

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 115 of 2012

Kalesh Ram Dhruv S/o Kejau Ram, aged about 45 years, R/o village Sevti, P.S. Station Bilha, District Bilaspur (CG)

---- Appellant

Versus

State of Chhattisgarh through the Station House Officer, P.S. Bilha, District Bilaspur, C.G.

---- Respondent

For the Appellant	:	Dr. Kumaresh Tiwari, Advocate
For the Respondent/State	:	Shri Vinod Tekam, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy

Judgment On Board

23/06/2018

The appellant stands convicted for the offence punishable under Section 307 of IPC and sentenced to undergo RI for seven years with fine of Rs.500/-, in default of payment of fine to further undergo RI for three months vide order dated 05.08.2011 passed by the 1st Additional Sessions Judge, Baloda Bazar, District Raipur (CG) in Sessions Trial No. 69/2011.

2. The case of the prosecution against the appellant is that on 18.07.2009 in the morning, the villagers of Mohtara village found an insane lady (a woman of unsound mind) injured with knife injuries on her neck and she was bleeding profusely. Near the spot, the villagers found the appellant standing and who declared before the public to have assaulted the victim for the purpose of making sacrifice in the nearby temple. The matter was immediately reported to the Police by the Kotwar

and a case was registered against the appellant for the offence under Section 307 of IPC.

3. During the course of trial, the prosecution examined as many as 13 witnesses and there was no witness examined in defence.

4. The trial Court taking into consideration the evidences which have come on record vide impugned judgment dated 05.08.2011 found the appellant guilty for the offence punishable under Section 307 of IPC and after convicting sentenced him under the said section for the period as mentioned in paragraph-1 of this judgment leading to the filing of this appeal.

5. Counsel for the appellant submits that the judgment of conviction is not sustainable for the reason that the victim has not been examined before the Court below and unless there is an evidence of victim, the offence under Section 307 of IPC could not have been established. Further the evidence of the doctor would reveal that the injury caused to the victim was only simple in nature and therefore the appellant could not have been prosecuted for the offence under Section 307 of IPC. Counsel for the appellant further submits that since there is no eye witness to the incident and that there is no direct evidence available with the prosecution, the conviction of the appellant under Section 307 of IPC is bad in law. He submits that the entire conviction is based upon the alleged extra judicial confession made by the appellant before PW-2 Daya Ram Sahu, PW-7 Jageshwar Sahu, PW-8 Chaituram Devdas & PW-9 Kailash Giri which by itself may not have sufficient strength to support the judgment of conviction in absence of any corroborative evidence. Thus, he prayed for setting aside of the impugned judgment.

6. Per contra, opposing the appeal state counsel submits that it is a case where not one but there are as many as four witnesses who have been examined by the prosecution i.e. PW-2, PW-7, PW-8 & PW-9 and all of them have made an identical statement of there being a confession made by the appellant at the spot of the incident itself. The confession so made was also immediately after the incident and therefore, there is no reason to disbelieve the four witnesses. He submits that the finding of the Court below cannot be said to be either erroneous or contrary to the evidence on record and prayed for rejection of the appeal.

7. Having heard the contentions put forth on either side and on perusal of the record, the fact remains that on 18.07.2009, the victim was assaulted with a knife on her neck with multiple injuries causing bleeding. The incident was of early morning and a large number of people gathered at the place of incident and found the victim bleeding. The people also found the appellant present at the spot who made a declaration before everybody repeatedly shouting that it was he who had assaulted the victim as a sacrifice in the temple. This part of prosecution story stands fully corroborated by the evidence of PW-2, PW-7, PW-8 & PW-9. Moreover, what also reflects is that from the cross-examination of these four witnesses, there is not much which has been extracted by the defence with which it could be said that the four witnesses have been making false statement against the appellant.

8. So far as the extra judicial confession part is concerned, it is also required to be appreciated that there is no allegation of any animosity between the victim and the appellant nor is there any animosity between the appellant and the four witnesses. The appellant himself had confessed of having assaulted the victim.

9. Given the aforesaid evidence which has come before the trial Court, the finding of guilt against the appellant cannot be said to be in any manner erroneous or perverse nor can it be said to be contrary to the evidence. Under the circumstances, the present appeal deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
JUDGE