

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 18 of 2009****Reserved on : 12.10.2018****Delivered on : 30.10.2018**

Jeetu @ Jitendra Shrivastava, S/o Late Pannalal Shrivastava, aged about 22 years, R/o Quarter No. 114 B Railway Colony, Rajhara, P.S. Rajhara, District- Durg (C.G.)

---- Appellant**Versus**

The State of Chhattisgarh, Through: Police Station- Rajhara, District- Durg (C.G.)

---- Respondent

For Appellant : Mr. Krishna Tandon, Advocate.

For State/respondent : Mr. Vinod Tekam, Panel Lawyer.

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

1. This appeal is preferred under Section 374(2) of the Code of Criminal Procedure, 1973 against judgment dated 31.12.2008 passed by Additional Sessions Judge Balod, District- Durg (C.G.) in Session Trial No. 32/2008, wherein the said court convicted the appellant for commission of offence under Section 307 of IPC and sentenced to R.I. for 3 years and fine of Rs. 3000/- with further default stipulations.
2. As per case of the prosecution, on midnight of 04.07.2008 and 05.07.2008, the complainant- Vijay Sonkar came out after taking food and at that time, the appellant was using abusive language against the complainant, when it was objected by him, then appellant gave blow by means of Gupti (a pointed iron made object) to the complainant. 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) The prosecution tried to conceal actual fact how and why the quarrel was started between victim and appellant, without any reason, why the appellant was using abusive language against the complainant, this important fact has not been pointed out by the prosecution, is doubtful.

(ii) The complainant himself was in drunken condition and it appears that due to fall he sustained injuries.

(iii) For offence under Section 307 of IPC, basic requirement is intention not the injuries. The appellant having knife and being sufficient opportunity, he can kill the complainant, but he did not do so, which goes to show that there was no intention to cause death of the victim.

(iv) As per version of the doctor, injuries caused by knife may be dangerous but, it does not mean that it will cause death of the victim, therefore, finding arrived at by the trial court is not sustainable.

4. On the other hand, learned State counsel submits that the finding arrived at by the trial court is based on proper marshaling of evidence and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.

5. Complainant- Vijay Sonkar (PW-1) deposed before the trial court that the appellant used abusive language against him

and when he objected to it, the appellant attacked him by Gupti on his neck and chin due to which, he felled unconscious. Due to his cries, his mother and brother Ravi reached to the spot and taken him to hospital at Dalli Rajhara.

6. Version of this witness is supported by version of Radha Bai (PW-8) who is mother of victim, Ramesh Soni (PW-9) & Raman Yadav (PW-10). Ramesh Soni deposed that he saw the complainant in a pool of blood. Version of these witnesses were subjected to searching cross-examination, but nothing could be elicited in favour of the defence.
7. There is no material contradiction in the statement of material witnesses and minor contradiction which do not go to the route of the case is insignificant. Version of these witnesses is supported by FIR which is lodged on the date of incident i.e. on 04.07.2008 at police station- Dalli Rajhara in which name of appellant is mentioned as culprit and his act of assaulting by Gupti is also mentioned. These witnesses firmed to their statement from date of investigation till recording of their statement before the trial court.
8. It is settled law that it is quality not quantity to be seen and all the witnesses are stable and there is nothing on record that they have any grudge against the appellant to rope in a false charge, their version cannot be discarded. Argument advanced on behalf of the appellant is not sustainable. Evidence of direct witness is supported by version of Dr. Poonam Prasad (PW-4), who examined the victim on

04.07.2008 at BSP hospital, Rajhara and noticed following injuries (Ex-P/7).

- (i) Stab injuries (by Gupti) in Chin 5 cm. x1 cm. x1.5 cm.
- (ii) Incision Injury in front of Neck 4cm. X 0.5 cm. x 0.5 cm.
- (iii) Incision Injury lower lip 1cm. X 0.5 cm. x 0.5 cm.

9. It is opined by the doctor (PW-4) that the injuries were dangerous to life. This medical expert has been subjected searching cross-examination, but remain unshaken. There is no other expert opinion contrary to this medical expert, therefore, it is established from his evidence that the injuries were threatening to life of the victim.

10. 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.

(iv) To justify conviction under this section, it is not essential that bodily injury capable of causing death should have been inflicted.

11. In the present case, the appellant has assaulted the victim by a pointed iron made weapon, which was dangerous and assault was made on vital part of the body and as per opinion of the doctor (PW-4), the same is threatening for life. Looking to the injuries, it can be easily inferred that the appellant did everything in his power to eliminate the victim, but final result allured because of proper treatment in time. The case of the appellant falls within mischief of Section 307 of IPC for which the trial court convicted the appellant for commission of offence under Section 307 of IPC and the same is hereby affirmed.

Also heard on point of sentence.

12. The trial court awarded sentence of 3 years for commission of offence under Section 307 of IPC, which 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.
13. The appellant is reported to be on bail and his bail bonds are cancelled. The trial court will prepare super-session warrant

and issue warrant of arrest against the appellant and after his arrest, he be sent back to the concerned jail for serving out the remaining part of the jail sentence. The trial court shall submit compliance report on or before 29th January, 2019.

Sd/-
(Ram Prasanna Sharma)
Judge

Arun