

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 26-11-2019
 Delivered on 30-01-2020

CRA No. 2877 of 1999

1. Shambhu aged 62 years s/o. Buddhu Giri (Bharti).
2. Ishwar aged 27 years s/o. Bisahu Verma.
3. Ishwari aged 32 years s/o. Bisahu Verma.
4. Bisahu @ Ledu aged 52 years, s/o. Baldu Verma (died and deleted).

All are r/o. Village Partewa, Police Station Rajim, District Raipur MP (now CG).

---- Appellants.

Versus

- The State of Madhya Pradesh (Now State of CG).

---- Respondent

For Appellant	:	Mr. Samir Singh, Advocate
For respondent/State	:	Mr. Aman Kesharwani, P.L.

Hon'ble Shri Justice Ram Prasanna Sharma
CAV Judgment

1. This appeal is preferred against the judgment of conviction and order of sentence dated 20-10-1999 passed by the 6th Additional Sessions Judge, Raipur MP (Now CG) in Sessions Trial No. 490 of 1997 wherein the said Court has convicted the appellants for commission of offence under Section 307 read with Section 34 of IPC and sentenced them to undergo rigorous imprisonment for four years and to pay fine of Rs.200/- each with default stipulations.

2. During pendency of the appeal appellant No.4 Bisahu @ Ledu died on 6-12-2012 and no application is filed for continuation of the appeal on his behalf, therefore, his appeal finally stands abated.

3. As per prosecution case, on 10-7-1997 at about 8 'O clock, victim Shiv Kumar Sharma had gone to his field to ease himself where all the four appellants assaulted him mercilessly by clubs. Due to repeated assaults he became unconscious. Two persons namely Prabhuram and Tulsiram rushed to the spot and thereafter appellants fled away from the spot. Victim Shiv Kumar Sharma was admitted in Primary Health Centre, Rajim. The matter was reported and investigated. After completion of trial, the appellants were charge-sheeted and convicted as aforementioned.

4. Learned counsel for the appellant would submit as under:

- i) Victim Shiv Kumar Sharma (PW/1) deposed before the trial court that has has been assaulted with knife but no incised wound was found on his person.
- ii) The trial Court should have considered the contradiction between the evidence of medical experts regarding injury on chest but same is overlooked .
- lii) The victim is having weak eye sight which suggests a reasonable suspicion about identification of the appellants.

- iv) Version of defence witness Ganga Bai is also overlooked that quarrel took place between the appellant No.1 and victim.
- v) The trial Court has not evaluated the evidence properly, therefore, finding of the trial court is liable to be set aside.

5. 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.

6. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

7. PW/1 Shiv Kumar Sharma deposed before the trial court that on the date of incident at about 7.30 a.m., he had gone to his field to ease himself where all the four appellants assaulted him by clubs and he got unconscious. Version of this witness is supported by version of Prabhuram (PW/2) and Tulsiram (PW/8), Ramji (PW/9) and Nand Kumar (PW/10). All the witnesses have been subjected to searching cross examination but nothing could be elicited in favour of defence.

8. Dr. Ramsevak Verma (PW/11) examined the victim on 10-7-1997 at Medical College Hospital, Raipur and noticed the following injuries.

- I) Left side eye swollen, black eye.
- ii) Stitched wound over left parietal region 5cm x 1 cm.
- lii) Stitched wound over left cheek 1 cm.
- iv) Stitched wound over right fore arm of size 1cm x 2 cm.
- v) Stitched wound over left foot on dorsal surface.
- vi) Abrasion over left shoulder of size 6 cm x6 cm.
- Vii) Abrasion over left upper limb 4x 2 cm.
- Viii) Abrasion over upper part of left thigh 6 x7 cm.
- ix) 1 cm x 1/2 cm size abrasion over chest.
- x) Bruise over left thigh post size 3 x 7 cm, 4x7 cm, 2 x 4 cm.
- xi) Bruise over left leg over post surface of size 3 cm x 12 cm.
- Xii) Bruise over back of size 2 cm x 10 cm 1x6cm.
- Xiii) Abrasion over back.

He deposed that victim was unconscious and death of the deceased was possible due to injury caused on his chest. Version of this witness is supported by version of Dr. Gopal Kela (PW/7)

who also examined the victim at Community Health Centre, Rajim.

9. Looking to the entire evidence, it is clear that all the appellants are authors of crime and injuries may have resulted into death of the victim. The date of incident is 10-7-1997 and report was lodged on the same day at Police Station Rajim naming all the four appellants as culprits and their act of assault is also mentioned as per Ex.P/1. Looking to the clinching evidence, argument advanced on behalf of the appellants is not sustainable.

10. Now, the question for consideration of this court is whether the act of the appellants falls within mischief of Section 307 of IPC. 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".

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

11. In the present case, act of the appellants shows brutality and looking to the medical evidence, it can be easily inferred that that the appellants had knowledge that death will be caused by their act. After evaluating the entire evidence, it is clear that Section 307 of IPC has clear application in the present case. The conclusion arrived at by the trial court is not liable to be interfered with and same is hereby affirmed. The trial court awarded sentence of four years which cannot be termed as harsh or unreasonable or disproportionate. Sentence part is also not liable to be interfered with.

12. Accordingly, the appeal being devoid of merits is liable to be and is hereby dismissed. Appellants No.1 to 3 are reported to be on bail. Their bail bonds stand cancelled. The trial Court will prepare super-session warrant and issue non-bailable warrant against the appellants and after their arrest they be sent to jail for serving out remainder of the sentence. The trial Court to submit its compliance report on or before 7-5-2020.

Sd/-

(Ram Prasanna Sharma)

Judge

Raju