

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 136 of 2011**

Kartik Khabbu Babri, S/o Kantaram Babri, aged about 42 years, R/o near Adra Fulas Falo Railway Station, West Bengal, Presently R/o Sirgiti Kirtinagar, P.S. Tarbahar, Bilaspur, District Bilaspur(CG)

---- Appellant

Versus

- State of Chhattisgarh through S.H.O. - P.S. Tarbahar, District Bilaspur (CG)

---- Respondent

For Appellant : Mr .Govind Dewangan, Advocate

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

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment on Board****21.01.2019**

1. This appeal is preferred against the judgment of conviction and order of sentence dated 6.9.2010, passed by the 9th Additional Sessions Judge(FTC), District Bilaspur (CG), in Sessions Trial No. 69 of 2010, wherein the said Court has convicted the appellant for commission of offence under Section 307 of the IPC and sentenced him to undergo R.I. for 7 years and fine of Rs.100/- with default stipulation.

2. In the present case, name of the victim is Dhaneshwari Nishad. As per version of prosecution, on the date of incident 11.12.2009, the prosecutrix had set out for School and had reached near Sirgitti, Nai Dunia Press, accompanied by the School fellow Ku. Deepu Yadav, the appellant allegedly reached there and expressed his desire to marry her, on refuting the

proposal for marriage, the appellant had given her blows with knife like weapon. The prosecutrix is said to be collapsed on the ground where after she was taken to Hospital. The matter was reported and the appellant was charge sheeted. After completion of trial, the trial Court convicted and sentenced the appellant as aforementioned.

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

- i) Judgment of the trial Court is based on misreading of evidence of witnesses and as such the same is perverse.
- ii) There is existence of serious contradictions in the statements of prosecution witnesses and medical opinion is at variance with the oral evidence.
- lii) Ingredients of offence under Section 307 IPC is not established, therefore, finding of the trial Court is mis appreciating the evidence and same is liable to be reversed.

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 appeal.

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

6. Prosecutrix Ku. Dhaneshwari Nishad (PW2) has deposed before the trial Court that she was going towards School along with her School mate namely Ku. Deepu Yadav (PW1) and at the

same time, the appellant asked her to stop and when she did not stop, the appellant after caught hold of her hand, inflicted knife injuries on her body which caused injury on neck, hand and feet. Version of this witness is supported by the version of Ku. Deepu Yadav(PW1), who is an eye-witness account to the incident. It is again supported by the version of Rambharos (PW3) and Smt. Sushila Nishad (PW4). All the witnesses have been subjected to incisive cross-examination but they are unshaken to the material fact. Version of direct evidence is supported by the version of Dr. A. Tiwari (PW8), who conducted examination on the victim and noticed following injuries :

- (i) Incised wound present on chin left side of 2 x 1/2 cm sharp margin upto skin deep
- (ii) Stab wound present on left side of neck with bleeding in the size of 2 x 1/2 cm deep
- (iii) Incised wound present on right palm dorsally in the size of 2 x 1/2 cm upto muscle deep
- (iv) Incised wound present on left forearm 2 x 1/2 cm upto muscle deep.

7. As per version of this witness, the injuries were fatal in nature. Version of direct and medical evidence is supported by FIR Ex. P13 which is lodged on same day of the incident i.e. 11th December, 2009, at Police Station, Tarbahar, in which name of the appellant is named as culprit and his act of assaulting by knife is also mentioned.

8. After re-assessing the evidence, this Court has no reason to say that the appellant has been falsely implicated on account of any grudge or otherwise. The evidence of victim and other

witnesses inspiring confidence supported by medical evidence and there is nothing to say that they have any reason to rope the appellant in a false charge.

9. Now the point for consideration is whether the act of the appellant falls within mischief of Section 307 IPC.

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 act of the appellant, it appears that he had knowledge that the injuries caused by him may be fatal to life of the victim and therefore, the evidence has taken step which would have constituted the particular crime of murder and he did everything within his power but the final result alludes because of proper treatment in time. It can be easily inferred that the case of the appellant falls within the mischief under Section 307 IPC for which the trial Court has convicted him. There are no material contradictions in the statements of the eye-witnesses. Minor contradictions which do not go to the root of the case are insignificant for deciding the issues. In this way the arguments advanced on behalf of the appellant are not sustainable.

12. After re-assessing the evidence, this court has no reason to record a contrary finding. Accordingly, the conviction of the appellant is hereby affirmed. The trial court has awarded sentence of 7 years R.I. for the offence under Section 307 IPC which cannot be termed as harsh, disproportionate or unreasonable. Therefore, the 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.

14. 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

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