

1.

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 11/11/2019

Delivered on 17/12/2019

CRA No. 1479 of 2015

Dashrath Kewat, Aged about- 20 years, S/o- Chaitu Kewat,
R/o- Vilalge Lingiyadih, Behind Appollo Hospital, P.S.
Sarkanda, District- Bilaspur(C.G.) ----- **Appellant**

Versus

State of Chhattisgarh. Through: D.M. Bilaspur (C.G.)

---- **Respondent**

For appellants : Mr. B.N. Nande and Mr. Rishi Rahul Soni,
Advocates
For State : Mr. Raghvendra Verma, G.A.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Judgment

1. This appeal is preferred against the judgment dated 16th July, 2015 passed by 9th Additional Sessions Judge, Bilaspur (C.G.), in Sessions Trial No.11/2015 wherein the said Court convicted appellant for charge under Sections 307/34, 325/34 & 323/34 of Indian Penal Code, 1860 and sentenced them to undergo R.I. for 7 years with fine Rs. 20,000/- , R.I. for 3 years with fine of Rs. 5000/- and R.I. for 6 months with fine of Rs. 500/- respectively with default stipulations.
2. In the present case, name of the victim is Manoj Yadav (PW-2). As per version of prosecution, on 3rd November, 2014 at about 11:30/12:00 in night, the appellant with other co-accused persons caused multiple injuries to the victim by club with an intention to kill him. After receiving injuries, the victim

2.

became unconscious, he was admitted to CIMS, Bilaspur for treatment. Where Dr. Ganga Ram Bareth(PW-7) Medical Officer CIMS Bilaspur noticed that his right eye bulge out, swelling all over the face, bleeding was present in right eye, nose, mouth and ear. Victim also sustained injuries on head, forehead, face, nose, lips, chin and left ear. The matter was reported and investigated. The appellant was charge sheeted and convicted as mentioned above.

3. Learned counsel for the appellant submits as under:

(I) In the FIR, name of Dugesh Sahu was only mentioned and it did not contain name of the instant appellant. Therefore, the case of the prosecution is based on suspicion.

(ii) It is not recorded in Police Memo by CIMS that injured was brought in unconscious state as per Ex.P-17.

(ii) Bare perusal of deposition of Manoj Yadav (PW-2) would show that he did not depose regarding weapons used by the appellant.

(iii) The Trial Court executed the prosecution story on the basis of seizure of weapon and recorded finding of furtherance of common intention, which is not correct.

(iv) As per medical evidence, victim consumed liquor and there is possibility of sustaining injury by fall. Therefore, finding of the Trial Court is liable to be set aside.

3.

4. On the other hand, learned State counsel submits that finding of the trial Court is based on proper marshaling of the evidence and same is not liable to be interfered with invoking jurisdiction of appeal.
5. Victim Manoj Yadav(PW-2) is the sole eye witness account to the incident, he named the appellant as culprit in his statement and from his statement, it is clear that appellant was one of the assailant and caused injuries to the victim on his vital parts of the body. As per version of this witness, he lost his vision after the incident. The FIR was lodged by one Smt. Ramin Yadav (PW-1) but as per version of this witness, she had not seen the incident. As the lodger is not an eye witness account to the incident, the information lodged by her is mere an information regarding commission of cognizable offence for setting the machinery into motion. Therefore, FIR is not substantive piece of evidence for recording as to what really happened on the date of incident. Argument advanced on behalf of the appellant is not sustainable. Participation of appellant in crime in question is established by the statement of the victim Manoj Yadav (PW-2) eye witness account to the incident.
6. The question for consideration of this Court is whether the act committed by the appellant falls within mischief of Section 307 of IPC, 1860.

4.

7. Dr. Ganga Ram Bareth (PW-7) is Medical Officer, CIMS Bilaspur, who examined the victim on 4th November, 2014 and found following injuries as mentioned below.

(I) There was a lacerated wound over the left supra orbital region measuring 5cm in length, 01 cm in width and 01 cm in depth.

(ii) There was a lacerated wound present over chin measuring 03 cm in length, 01 cm in width and 01 cm in depth.

(iii) There was a lacerated wound present over the nose (dorsum) measuring 03 cm in length, 01 cm in width and 01 cm in depth.

(iv) Bleeding was present from right eye, nose, mouth and ear.

(v) Right eye bulge out.

(vi) Swelling all over the face.

(vii) Lower incisor, canin, teeth were broken.

This witness opined that weapon used in crime in question was may be by a Blunt & sharp object.

8. As per version of this witness, the victim Manoj Yadav could have died if he was not brought to the hospital in time. Further, Dr. A.K. Gupta (PW-8) Director Medical Services, Appollo Bilaspur opined after CT Scan of the victim that he received multiple facial bone fracture. He also deposed that the right eye ball of the victim was bulge out and there was no light in both the eyes.

5.

9. Hon'ble the Supreme Court in the matter of **Sachin Jana and Another Versus State of West Bengal**, has observed as under:-

To justify a conviction under this section, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.

10. Determinative question is the intension or knowledge that will be caused by the act of the accused irrespective of the result.
11. In the present case, appellant caused multiple injuries on the head of victim, as a result of this act, victim suffered facial bone fracture which was grievous in nature and looking to the merciless beating and brutality, the appellant had knowledge that his act will cause death of the victim.
12. On an overall assessment of the evidence, it is clear that Section 307 off IPC has clear application in the present case therefore, argument on behalf of the appellant is not sustainable. Conclusion arrived at by trial Court is not liable to be interfered with and conviction of the appellant under Section 307/34 of IPC is hereby affirmed. The other Sections of IPC i.e. 323 and 325 are merged with Section 307 of IPC and appellant has to suffer jail term awarded for Section 307 of IPC.
13. Considering the facts and circumstances of the case and further considering the act of the appellant. Sentence awarded to the appellant by the trial Court cannot be termed as harsh, disproportionate or unreasonable. Accordingly, the appeal is liable to be and is hereby dismissed.
14. Appellant is reported to be in jail, therefore, no further order for his arrest etc., is required.

Sd/-
(Ram Prasanna Sharma)
Judge