

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 621 of 2011**

- Thakurram Kashyap S/o Sarjoram Kashyap aged about 21 years, R/o village Fundelpara (Latapara) Police Station Deobhog District Raipur (CG)

---- Appellant**Versus**

- State of Chhattisgarh through Police Station Deobhog District Raipur (CG)

---- Respondent

 For Appellant : Mrs. Indira Tripathi, Advocate
 For respondent/State : Mr. Vinod Tekam, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma
Judgment on Board

02.01.2019

1. This appeal is preferred against the judgment of conviction and order of sentence dated 19.7.2011, passed by the Additional Sessions Judge Gariyaband, District Raipur(CG), in Sessions Trial No. 12 of 2011, 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.10,000/- with default stipulation.

2. In the present case, prosecutrix is Ku. Tileshwari Yadav(PW1). As per version of prosecution, on 18.12.2010 at about 9.00 am, the prosecutrix went to Tube-well for washing clothes and for bath. At the same time, the appellant reached there with a knife and asked the victim that why she is not ready to marry him and asked to leave the house, but when she denied, the appellant inflicted multiple injuries by knife on her body

including vital parts. The matter was reported and investigated. 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) Version of the victim is not supported by the version of independent witnesses and as per version of medical expert, only injury No.1 is serious while other injuries are simple in nature, therefore, conviction of the appellant for commission of offence under Section 307 IPC cannot be sustained.
- ii) Blood group found in the knife is not examined through laboratory and therefore, it cannot be said that the injuries were caused by the knife seized in the case.
- lii) Raguvar (PW8) and Chamruram (PW9) have not supported the version of prosecution, therefore, version of the prosecution is doubtful.
- iv) Conviction of the appellant is based on conjectures which 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 the same is not liable to be interfered while invoking the 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. Prosecutrix (PW1) has deposed before the trial Court that the appellant asked her to elope with him, but when she denied the appellant inflicted injuries on her throat, back and other parts of the body. As per version of this witness, the appellant inflicted 9 injuries. Version of this witness is supported by version of Trishikha bai (PW2), Dilip Kumar (PW3), Yogendra Kumar (PW4), Shyamlal (PW5), Padmani Bai (PW6) and Lalit Kumar (PW7). All the witnesses have been subjected to searching cross-examination but nothing could be elicited in favour of defence side. Version of direct evidence is supported by the version of Chamaruram (PW9) and Inspector G.R. Diwan (PW10) who seized the knife from the possession of the appellant which was sent to examination to medical expert Dr. Anju Sonwani (PW12) and as per version of this witness injuries could be inflicted by this weapon. Dr. Anju Sonwani (PW12) examined the prosecutrix on 18.12.2010 and noticed following injuries :

- (i) Incised wound on front side of neck of 16 x 1 x 2 cm
- (ii) Incised wound on neck of 4 x 0.5 x 0.5 cm
- (iii) Incised wound on stomach of 2.5 x 0.3 x 0.2 cm
- (iv) Incised wound on right hand of 3 x 0.2 x 0.2 cm
- (v) Incised wound on left thumb of 3 x 0.3 x 0.2 cm
- (vi) Incised wound on right thumb of 3 x 0.5 x 0.4 cm
- (vii) Incised wound on back side (dorsal spine) of 3 x 0.5 x 0.5 cm
- (viii) Incised wound on left side of chest of 3 x 0.5 x 0.5 cm

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

8. Hon'ble the Supreme Court in the matter of **Sachin Jana and another Vs. State of West Bengal**, reported in (2008) 3 SCC 390, 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”.

9. In the present case, the appellant inflicted 2 injuries on the throat of the victim. One injury on the abdomen and other on the vest, chest, thumb and left hand of the body. Looking to the injuries it can be easily inferred that the appellant has done everything within his power to cause fatal injury but the final result alludes because of the proper treatment in time. In the facts and circumstances of the case, it can be easily inferred that it was within knowledge of the appellant that injuries may kill the victim. The trial Court has elaborately discussed the entire evidence and came to the conclusion that the case of appellant falls within the mischief of Section 307 IPC.

10. 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.

11. Accordingly, the appeal being devoid of merits is liable to be and is hereby dismissed.

12. 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**

sunita