

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 11-01-2019

Judgment delivered on 30-01-2019

CRA No. 708 of 2012

- Parimal Chatterjee s/o. Late Virendra Nath Chatterjee aged about 48 years, r/o. Chatterjee Galli, New Sarkanda PS Sarkanda, Bilasur (CG). Present address Dubey Colony, Mowa, PS Pandari, District Raipur (CG).

---- Appellant

Versus

- State of Chhattisgarh through District Magistrate Raipur, District Raipur (CG).

---- Respondent

 For Appellant : Mrs. Indira Tripathi, Advocate

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

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

1. This appeal is preferred against the judgment of conviction and order of sentence dated 25-7-2012 passed by 4th Additional Sessions Judge, Raipur, District Raipur (CG) in Sessions Trial No. 152 of 2011 wherein the said Court has convicted the appellant for commission of offence under Sections 307 and 498-A of IPC and sentenced him to undergo rigorous imprisonment for ten years and to pay fine of Rs.100/- and RI for three years and to pay fine of Rs.100/- with default stipulations.

2. In the present case, complainant/victim is Madhumita Chatterjee who is wife of the appellant. As per version of the prosecution, she was married to appellant in the year 1990 and after marriage she was residing with the appellant at her matrimonial home where the appellant started quarreling with her after consuming liquor. On the date of incident i.e., 24-2-2011 when the victim was sitting in a computer center, appellant had thrown acid upon her as a result of which she sustained grievous burn injury. 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) PW/1 Dinesh Banjare, PW/6 Bhagirathi Verma and PW/7 Vijay Verma turned hostile, therefore, conviction on the basis of complainant and other interested witnesses is not proper.
- ii) Injury whatsoever received by the complainant is not sufficient to cause death of the deceased, therefore, charge under section 307 of IPC is not established.
- iii) The trial Court has not discussed about the omissions, contradictions and improvements in the statements of the prosecution witnesses, therefore, finding of the trial Court is not sustainable.

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. In the present case, date of incident is 24-2-2011 and place of incident is one Ram Krishna Centre, which is situated at main road, Mowa within jurisdiction of Police Station Pandari. Report was lodged on the same day at Police Station Pandari naming the appellant as culprit and it is clearly mentioned in the FIR regarding cruelty and acid throwing upon her by the appellant. Victim has lodged FIR against her husband/appellant on the same day and she is firm to her version before the trial Court. PW/15 Madhumita Chatterjee/victim deposed before the trial Court that the appellant used to beat her after consuming liquor. She was running computer centre at Mowa in the year 2009 and on the date of incident, the appellant threw acid on her. Version of this witness is supported by version of Sanjay Chakrabarti (PW/16), Vijay Verma (PW/7) and Subhash Chakrabarti (PW/2).

7. From the evidence of all these witnesses, it is established that the appellant subjected the victim to cruelty and assaulted her by throwing acid on her body. All the witnesses have been

subjected to searching cross examination, but nothing could be elicited in favour of defence. There is nothing on record to show that the prosecutrix has falsely roped her husband in a false charge. Version of the victim and other witnesses is incriminating piece of evidence against the appellant and this court has no reason to say that they are falsely roping the appellant. There is nothing to say that the appellant has been falsely implicated for one or other reason. Dr. Devendra Nayak (PW/19) who examined the victim on 24-2-2011 at Balaji Hospital, Raipur, deposed that she was brought in serious condition after sustaining 60% deep burn injuries. She was kept in Intensive Care Unit (ICU) for 40 days where four complicated operations were done to her and in the meantime she was very serious. As per version of this expert, if proper treatment would not have been provided to her instantly, she would have succumbed to those injuries.

8. Looking to the gravity of the offence and critical condition of the victim, the trial Court opined that it is a case of attempt to murder.

9. Now the point for determination is whether the act committed by the appellant constitutes offence under Section 307 of IPC.

10. An attempt is an intended, but unfinished crime, tending but failing to effect its commission. Specific intention to commit the crime of murder is a necessary prerequisite of this section. In so far as the offence relates to an attempt, the overt act must

necessarily be left unaccomplished because otherwise the prosecution would be for the completed crime. Apart from the necessary *mens rea*, *actus reus* must be more than a preliminary preparation. The attempt must have gone so far that it would result in the commission of the crime intended unless frustrated by the intervention of extraneous circumstances, independent of the will of the accused. So, in order to constitute an offence under this section, it must be established that the offender did an act (the *actus reus*) and that act was actuated by an intention (the *mens rea*) to go further and to achieve a definite end, which is a specific crime, namely, murder. The prosecution has to establish both the elements of the crime by proving that the accused did something, which, in point of law, would be an intention of the commission of an offence and in taking that step, he was inspired by an intention to achieve the definite objective which constituted the particular crime.

11. To constitute an offence under Section 307 IPC, two ingredients of the offence must be present:

- (a) an intention 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 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.

12. From the entire evidence it is established that the appellant did everything within his control, but the final result alluded because of proper treatment in time. Looking to the facts and

circumstances of the case and the evidence adduced by the prosecution, argument advanced on behalf of the appellant is not sustainable. The act of the appellant falls within mischief of Sections 307 and 498-A of IPC for which the trial Court convicted the appellant and same is hereby affirmed.

13. Heard on the point of sentence.

The trial Court awarded RI for ten years for offence of attempt to murder which cannot be termed as harsh or unreasonable or disproportionate. Sentence part is also not liable to be interfered with.

14. Accordingly, the appeal being devoid of merits is liable to be and is hereby dismissed. As per the report of jail authorities, the appellant has suffered full jail term and has been released from jail after getting remission, therefore, no fresh order for his arrest etc., is required.

Sd/-

(Ram Prasanna Sharma)

Judge

Raju