

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1129 of 2001

Reserved on : 03.12.2019

Delivered on : 30.01.2020

Kalam Sai, S/o Budhram Kanwar, aged about 25 years, Occupation- Agriculture, R/o Village- Amagasi, P.S.- Lakhanpur, District- Surguja (C.G.)

---- Appellant

Versus

State of Chhattisgarh

---- Respondent

For Appellant : Mr. Mirza Kaiser Baeg, Advocate.

For State/respondent : Mrs. Smita Jha, 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 08.11.2001 passed by First Additional Sessions Judge, Ambikapur, District- Surguja (C.G.) in Session Trial No. 169/2000, wherein the said court convicted the appellant for commission of offence under Sections 325 & 324 of IPC, 1860 and sentenced to undergo R.I. for 3 years and fine of Rs. 500/- & R.I. for 1 year and fine of Rs. 500/- respectively with further default stipulations. All the sentences to run concurrently.
2. In the present case, name of the victims are Shyam Ram & Mankunwar. Mankunwar is mother of Shyam Ram. As per version of the prosecution, on the date of incident i.e. on 02.02.2000 at about 6:30 p.m., Shyam Ram was at home situated at Village- Amagasi where the appellant came and abused that they have thrown garbage in his house, thereafter, he assaulted Shyam Ram by axe and when

her mother namely Mankunwar intervened, the appellant assaulted her. Some persons intervened into the matter and thereafter, report was lodged. The matter was investigated, the appellant was charge-sheeted and after completion of trial, he was convicted as mentioned above.

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

(i) There is single injury on head of Shyam Ram which might have occurred during struggle, but that aspect of the matter lost in sight of the trial court.

(ii) There is enmity between Shyam Ram and the appellant, but this aspect of the matter is overlooked by the trial court.

(iii) The injuries sustained by Mankunwar is due to her interruption which cannot be termed as offence under Section 324 of IPC.

(iv) The trial court has not evaluated the evidence in its true perspective, therefore, 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 proper marshaling of evidence 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. Shyam Ram (PW-2) deposed before the trial court that on the date of incident, the appellant assaulted him and when her mother intervened, the appellant also assaulted her. Version of this witness is supported by version of Mankunwar (PW-3). It is again supported by version of Tijo Bai (PW-4). All these witnesses have been subjected to searching

cross-examination, but nothing could be elicited in favour of the defence. Dr. A.S. Kerketta (PW-7) examined Shyam Kunwar on 02.02.2000 at 11:30 p.m. at Primary Health Centre, Lakhanpur and noticed following injury (Ex.P/12) :-

- (i) Incised (sharp cutting) wound over just lateral to mid line (left side) of frontal region of scalp size 4 inch x 1 inch bone deep.

7. He advised for X-ray examination and opined that the injury is caused within six hours of his examination. This witness further deposed that he also examined Mankunwar on 02.02.2000 and noticed following injury (Ex.P/13) :-

- (i) Incised (sharp cutting) wound over just lateral to mid line (left side) of frontal region of scalp size 4 inch x 1 inch bone deep.

8. He advised for X-ray examination of victim- Mankunwar and opined that the injury is caused within six hours of his examination. This medical expert further opined that the injury caused by Shyam Ram was fatal in nature if would not have been provided instant treatment. Version of this witness is unrebutted during cross-examination and there is no other expert opinion contrary to the opinion of this expert, therefore, there is nothing on record to reject his version.

9. Dr. M.K. Jain (PW-1) who examined X-ray plate of Shyam Ram and opined that small crack fracture was found in left frontal bone which shows that the injury caused to Shyam Ram was grievous in nature. Earlier the appellant was charge-sheeted for offence under Section 307 of IPC for causing fatal injury to Shyam Ram and it is arguable whether the case of the appellant falls within mischief of Section 307 of IPC or Section 325 of IPC, but the fact remains that no appeal is

preferred against opinion of the trial court and looking to the dangerous/grievous injuries as defined in Section 320 of IPC, argument advanced on behalf of the appellant is not sustainable.

10. The act of the appellant falls within mischief of Sections 325 of IPC, 1860 for causing injury to Shyam Kunwar. Again, the injury of Shyam Kunwar was found to be cutting injury, the act of the appellant falls within mischief of Section 324 of IPC for which the trial court convicted the appellant and his conviction is hereby affirmed.

Heard on the point of sentence.

11. The trial court awarded R.I. for 3 years & R.I. for 1 year for commission of offence under Sections 325 & 324 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.
12. The appellant is reported to be on bail, his bail bond is cancelled. The trial court will prepare super-session warrant and issue warrant of arrest against the appellant and after his arrest, he 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 30th June, 2020.

Sd/-
(Ram Prasanna Sharma)
Judge