

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 50 of 2011

Sohan Yadav, S/o Late Sudarshan Yadav, aged 40 years, R/o Village- Dodaki, P.S. Bilha, District- Bilaspur (C.G.)

---- Appellant

Versus

State of Chhattisgarh, Through – P.S- Bilha, District- Bilaspur (C.G.)

---- Respondent

For Appellant : Mr. Vipin Singh, Advocate.

For State/respondent : Mr. Ishwar Jaiswal, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board

25/11/2019

1. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against judgment dated 16.11.2010 passed by First Additional Sessions Judge, Bilaspur (C.G.) in Session Trial No. 06/2010, wherein the said court convicted the appellant for commission of offence under Section 304 (Part-I) of IPC, 1860 for causing culpable homicide to one Shanta Bai on 19.09.2009 at about 10:30 a.m. at Village- Dodaki and sentenced to undergo R.I. for 6 years and fine of Rs. 1000/-. He again convicted for commission of offence under Section 307 of IPC, 1860 for attempt to murder of his wife namely Shyam Kunwar on the same day at same place and sentenced to undergo R.I. for 5 years and fine of Rs. 1000/- with further default stipulations.

2. To substantiate the charge, the prosecution examined as many as 19 witnesses. Shyam Kunwar (PW-1) who is victim for offence under Section 307 of IPC, deposed before the trial court that she and Shanta Bai both dashed against a wall, thereafter, she got unconscious. Ramu (PW-2) deposed before the trial court that he saw Shanta Bai and Shyam Kunwar in unconscious position and they were thereafter taken to hospital. Johan (PW-3) deposed before the trial court what is informed to him by Mongra, Goutarhin and Shankar.
3. Ramdev (PW-4) is not able to state as to how Shanta Bai and Shyam Kunwar got injured. Goutarhin Bai (PW-5) deposed before the trial court that she received information regarding injuries received by Shanta Bai and Shyam Kunwar, but she is not eye-witness account to the incident. Mongra (PW-6) deposed before the trial court that both the victims fallen on the ground and she saw them in that position. Shankar (PW-7) deposed on the same line.
4. The other witnesses are related to the investigation after registration of FIR including medical expert and investing officer. The FIR was lodged on 19.09.2009 at 10:30 a.m. at Police Station- Bilha by one Ramu as per s Ex. P/29, but said Ramu has not supported the FIR, therefore, the FIR is not proved and the same cannot be used against the present appellant. In every prosecution, the initial burden to establish the basic facts of the case is on prosecution, but there is

nothing on record to connect the appellant with the crime in question.

5. No one deposed before the trial court that the respondent was present in the house where the incident took place. If the offence is committed in house and presence of the appellant in the said house at the time of commission of offence is established, then he was under obligation to explain the circumstances as per Section 106 of the Indian Evidence Act, 1872 (for short "the Act, 1872"), but when his presence is not established in the said house at the time of incident, the provision of Section 106 of the Act, 1872 cannot be invoked, therefore, the finding recorded by the trial Court on the basis of Section 106 of the Act, 1872 is not sustainable.
6. Accordingly, the appeal is allowed. Conviction and sentence passed by the trial court is set aside. The appellant is acquitted of the charge under Sections 304 (Part-I) & 307 of IPC. The appellant is reported to be in jail. He be set at liberty forthwith if not required in any other case. The fine amount, if paid, shall be refunded to the appellant.

Sd/-
(Ram Prasanna Sharma)
Judge