

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 11.11.2019

Delivered on 17.12.2019

Criminal Appeal No.980 of 2015

- Prakash Ekka S/o Shri Hiralal Ekka Aged About 24 Years R/o Village - Jajga Baulapara, Police Station - Sitapur, District - Surguja Chhattisgarh.

---- Appellant

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station Sitapur Ambikapur, District - Surguja Chhattisgarh.

---Respondent

For appellant : Shri Vivek Kumar Pandey, Advocate
 For respondent/State: Shri Raghavendra Verma, Govt. Advocate

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

1. The appeal is directed against judgment dated 31.7.2015 passed by Fourth Additional Sessions Judge, Ambikapur Distt. Surguja (CG) in Session Trial No.216/2013 wherein the said Court convicted the appellant for commission of offence under Section 307 of the Indian Penal Code, 1860 and sentenced him to undergo rigorous imprisonment for seven years and to pay fine of 1000/- with default stipulation for commission of offence of attempt to murder one Satyanarayan on 08.02.2013 at about 9.00 pm at Village Jajga, Baulapara, Police Station Sitapur, Distt. Surguja.

2. As per the case of the prosecution, on the date of incident, one *annaprashan* ceremony was going on in the house of Sukhi

Ram and on the said function, complainant Satyanarayan and other persons were present. After completion of the programme, one Suganti Bai who was present there fell down. At the same time, husband of Suganti Bai, who is present appellant, came there and told the victim that he is teasing his wife and assaulted him by club on his head, ear, nose, mouth and face and also inserted the stick in his private part of the body. The matter was reported and investigated and the appellant was charge sheeted and convicted as mentioned above.

3. Learned counsel for the appellant submits as under:

(i) As per the version of prosecution witnesses, charge under Section 307 IPC is not established.

(ii) There are so many contradictions and omissions in the statement of the prosecution witnesses, therefore, finding of the trial Court is not sustainable.

(iii) The learned trial Court failed to appreciate that there is no intention on the part of the appellant and also failed to appreciate the deposition of the independent witnesses. Therefore, finding of the trial Court may 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 marshaling of the evidence and the same is not liable to be interfered with while invoking the jurisdiction of the appeal.

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

6. Satyanarayan (PW-1) who is the victim deposed before the trial Court that the appellant assaulted him by club on his head, nose and inserted stick in his private part. Version of this witness is unrebutted during cross-examination and it is further supported by the version of Smt. Manitra (PW-6). Again it is supported by the version of medical expert Dr. SN Paikra (PW-12) who examined the victim and noticed following injuries:-

- (i) Lacerated wound of 1 ½ x 1 x ½ inch on the tip of the nose
- (ii) Lacerated wound of 2 x 1 x ½ inch on the left side of the face
- (iii) Lacerated wound of 1 ½ x 1 x ½ inch on anus
- (iv) Lacerated wound of 1 x ½ x ½ inch on left parietal region of the head.

As per the version of this witness, all the injuries were caused by hard and blunt object and caused within 2-3 hours of the examination. He opined that all the injuries were grievous in nature and also opined that there was possibility of death of the victim by the injuries sustained to him. Version of this witness is unrebutted during cross-examination.

7. The defence side examined one witness namely Suganti (DW-1) who deposed before the trial Court that the victim tried to outrage her modesty but her version is not substantiated by any documents. Again, she has stated before the trial Court on 02.7.2015 i.e. after two years and five months of the incident and there was no explanation regarding not stating the same at a first

available opportunity. Therefore, her version is rightly rejected by the trial Court.

8. Now the question for consideration before this Court is whether the act of the appellant falls within mischief under Section 307 IPC. Hon'ble the Supreme Court in the matter of **Sachin Jana and Another Versus State of West Bengal**, 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.”

Determinative question is the intension or knowledge that will be caused by the act of the accused irrespective of the result.

9. In the present case, act of the appellant shows brutality and looking to the medical evidence, death was possible and it can be easily inferred that the appellant had knowledge that death will be caused by his act. After evaluating the entire evidence, it is clear that Section 307 IPC has clear application in the present case. In view of the above, arguments advanced on behalf of the appellant is not sustainable. The conclusion arrived at by the trial Court is not liable to be interfered with and the same is hereby affirmed.

10. The trial Court awarded sentence of seven years which cannot be termed as harsh, disproportionate or unreasonable. Therefore, sentence part is not liable to be interfered with.

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

Sd/-
(Ram Prasanna Sharma)
JUDGE