

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 2924 of 1999

Reserved on : 22.01.2020

Delivered on : 27.02.2020

1. Rajkumar, S/o Tulsiram, aged about 25 years.
2. Samaru, S/o Rajman, aged about 28 years.
3. Rajman, S/o Tulsiram, aged about 16 years.

All are R/o Village- Kapanapara, P.S.H. Bango, District- Korba (M.P.)
(Now C.G.)

---- Appellants

Versus

State of Madhya Pradesh, Through: P.S.H. Officer, P.S.H. Bango, District-
Korba (M.P.) (Now C.G.)

---- Respondent

For Appellants : Mr. J.K. Shastri, Advocate.
For State/respondent : Mr. Afroj Khan, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This appeal is preferred under Section 374(2) of the Code of Criminal Procedure, 1973 against judgment dated 29.09.1999 passed by Second Additional Session Judge, Bilaspur (M.P.) (Now C.G.) in Session Trial No. 460/1998, wherein the said court convicted all the three appellants for commission of offence under Section 326/34 of IPC, 1860 and sentenced to undergo R.I. for 3 years and fine of Rs. 500/- each with further default stipulations.

2. In the present case, name of the victim is Ramadhar. As per version of the prosecution, all the three appellants in furtherance of common intention caused grievous injuries to Ramadhar in his right wrist and other parts of his body that is why report was lodged. The matter was investigated, the appellants were charge-sheeted and after completion of trial, convicted as mentioned above.
3. Learned counsel for the appellants submits as under:-
 - (i) Almost all the witnesses belong to the family of the complainant and there is contradiction between facts stated in FIR and statement recorded before the court below.
 - (ii) Seizure of the article is not legally proved before the trial court, therefore, finding of the trial court is not sustainable.
 - (iii) The appellants had not any intention to commit offence, but the trial court has not evaluated the evidence properly, therefore, the finding arrived at by the trial court is liable to be set aside.
4. On the other hand, learned State counsel submits that the finding arrived at by the trial court is based on relevant material placed on record and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.
5. I have heard learned counsel for the parties and perused the records.
6. First question for consideration before this Court is whether the appellants have assaulted the victim Ramadhar in furtherance of common intention. Ramadhar (PW-7) deposed before the trial court

that he had gone to shop of appellant No. 2- Samaru for purchasing article for his hotel and he was sitting with appellant No. 1- Rajkumar, thereafter, he was talking with appellant No. 2- Samaru and at the same time, the appellant No. 3- Rajman assaulted him by club from back side, thereafter, all the three appellants tied his feet and kept his hands on wood and cut his hand by axe that is why his wrist was separated from other parts of the body. He further deposed that the appellant No. 1- Rajkumar assaulted him by knife on his chest and near his left ear. Version of this witness is supported by version of Bajrang (PW-5) who is eye-witness account to the incident. Both the eye-witnesses have been subjected to searching cross-examination, but nothing could be elicited in favour of the defence.

7. In the present case, date of incident is 01.08.1998 and the report was lodged on the same day naming all the appellants as culprit and their act of assault is also mentioned in the said report. Version of above witness is supported by version of Dr. S.D. Dahire (PW-3) who examined the victim Ramadhar on 01.08.1998 at 6:45 p.m. at Community Health Centre, Katghora and noticed following injuries:-

- (i) Incised wound on right forearm cut to the bone and hand separate amputated.
- (ii) Incised wound size 1.5" x 0.5" on front of chest at sternum region.
- (iii) Incised wound size 2" x 0.5" on left side of chest at lower part .
- (iv) Incised wound size 2.5" x 0.5" on left side of parietal region.
- (v) Incised wound size 1.5" x 0.5" on left side of face near below the ear .

(vi) Incised wound size 1" x 0.25" on anterior aspect of left side leg at upper part .

8. As per version of this witness, all the injuries were caused by sharp object within 24 hours. He further opined that death would have been caused if treatment would not have been provided in proper time. The injury which endangers to life is grievous in nature as per Section 320 sub-clause 8 of IPC, 1860. From the direct evidence which is supported by FIR and medical evidence, it is clearly established that all the three appellants have committed offence in furtherance of common intention in tying leg of the victim and cutting his wrist.
9. On overall assessment of the evidence adduced by the prosecution, argument advanced on behalf of the appellants is not sustainable. The trial court elaborately discussed the entire evidence, and after reassessing the same, this Court has no reason to record contrary finding. The act of all the appellants falls within mischief of Section 326/34 of IPC, 1860 for causing grievous injury to the complainant-Ramadhar by sharp object for which the trial court convicted all the appellants and their conviction is hereby affirmed.

Heard on the point of sentence.

10. The trial court awarded R.I. for 3 years each of the appellant for commission of offence under Section 326/34 of IPC, which cannot be termed as harsh, disproportionate or unreasonable looking to the gravity of offence and the factual matrix of the case. The whole sentence part is also not liable to be interfered with. Accordingly, the

appeal is liable to be and is hereby dismissed.

11. The appellants are reported to be on bail, their bail bonds are cancelled. The trial court will prepare super-session warrant and issue warrant of arrest against the appellants and after their arrest, they be sent back to the concerned jail for serving out the remaining part of the jail sentence. The trial court shall submit compliance report on or before 31st August, 2020.

Sd/-
(Ram Prasanna Sharma)
Judge

Arun