

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment Reserved on : 04.04.2018

Judgment Delivered on : 03/05/2018

CR.A. No. 378 of 2007

Gangadas Kurre, S/o. Piladas Kurre, aged about 35 years, R/o. Maharshi Road, Mangla, P.S. - Civil Lines, District – Bilaspur (C.G.)

---- Appellant

Versus

State of Chhattisgarh, Through : District Magistrate, Bilaspur (C.G.)

-----Respondent

For Appellant	: Mr. K.A. Ansari, Sr. Advocate with Mr. Kripesh G. Kela, Advocate
For Respondent/State	: Mr. Vinod Tekam, Panel Lawyer

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V JUDGMENT

03/05/2018

1. This appeal has been preferred against the judgment of conviction and order of sentence, passed by Sessions Judge, Bilaspur, District – Bilaspur (C.G.), passed in Sessions Trial No. 335/2006, passed on 26.04.2007, convicting the appellant for the offence punishable under Section 506 (B) of the Indian Penal Code and sentenced to under go R.I. for 1 year along with fine of Rs.200/-, for offence under Section 307 of the Indian Penal Code and sentenced to under go R.I. for 7 years along with fine of Rs.1000/-, offence under Section 25 (1) (B) of the Arms Act and sentenced to under go R.I.

for 1 year along with fine of Rs.200/- and for offence under Section 27 (2) of Arms Act and sentenced him to under go R.I. for 7 years and fine of Rs.500/- with default stipulations.

2. Case of the prosecution in brief is that the complainant/injured Neelam Shukla was the tenant of this appellant and the appellant had been pressurizing the complainant to vacate the premises. On 27.03.2006 at about 6.00 PM in the evening, the appellant arrived in the house of the complainant and abused her with obscene words and also threatened her that, if she does not vacate the premises, she will be killed and at the same time, the appellant took out sword like weapon and assaulted the complainant causing injuries on her body. FIR (Ex.P-8) was lodged in the Police Station and on that basis offence was registered against this appellant. After completion of investigation, charge-sheet was filed before the concerned Court.
3. Appellant was charged with offences under Section 294, 506(B), 307 of the Indian Penal Code and Section 25 and 27 of the Arms Act. The appellant denied the charges and prayed for trial. The prosecution examined 9 witnesses on its behalf. On examining the appellant under Section 313, he denied all the incriminating evidence against him and pleaded innocence and false implication. No witness was examined in defence. On completion of trial, judgment has been delivered, in which the appellant stands convicted and sentenced as mentioned herein above.
4. Counsel for the appellant submits that erroneous judgment of conviction and order of sentence has been passed by the trial Court

convicting the appellant and sentencing him. The prosecution had failed to prove its case beyond all reasonable doubts. The statement of the witnesses, were not trustworthy. Hence, the judgment of conviction and order of sentence is bad in law. In the alternative it is prayed that the sentence imposed upon the appellant is too heavy and harsh, which may have been imposed upon him in the lighter side. It is prayed that the appeal be allowed and the appellant be acquitted of the charges.

5. Counsel for the State opposing the submission made in the grounds raised in the appeal submits that the prosecution has proved its case beyond all reasonable doubts. Statement of the witnesses have been trustworthy and accordingly the finding has been given by the trial Court, which needs no interference.
6. I have heard the learned counsel for the parties and perused the record of the Court below.
7. The point in issue for determination in this appeal is whether the prosecution had failed to prove its case beyond all reasonable doubts against the appellant and on that basis, the appellant is entitled for acquittal?
8. Perused the record of the trial Court and heard the counsel for the both the parties.
9. The main witnesses in this case is complainant Neelam Shukla (P.W.-6), who has stated that on the date and time of incident, when she was in her residence, the appellant forced his entry into the

house and used obscene words to abuse her. When this witness objected, then appellant took out sword like weapon and assaulted her causing injuries on her shoulder and face. When she raised alarm, witnesses arrived on the spot. Subsequent to that this witness was hospitalized. FIR (Ex.P-8) was lodged by him. In cross-examination, her statement had been un-rebutted and there is no such statement of admission so as to contradict her statement given in examination-in-chief. Her statement has been supported by Neha Shukla (P.W.-4), who is her daughter and Kishore Shukla (P.W.-8), who is her husband. The independent witnesses namely Smt. Lalita Yadav (P.W.-2), Smt. Madhu Yadav (P.W.-7) have not supported the case of the prosecution and declared hostile by the prosecutor.

10. Further corroboration to the statement of the complainant is found in the statement of Dr. R.K. Upadhyay (P.W.-1), who on examining the injured – Neelam Shukla had found incised wound on left upper part of face size 7cm x 3cm x 3 cm, another incised wound 4 cm below of first incised wound size 7cm x 3.5 cm. A lacerated wound on right wrist joint of size 2 cm x 0.5 cm and one abrasion on right hand of size 1.5 cm x 0.25 cm. It was opined by the said witnesses vide his report Ex.P-1 that first and second injury was caused by some hard and sharp object within a period of two hours before the examination. No opinion has been given about the gravity of the injuries by this witnesses. In cross-examination, the statement about the injury report has remained un-rebutted.

11. Dr. Neeraj Shende (P.W.-5) is the treating doctor, who has given similar report of the injuries found in the body of the injured Neelam Shukla (P.W.-6). He has further given his opinion vide report Ex.P-7 that injuries caused to the injured were simple in nature, although it is reported that injuries could have been fatal if were not treated within time. In cross-examination, the report given by him is remained un rebutted. Although he has made some admission about some other possibilities and manner in which the injuries may be caused. But that is a hypothesis and for support of such hypothesis, defence was required to lead evidence and no such evidence was brought on record by the appellant. A.S.I., Tribhuwan Singh Bisen (P.W.-9) has given statement about the investigation conducted by him.
12. After due consideration, it appears to this extent that, the evidence of prosecution is clear and trustworthy that on the date and time of incident, the appellant was present, who assaulted the complainant – Neelam Shukla (P.W.-6) with sharp weapon and caused injuries on her face and other parts of the body. Similarly there is evidence of illegal and unauthorized possession of prohibited arms, which was again used for commission of offence of causing injuries to the complainant.
13. The trial Court has passed its finding in report of the Dr. Neeraj Shende (P.W.-5) that injuries were fatal in nature, which does not appear to be erroneous at this stage. Further to make out the intention to cause death, it is not necessary that injuries should be

of fatal in nature. According to the statement of the witnesses that appellant came armed with sharp edged weapon and had assaulted the victim, itself is sufficient to show his intention to cause her death. The utterances made by him, threatening her for life, also support the conviction for charge under Section 506 of the Indian Penal Code. Similarly, the evidence regarding possession of sharp edged weapon prohibited under the provisions of Arms Act and having made use of the said weapon in causing injuries to the complainant in this case support the conviction under Section 25 (1) (B) and 27 (2) of the Arms Act.

14. On the basis of the finding in this appeal herein above, it appears that this appeal is without any substance and there is no room for interference in the impugned judgment of conviction and order of sentence passed by the trial Court. Hence, this appeal is dismissed.
15. It is reported that the appellant has completely served out his sentence and has been released subsequently. Hence, no order is required for arrest and detention of the appellant.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram