

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 6-2-2019

Delivered on 8-3-2019

CRA No. 191 of 2010

- Mukesh @ Seenu Yadav S/o Ramehs Yadav Occupation Student, R/o Kasaridih, Police Station Durg, Dist. Durg (CG).

---- Appellant

Versus

- State Of Chhattisgarh through Chowki Padnmanabhpyur, Police Station Durg, Dist. Durg (CG).

---- Respondent

For Appellant : Mr. Govind Ram Miri, Advocate

For respondent : Mr. Raghavendra Verma, GA.
State

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Judgment

1. This appeal is preferred against the judgment dated 8-9-2009 passed by 12th Additional Sessions Judge,(FTC),. Durg, District Durg (CG) in Session Trial No. 38 of 2009 wherein the said Court has convicted the appellant for the commission of offence under Section 307 of IPC and sentenced him to undergo RI for seven years and to pay fine of Rs.1000/- with default stipulations.

2. In the present case, victim is Sajjad Ali (PW/1). ,As per version of prosecution, on 25-8-2008 in between 10 and 10-30 pm the appellant along with others in-furtherance of common intention assaulted the victim Sajjad Ali by knife over his abdomen as a result

of which he sustained grievous injuries and fell down the ground. The matter was reported and investigated. and after completion of investigation charge sheet was filed, the appellants did not plead guilty and the trial was conducted. After completion of trial, the trial Court convicted and sentenced the appellants as aforementioned.

3 Learned counsel for the appellants would submit as under:

- i) Victim Sajjad Ali admitted that there was no previous enmity with the appellant and there was no pre-intimidation and therefore, case under Section 307 of IPC was not made out.
- ii) The injury sustained by the victim as a result of scuffle between the group and it cannot be said that attempted to cause death of Sajjad Ali was made.
- iii) Version of Asique Alil (PW/3) and Sabbir Quraishi (PW/5) is not supportive piece of evidence because they have stated different version in different times. Again version of Answar Ali (PW/7) and Yusuf Khan (PW/9) is also not believable because both were not present right from beginning.
- iv) The trial Court has not evaluated the evidence in its true perspective.

Reliance has been placed in the matters of **Thulia Kali vs. The State of Tamil Nadu**, reported in 1972 CRI.L.J. 1296 (V 78 C 333) S, **Meharaj Singh (L/Nk) vs. State of UP** (1994) 5 SCC 188, **Neelam Bahal and another vs. State of Uttarakhand**, reported (2010) 2 SCC (Cri) 1025. **State of Maharashtra vs. Gulabsingh and others**, reported in AIR 1978 Bombay 367 and **Munna @ Vijay Kant vs. State of Rajasthan**, reported in (1982) 3 SCC 380.

4. On the other hand, learned counsel for the respondent would submit that the finding of the trial Court is based on proper marshaling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5.. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

6.. In the present case, date of incident is 25-8-2008 and the matter was reported on 27-8-2008 in which name of the appellant is clearly mentioned as culprit and the act of the appellant is also mentioned in the said report. PW/4 Sajjad Ali, who is victim of the incident deposed before the trial court that he left the house at about 9.30 pm to go to place of work and when he reached near Kanhaiyapuri chowk,

appellant reached there with other persons who assaulted him and at the same time, appellant assaulted him by knife. The first attack was towards his face which was resisted by him by hand and sustained injury on hand and again appellant inflicted knife injury on his abdomen to which he fell unconscious. Thereafter, appellant and other persons fled away from the spot. Version of victim Sajjad Ali is supported by version of Anwar Ali (PW/7), Yusuf (PW/9) and Asif Ali (PW/3). From the entire evidence, it is established that appellant inflicted knife injuries on the body of the victim twice who was resisted by hand and another was inflicted on abdomen. All these witnesses have been subjected to searching cross-examination, but they are unshaken. Version of victim Sajjad Ali (PW/4) is supported by Dr. Manish Dewangan (PW/10) who examined the victim on 11-12-2006 at Sector No.9 Hospital, Bhilai and noticed the following injuries as per Ex.P/21.

- i) Penetrating injury on abdomen of 1 cm in size 4 cm above umbilicus peritoneal breech omentum protruding from it.
- ii) Incised wound on palmar aspect of hand of 2cm x 0.25 cm over the palmar aspect of left palm between thumb and index finger

As per version of this witness, injuries were grievous and fatal to life. Opinion of this expert is unshaken during cross examination and there is no opinion contrary to opinion of this witness, therefore, it is established that the injuries sustained by the victim were fatal in nature.

7. Now the point for consideration of this court is whether the act of the appellant falls within Section 307 of IPC. There is nothing on record to say that the appellant has been falsely roped in the charge. There is nothing to say that any of the prosecution witnesses is deposing falsely on account of grudge or otherwise. There is no to disbelieve their testimonies.

8. Looking to the clinching evidence against the appellant, it is established that he did everything within his power but the final result alludes because of proper treatment in time. It can be easily inferred that the appellant had intention or knowledge to eliminate the victim. Argument advanced on behalf of the appellant is not sustainable. Finding of the trial Court is based on the evidence adduced before it and same is hereby affirmed. The case law cited by learned counsel for the appellant do not help to the appellant as they are distinguishable from the facts of the present case. The act of the appellant falls within Section 307 of IPC for which the trial Court convicted the appellant. Sentence awarded by the trial Court cannot

be termed as harsh, disproportionate or unreasonable. Sentence part is also not interfered with.

9. Accordingly, the appeal being devoid of merit is liable to be and is hereby dismissed. From the record it appears that non-bailable warrant has been issued against the appellant by this court but report thereof has not been received. The trial court to ensure that whether the non-bailable warrant issued against the appellant by this court has been served or not. If it is not served on the appellant, the trial court will issue non-bailable warrant against the appellant for his arrest and after his arrest he be sent back to the concerned jail to serve out the remaining part of the jail sentence.

Sd/-

(Ram Prasanna Sharma)

Judge

Raju