidence of Investigating Officer S.R. Bhagat (PW/11) and medical expert has opined after examination of seized axe. If the witnesses of seizure are not supporting the version of prosecution, the same will not effect the case of the prosecution because the case is not based on the corroborative piece of evidence, but the case is based on direct evidence and medical evidence, therefore, it cannot be said that the trial Court has not evaluated the evidence in its true perspective.

9. The finding of the trial Court regarding commission of offence under Section 324 of the IPC is based on proper marshaling of evidence and the same is not liable to be interfered with. Conviction of the appellant for commission of offence under Section 324 of IPC is hereby affirmed. Looking to

the injuries which are caused on vital part of the body i.e., on neck and looking to the fact that the appellant has brutally assaulted the minor girl of seven years, sentence of three years cannot be termed as harsh, disproportionate or unreasonable. Therefore, sentence part is also not liable to be interfered with.

10. Accordingly, the appeal is liable to be and is hereby dismissed. The appellant is reported to be on bail. His bail bonds shall stand cancelled. The trial Court will prepare super session warrant and issue warrant of arrest against him. After his arrest he be sent to concerned jail to serve out the remaining part of the jail sentence. The trial Court to submit compliance report on or before 11th January, 2019.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju