

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 4-2-2019

Delivered on 28-3-2019

CRA No. 193 of 2011

- Domeswar @ Domes s/o Shri Deo Prasad, aged about 20 years, r/o. Village Tarod, P Balod, Dist. Durg (CG).

---- Appellant

Versus

- State of Chhattisgarh through Station House Officer, PS Balod, Dist. Durg (CG).

---- Respondent

For Appellant : Ms. Sofia Khan, Advocate

For respondent/State : Mr. V.B. Singh, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Judgment

1. This appeal is preferred against the judgment dated 28-12-2010 passed by the Additional Sessions Judge (FTC), Balod, District Durg (CG) in Session Trial No. 26 of 2010 wherein the said Court has convicted the appellant for the commission of offence under Sections 307 and 452 of IPC and sentenced him to undergo RI for seven years and to pay fine of Rs.1,000/- and RI for six years and to pay fine of Rs. 500/- with default stipulations. Both sentences are directed to run concurrently.

2. In the present case, name of the victim is Kumari Chandrika (PW/1). As per version of the prosecution on 2-6-2010 at about 9.00 a.m., appellant entered into the house of the prosecutrix

Kumari Chandrika and said for doing the marriage. When she refused the appellant attacked her by knife due to which she was badly injured. The matter was reported and investigated and after completion of investigation charge sheet was filed, the appellant did not plead guilty and the trial was conducted. 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) Appellant and complainant had love affair, therefore, it is not possible to attack on prosecutrix. Knife which was seized by the prosecution is not connecting piece of evidence.
- ii) The trial court has not evaluated the evidence in its true perspective, therefore, offence under Section 307 of IPC is not established. Independent witnesses have not supported the version of prosecution.
- iii) All the prosecution witnesses are interested witnesses, therefore, they are not reliable.
- iv) Due to provocation of the victim namely Chandrika Gaikward (PW/1), the incident took place, therefore, no offence is made out against the present appellant.
- v) The medical Dr. Smt. S. Cladius (PW/3)

has not mentioned that the injuries were sufficient to cause death, therefore, charge under Section 307 of the IPC is not established.

4. On the other hand, learned counsel for the respondent would submit that the finding of the trial Court is based on proper marshaling 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. PW/1 prosecutrix deposed that on the date of incident at about 9.00 a.m., she was talking to her sister in mobile phone and at the same time appellant came there and attacked her stating that she is not maintaining relation with him and threatened her to kill. She moved inside the house and narrated the incident to her mother and brother and at the same time appellant assaulted her by knife on abdomen and thereafter assaulted on her throat and left hand. Her mother and brother intervened into the matter and tried to catch the appellant, but anyhow he managed to flee away by crossing the wall of the house. Version of this witness is supported by version of PW/2 Jagotin Bai. PW/4 Basant Kumar and PW/6 Chiman Lal. All these witnesses have been subjected to searching cross examination, but

nothing could be elicited in favour of the defence. Direct evidence adduced by the prosecution is again supported by version of Dr. Smt. S. Cladius who examined the prosecutrix on 2-6-2010 at 9.50 am and noticed the following injuries as per Ex.P/7.

- I) Incised wound in the size of 1cm x 3 cm x 3 cm in front of neck.
- ii) Incised wound in the size of 2 cm x 1 cm depth over epigastric area.
- lii) Two incised wounds in the size of 3 cm x 2 cm x 2 cm over right index finger

As per version of this witness, there was excessive bleeding from the body of the prosecutrix that is why blood was transfused in her body, otherwise, she would succumbed to the injuries.

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

8. 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 Section 307 of 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.

9. In the present case, the victim sustained the injuries closed to neck and as per opinion of the medical expert, blood was oozing

from her body , therefore, blood was transfused in her body, otherwise she would succumbed to those injuries.

10. Looking to the entire evidence, it is clear that the appellant has done everything within his power to cause fatal injury but the final result alludes because of proper treatment given to her in time. From the facts and circumstances of the case, it can be inferred that the appellant had intention/knowledge that it may cause murder of the victim. Looking to the facts and circumstances of the case, argument advanced on behalf of the appellant is not sustainable and the case of the appellant clearly falls within the ambit of Sections 452 & 307 of the IPC for which the trial Court convicted him and this Court has no reason to record contrary finding. Conviction of the appellant under Sections 452 & 307 of IPC is hereby affirmed. The trial Court awarded seven years for the said offence. The sentence awarded by the trial Court cannot be termed as harsh or unreasonable or disproportionate.

11. Accordingly, the appeal being devoid of merits is liable to be and is hereby dismissed. As the appellant is reported to be in jail, therefore, no further order for his arrest etc., is required.

Sd/-
(Ram Prasanna Sharma)
Judge

Raju

