

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 579 of 2009

Tulasi Yadav, S/o Samaru Yadav aged about 28 years, R/o Ward No.1 BhainsBajay Champa Police Station Champa, District Janjgir Champa CG

(Present Address)

Village Kudharikhar, Police Station Tamnar, Tahsil Gharghoda, District Raigarh

---- Appellant

Versus

State Of Chhattisgarh Through Police Station Tamnar, Tahsil Gharghoda District Raigarh (CG)

---- Respondent

For Appellant : Shri Amiyakant Tiwari, Advocate

For State/ Respondent : Shri Vinod Tekam, Panel Lawyer

HON'BLE SHRI JUSTICE RAM PRASANNA SHARMA

JUDGMENT ON BOARD

10/12/2018

1. Ms. Purnima Singh, Advocate has been engaged by the appellant, but despite repeated calls, none appeared on all dates of the week, therefore, Shri Amiyakant Tiwari, Advocate present in the Court is appointed as amicus curiae to argue the matter on behalf of the appellant.

2. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against the judgment dated 10.6.2009, passed in S.T.No.23/2009 by the 4th Additional Sessions Judge (FTC), Raigarh, District Raigarh(CG) for

commission of the offence under Section 307 of the Indian Penal Code and sentenced to undergo R.I. for 7 years and fine of Rs.500/- with default stipulation.

3. In the present case, name of the victim is Deepawali Bai. As per case of the prosecution, Deepawali Bai is a married lady and despite marriage, she resides with her parents at village Kudhrikhar. The present appellant is also resident of same village. He proposed to marry the prosecutrix but she denied. On the date of incident, when she was bathing near the canal of Dhobhighat of Kelo river with some other women, the appellant assaulted her with sword. The matter was reported and investigated and the appellant was charge sheeted. After completion of trial, the appellant was convicted and sentenced as above.

4. I have heard learned counsel for the parties and perused the record.

5. Learned counsel for the appellant submits that there are material contradiction and omissions in the statement of eye-witnesses and their version is developed one which cannot be relied upon and there is absence of motive on the part of the appellant, therefore, charges levelled against him is not established. Eye-witnesses are not reliable, therefore, finding of the trial Court is liable to be set aside.

6. On the other hand, learned counsel for the State supporting the judgment submits that the finding arrived at by the trial Court is based on cogent and reliable evidence and the same is not liable to be interfered with.

7. Deepawali Bai (PW5) deposed that she was married with one Raju Yaday who was resident of village Himgir, but she is not living with him and living with her parents at village Kudhrikhar. The appellant is also married and he proposed this witness to marry with him to which she denied. After denial he threatened him many a times and on the date of incident when she was bathing at Kelo river, he came with a sword and assaulted her on head. She sustained multiple injuries. Version of this witness is supported by version of Ku. Savita (PW4) who is eye-witness account to the incident. Again, it is supported by the version of Suklambar Yadav (PW1), Labhoram (PW2), Pitambar (PW3) and Natthuram (PW6). All the witnesses have been subjected to searching cross-examination but nothing could be elicited in favour of the defence. Version of direct witnesses is supported by the version of Dr. Dharam Sai Painkara (PW9) who examined the prosecutrix on 15.11.2008 at C.H.C, Tamnar. After examination, he noticed following injuries on the body of the victim :

- (I) Cut over head on parietal region of 10 x 1 ½ x 1 ½ cm
Cut over head on parietal region of 10 x 1 ½ x 1 ½ cm
- (II) Cut over lower part of arm on right side of 14 x 7 cm

(III) Cut over below neck of 13 x 2 x 1 cm

As per version of this witness, he found fracture in skull of the victim. Again he deposed that one sword was brought before him for examination and after examination, he found that the injuries to the victim could be caused by this weapon. He further opined that if proper treatment would not have been provided to the victim, she could have succumbed to the injuries. Version of this witness is again supported by Dr. Anil Kumar Kushwaha (PW8). Balmukund (PW10) and Vishnu (PW11) are the witnesses of seizure who proved seizure of sword from the appellant. There are no material contradictions in the statements of the witnesses. Minor contradictions which do not go to the root of the case are insignificant and they have no adverse affect to the prosecution case.

8. Hon'ble the Supreme Court in the matter of **Sachin Jana and another**, reported in (2008) 3 SCC 390 has observed as under:

“To justify a conviction under this section, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary

circumstances to cause the death of the person assaulted. What the court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof”.

9. When the evidence on record is analysed it is clear that Section 307 IPC has clear application and looking to the evidence in its entirety, finding arrived at by the trial Court is not liable to be interfered with. Accordingly, conviction of the appellant under Section 307 IPC is hereby affirmed.

10. Heard on the point of sentence:

The trial court awarded jail sentence of R.I. for 7 years and fine of Rs. 500/- for commission of offence under Section 307 of IPC. Looking to the gravity of the offence, it cannot be termed as harsh, disproportionate or unreasonable and the same is not liable to be interfered with. The sentence part is also not liable to be interfered with. Accordingly, the appeal is liable to be and is hereby dismissed.

11. It is reported by the jail authorities that the appellant has suffered full term of his jail sentence and has been released after getting remission, therefore, no order for his arrest etc. is required.

Sd/

(Ram Prasanna Sharma)

JUDGE