

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 22 of 2005

1. Ramkishan Pathak, S/o Chotelal Pathak, aged about 47 years, Occupation- Hotel, R/o Behind Ganj Near Railway Station, P.S.- Kharsia, District- Raigarh (C.G.)
 2. Hanuman Prasad Mishra @ Hanuman Prasad Pathak @ Dhannu Pathak, S/o Shivprasad Mishra, aged about 19 years, Occupation- Hotel, R/o Near P.S. Pathalgaon, Pathalgaon, Presently residing behind the Ganj of Railway Station, Kharsia, District- Raigarh (C.G.)
- Appellants**

Versus

State of Chhattisgarh, through D.M. Raigarh, District- Raigarh (C.G.)

---- Respondent

For Appellants : Mr. Ravindra Sharma, Advocate.

For State/respondent : Mrs. Shubha Shrivastava, PL.

Hon'ble Shri Justice Ram Prasanna Sharma

JUDGMENT ON BOARD

22/10/2019

1. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against judgment dated 24.12.2004 passed by Special Judge, Raigarh (C.G.) in Special Case No. 57/2003, wherein the said court convicted both the appellants for commission of offence under Section 307 of IPC, 1860 and sentenced to undergo R.I. for 3 years and fine of Rs. 2000/- each with further default stipulations.
2. In the present case, name of the victim is Daniram. On the date of occurrence i.e. on 15.07.2003 between 7-8 a.m. when victim- Daniram reached to railway station- Kharsia, in the meantime, both the appellants asked him to take liquor. There was some altercation between them and the appellants assaulted him.

Matter was reported, investigated and after completion of trial, the trial court convicted the appellants as mentioned above.

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

(i) Injuries found on body of the victim is simple in nature, therefore, the offence under Section 307 of IPC is not made out.

(ii) Version of the prosecution witnesses is contradicted to each other, therefore, the story put-forth by the prosecution is not acceptable.

(iii) Looking to omission and contradiction in statement of the prosecution witnesses, finding arrived at by the trial court is not liable to be sustained.

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 looking to the injuries caused on body of the victim. Commission of offence under Section 307 of IPC is made out for which the appellants are convicted, therefore, it is not a case where any interference of this Court is required with the judgment of the trial court.

5. I have heard learned counsel for the parties and perused the record.

6. First question for consideration before this Court is whether the appellants assaulted Daniram on the date of incident. Daniram (PW-1) deposed before the trial court that both the appellants assaulted him by blade (उस्तरा). Version of this witness is unrebutted during cross-examination and it is supported by

version of Dr. D.C. Kingar (PW-13) who examined him on 15.07.2003 and noticed 22 injuries on different parts of the body of the victim. From entire record, there is nothing on record that the appellants have not assaulted the victim as deposed by him, therefore, it is established that the appellants have assaulted Daniram on the date of incident.

7. Second question for consideration before this Court is whether the offence under Section 307 of IPC is made out against the appellants. Dr. D.C. Kingar (PW-13) deposed before the trial court (Para 7) that no fracture was found on the body of the victim. Daniram (PW-1) himself deposed before the trial court that he was admitted in hospital at Kharsai for one day, thereafter, admitted in hospital at Raigarh for 5-6 days.
8. From version of this witness, it is clear that he has been cured after 6 days. Looking to the factual version given by this witness and evidence of medical expert, it is clear that the injuries sustained by the victim were not grievous in nature and looking to admission of 6 days in hospital, the case of the prosecution does not fall within definition of grievous hurt as defined in Section 320 of IPC.
9. Dr. Anil Kumar Kushwaha (PW-11) who examined the victim deposed before the trial court that the injuries sustained by the victim are not dangerous. Though, he further deposed that in absence of medical treatment death of the victim would have been caused. From evidence of this medical expert, it is clear that the injuries sustained by the victim were not dangerous.

10. For establishing commission of offence under Section 307 of IPC, it has to be established that the appellants had intention to kill the victim, but looking to the simple injuries caused on body of the victim, the intension to kill the victim is not established. In absence of intention to kill the victim, charge under Section 307 of IPC is not established, therefore, looking to entire facts and circumstances of the case, finding arrived at by the trial court regarding commission of offence under Section 307 is not sustainable. Injuries were caused by sharp object and the same was simple in nature, therefore, the commission of offence by the appellants falls within mischief of Section 324 of IPC. Accordingly, the appellants are convicted for commission of offence under Section 324 of IPC read with Section 34 of IPC instead of Section 307 of IPC.

Heard on the point of sentence.

11. The appellants have suffered jail sentence from 16.07.2003 to 24.12.2004 i.e. for about 1 year and 5 months, thereafter, from the date of judgment i.e. on 24.01.2004 to grant of bail by this Court i.e. on 04.03.2003. They have suffered jail sentence of 1 year and 8 months. The appellants are now sentenced to the period already undergone by him for commission of offence under Section 324 of IPC. The fine amount imposed by the trial court shall remain intact.
12. With these modifications, the appeal is partly allowed.

Sd/-
(Ram Prasanna Sharma)
Judge