

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 5-11-2019
 Delivered on 6-12-2019

CRA No. 1048 of 2001

- Ashok Satnami s/o. Sampat Satnami, aged about 20 years, resident of Sector-7, Street No.13/A, Quarter No.3-A, Bhilainagar, Tahsil Durg, District Durg (CG).

----Appellant

Versus

- The State of Chhattisgarh

---- Respondent

 For Appellant : Mrs. Smita Jha and Ms. Itu Rani Mukherjee, Advocates.

For respondent/State : Mr. Ishwar Jailswal, PL.

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

1. This appeal is preferred against the judgment of conviction and order of sentence dated 22-10-2001 passed by IV Additional Sessions Judge, Durg CG in Sessions Trial No. 367 of 1999 wherein the said Court has convicted the appellant for commission of offence under Section 308 of IPC for attempting to commit culpable homicide of one Shivaji and his wife namely Baikunthi Devi on 19-9-1999 at about 6.45 pm at Sector7, Bhilainagar and sentenced him to undergo

rigorous imprisonment for 2 years and fine of Rs.1000/-, with default stipulations .

2. As per prosecution case, on the date of incident appellant was using tape-recorder in full sound in the Lord Ganesh Pandal which caused disturbance to the people of the locality. The complainant objected to that and at about 6.45 pm appellant along with one Rajesh had altercation with Shivaji Shindi (PW/7) and Baikunthi Devi (PW/6) and at the same time appellant stabbed in the abdomen of Baikunthi Devi by pointed iron made *Gupti* as a result of which she sustained grievous injury and admitted in Sector-9 hospital, Bhilai. The matter was reported and investigated. After completion of trial, the trial Court convicted and sentenced him as aforementioned.

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

- i) Version of Baikunthi Devi is not supported by version of other prosecution witnesses, therefore, finding on the basis of statement of Baikunthi Devi is not proper.
- ii Name of the appellant is not stated before Dr. Ashok Kumar Raj (PW/4) and it is also not stated in Rojnamcha Sanha No.1585 dated 19-9-1999.

- lii) Gupti which is an instrument of offence was not brought before the trial court and same has not been shown to the witnesses.
- iv) The trial court has ignored vital omissions and contradictions, therefore, finding of the trial court is liable to be set aside.

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 same is not liable to be interfered while invoking 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. The first question for consideration of this court is whether the appellant assaulted Smt. Baikunthi Devi (PW/6) and Shivaji (PW/7). In the present case, date of incident is 19-9-1999 and FIR was lodged on the same day as per Ex.P/9 at Police Station Bhailainagar in which name of the appellant is mentioned as culprit and his act of assaulting by Gupti to Baikunthi Devi is also clearly mentioned in the said FIR.

7. PW/6 Baikunthi Devi deposed before the trial Court that the appellant was operating tape-recorder in full sound at Lord Ganesh pandal to which she and her husband objected and she removed the plug and thereafter appellant reached near her house, dashed her husband and assaulted in her abdomen by *Gupti* many times. Version of this witness is supported by version of Shivaji (PW/7) and their statement is unrebutted during cross examination which is supported by FIR. It is again supported by version of Dr. Ashok Kumar Raj (PW/4) who examined Baikunthi Devi (PW/6) and found many stab wounds in her abdomen. The Doctor has not opined that the injuries were sufficient to cause death in ordinary course of nature. Looking to the evidence the trial court opined that the act is without any intention to cause death, but it appears that it is done with knowledge that it is likely to cause death, therefore, it is an attempt to commit culpable homicide not amounting to murder which falls within mischief of Section 308 of IPC.

8. The arguable point is whether it is an attempt to commit murder or whether it is an attempt to commit culpable homicide but the fact remains that no appeal is filed by the State that the appellant is convicted for lesser offence, therefore, this court cannot alter the offence under Section 308 of IPC into Section 307 of IPC. Causing multiple injuries

in the abdomen by iron made *Gupti* is brutal act, therefore, argument advanced on behalf of the appellant that it is a case of sudden quarrel and case of the appellant falls within mischief of Section 324 of IPC is not sustainable. From the entire evidence, finding arrived at by the trial court cannot be reversed, therefore, conviction of the appellant for offence under Section 308 of IPC is hereby affirmed.

9. Heard on the point of sentence.

The trial court awarded sentence of two years for the said offence which cannot be termed as harsh, disproportionate or unreasonable. Sentence part is also not liable to be interfered with and the same is upheld.

10. Accordingly, the appeal being devoid of merit is liable to be and is hereby dismissed. The appellant is reported to be on bail. His bail bonds shall stand cancelled. The trial Court will prepare super-session warrant and issue non-bailable warrant against the appellant and after his arrest he be sent to jail for serving out remainder of the sentence. The trial Court to submit its compliance report on or before 30-04-2020.

Sd/-

(Ram Prasanna Sharma)

Judge

Raju