

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 11-01-2019

Judgment delivered on 30-01-2019

CRA No. 778 of 2012

1. Chamar Singh Marar s/o. Sagbar Ram, aged about 49 years.

2. Mahadev Marar, s/o. Harisingh Marar, aged about 41 years.

Both are residents of village Lendra, Police Station Koshir,
District Raigarh (CG)..

---- Appellants

Versus

- State of Chhattisgarh through District Magistrate Raigarh,
District Raigarh (CG).

---- Respondent

For Appellants : Mrs. Indira Tripathi, Advocate

For respondent/State : Mr. Ravish Verma, Govt. Advocate.

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

1. This appeal is preferred against the judgment of conviction and order of sentence dated 31-8-2012 passed by the Additional Sessions Judge, Sarangarh (CG) in Sessions Trial No. 37 of 2011 wherein the said Court has convicted the appellants for commission of offence under Sections 307 read with Section 34 and Section 323 read with Section 34 of IPC and sentenced them to undergo rigorous imprisonment for seven years and to pay fine of Rs.1000/- and RI for one year, with default stipulations.

2. As per version of prosecution, Dharmendra Sahu and Tarachand Sahu are the victims of the incident and the date of incident is 25-8-2011 near grocery shop situated at village Lendra. It is alleged that both the appellants were hidden and after seeing Tarachand Sahu they assaulted him by clubs on his head and other parts of the body till he became unconscious. When Dharmendra Sahu intervened in the matter, they also assaulted him. The matter was reported and investigated. After completion of trial, the trial Court convicted and sentenced him as aforementioned.

3. Learned counsel for the appellants would submit as under:

- i) Evidence of Tarachand Sahu is improbable because he deposed before the trial Court that he received 52 injuries but the Doctor who examined him noticed only ten injuries. None of the injuries is dangerous to life, therefore, charge under Section 307 of IPC is not established.
- ii The trial Court has ignored the evidence of independent witnesses who have not supported the version of prosecution.
- iii) The trial Court has not discussed about the omissions, contradictions and improvements in the statements of the prosecution witnesses, therefore, finding of the trial Court is not sustainable.

4. On the other hand, learned counsel for the State supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshalling 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. PW/10 Tarachand Sahu deposed before the trial Court that he was in the company of his daughter at the time of incident where both the appellants assaulted him by clubs. He further deposed that when Dharmendra Sahu intervened in the matter, both the appellants have also assaulted him by clubs. Version of this witness is supported by version of Dharmendra Sahu (PW/1) and Ku. Sokeswari (PW/2). All the witnesses have been subjected to searching cross examination, but nothing could be elicited in favour of defence. In the present case, date of incident is 25-8-2011 and report was lodged on the same day at Police Station Sarangarh naming the appellants as culprits and their act of assault is also mentioned in the said report.

7. Dr. Amrit Rohlader (PW/6) examined Tarachand Sahu on 25-8-2011 at Primary Health Centre, Kanakbeera and noticed the following injuries.

- I) 10x2x3 cm lacerated wound and bleeding on left parietal region

- ii) 8x8 cm swelling on right parietal region
- lii) 6x3 cm linear bruise on left fore-arm dorsal surface which is 3 in number.
- iv) 8x2 cm linear bruise on right shoulder.
- v) 6x2 cm linear bruise on right arm outer surface
- vi) 6x2 cm linear bruise on right forearm vertical surface.
- vii) 5x2 cm linear bruise on right elbow.
- viii) 10x1x .5 cm lacerated wound and 10x8 cm swelling on right L.L. , below knee.
- ix) 10X6 cm swelling on lacerated L.L. , below left knee and head injury and advised for X-ray skull and CT scan skull.

8. He further deposed that he also examined Dharmendra Sahu on the same day and noticed the following injuries.

- 1) 6 x 3 x 3 cm lacerated wound and bleeding on left parietal region.
- ii) 5 x 4 cm swelling on left thumb and advised for x-ray skull and x-ray of left palm.

9. Dr. Anil Kumar Kushwaha (PW/7) deposed that Tarachand Sahu sustained head injury on brain and also sustained fracture of

parietal bone. He deposed that if proper treatment would not have been provided to him, the injuries would have fatal.

10. To constitute an offence under Section 307 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 Section 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. Looking to the entire evidence, the trial Court opined that the injuries caused to Tarachand Sahu were fatal in nature; it means the appellants did everything within their control, but the final result allures because of proper treatment in time. Looking to the facts and circumstances of the case and the evidence adduced by the prosecution, argument advanced on behalf of the appellants is not sustainable. The act of the appellants falls within mischief of Sections 307 read with Section 34 and Section 323 read with Section 34 of IPC for which the trial Court convicted them. As the evidence regarding material fact is not contradictory, minor omissions which do not go to the root of the case are insignificant, therefore, conviction of the appellants for the said offence is hereby affirmed.

12. Heard on the point of sentence.

The trial Court awarded RI for seven years for offence of attempt to murder which cannot be termed as harsh or unreasonable or disproportionate. Sentence part is also not liable to be interfered with.

13. Accordingly, the appeal being devoid of merits is liable to be and is hereby dismissed. As per the report of jail authorities, the appellants have suffered full jail term and have been released from jail after getting remission, therefore, no fresh order for their arrest etc., is required.

Sd/-

(Ram Prasanna Sharma)

Judge

Raju