

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 807 of 2010**

Raju @ Shoko @ Chotte Lal, S/o Fattelal Satnami, Aged about 27 years, R/o Nagara Dih, Thana- Chakarbhata, District- Bilaspur (C.G.)

---- Appellant

Versus

State of Chhattisgarh, Through the Police Station- Chakarbhata, Bilaspur (C.G.)

---- Respondent

For Appellant : Mr. Neelkanth Malaviya, Advocate.

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

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment on Board

04.02.2019

1. This appeal is preferred under Section 374(2) of the Code of Criminal Procedure, 1973 against judgment dated 30.09.2010 passed by Ninth Additional Sessions Judge (FTC), Bilaspur (C.G.) in Session Trial No. 34/2010, wherein the said court convicted the appellant for commission of offence under Section 307 of IPC and sentenced to R.I. for 7 years and fine of Rs. 100/- with further default stipulations.
2. In the present case, name of the victim is Rukmani Bai (PW-6) who was wife of the appellant. As per case of the prosecution, the appellant used to beat the victim after marriage. On the date of incident i.e. on 15.04.2008 at night, the appellant inflicted blow on head of the victim by axe. It is alleged that he inflicted injuries for multiple times. She sustained injuries on her head, forehead, left hand. Upon X-ray, fracture was found on second, third & fourth finger of left hand and amputation

was also found. Matter was reported, appellant was charge-sheeted and after completion of trial, the trial court convicted the appellant as mentioned above.

3. Learned counsel for the appellant submits as under:-

(i) No conclusive evidence on record that the offence is committed by the appellant and looking to the facts and circumstances of the case, charge under Section 307 of IPC is not made out.

(ii) There is material contradiction and omission in statement of the prosecution witnesses which has been ignored by the trial court.

(iii) The trial court has not evaluated the entire evidence in its true perspective, therefore, finding arrived at by the trial court is liable to be reversed.

4. On the other hand, learned State counsel submits that the finding arrived at by the trial court is based on proper marshaling of evidence and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.

5. Victim- Rukmani Bai (PW-6) deposed before the trial court that the appellant inflicted injuries multiple times which caused injuries on her head, left hand and right hand. Version of the victim is supported by version of Pancho Bai (PW-1), Jairam (PW-2) & Rajkumar (PW-3). As per version of Head Constable- Narbada Prasad Yadav (PW-8), on discovery statement of the appellant, one axe was seized from his

possession. Version of these witnesses were subjected to searching cross-examination, but nothing could be elicited in favour of the defence.

6. There is no material contradiction in the statement of material witnesses and minor contradiction which do not go to the route of the case, is insignificant and the same is not adversely affect the case of the prosecution.
7. Evidence of direct witness is supported by version of medical expert Dr. R.K. Upadhyay (PW-4), who examined the victim on 15.04.2008 at CIMS, Bilaspur and noticed following injuries (Ex-P/5):-
 - (i) Incised wound on upper part of forehead 12 cm. x 5.5 cm. x 3.5 cm., skull bone exposed.
 - (ii) Incised wound on middle of forehead 14.5 cm. x 2.5 cm. x 2 cm.
 - (iii) Index finger, middle finger and ring finger of the right hand found amputated showing incised wound on the amputated part.
 - (iv) Middle finger of the left hand found fractured.
 - (v) Ring finger of the left hand found amputated showing incised wound on the out surface.
 - (vi) Incised wound of 4.5 cm. x 1.5 cm. x 1.5 cm. found on left hand.

8. It is again supported by version of Radiologist Dr. Anil Pratap Singh (PW-11), who found multiple fracture on finger of left hand of the victim and found amputation also.
9. Now the point for consideration before this Court is whether the act of the appellant falls within mischief of Section 307 of IPC. To constitute an offence under Section 307 of 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 S. 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.

10. In the present case, appellant assaulted the victim on vital part of her body. Looking to the total effect of the injuries, it can be easily inferred that the appellant did everything in his power to eliminate the victim, but final result alluded because of proper treatment in time. The case of the appellant falls within mischief of Section 307 of IPC for which the trial court convicted the appellant for commission of offence under Section 307 of IPC and the same is hereby affirmed.

Also heard on point of sentence.

11. The trial court awarded sentence of 7 years for commission of offence under Section 307 of IPC, which cannot be termed as harsh, disproportionate or unreasonable looking to the gravity of offence and the same is not liable to be interfered with. The sentence part is also not liable to be interfered with. Accordingly, the appeal is liable to be and is hereby dismissed.
12. It is reported by Jail Superintendent, Central Jail, Bilaspur that the appellant is in custody, therefore, no further order etc. is required.

Sd/-
(Ram Prasanna Sharma)
Judge