

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 03/01/2020

Delivered on 05/03/2020

CRA No. 551 of 2003

Manak Chand, S/o- Hemlal Jangade, R/o- Semariya, Tahsil-
Bemetara, District- Durg(C.G.) **---- Appellant**

Versus

State of Chhattisgarh **---- Respondent**

For Appellant : Smt. Laxmin Tondey, Advocate
For State/respondent: Mr. Afroj Khan, P.L.

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

1. This appeal is preferred against judgment dated 23.04.2003 passed by the Third Additional Sessions Judge (F.T.C.), Bemetara, District- Durg (C.G.) in Sessions Trial No.49/2003 wherein the said Court convicted the appellant for commission of offence punishable under Sections 307 of the Indian Penal Code, 1860 and sentenced him to undergo R.I. for 7 years and fine of Rs. 10000/- with default stipulation.
2. In the present case, name of the victim is Arjun Ram. As per version of the prosecution victim Arjun Ram reached at village Semariya on 12th of December, 2002 for searching of his father and took dinner with one Hemlal in the home of the appellant thereafter, he went to sleep to the home of Hemlal. On same night near about 12 O' clock appellant assaulted the complainant by knife. Accused Hemlal came when heard a noise of the complainant then the appellant

went away. Thereafter, matter was reported and investigated and the appellant was charge-sheeted and convicted as mentioned above.

3. Learned counsel for the appellant submits that as per evidence of medical expert all the injuries of the complainant are simple in nature therefore, case of the appellant does not fall within ambit of Section 307 of IPC. From the evidence. It is clear from evidence that complainant tried to assault the appellant and his father by knife but same is over-looked by the trial Court. The trial court has not evaluated the evidence properly therefore, finding of the trial Court is liable to set-aside.
4. On the other hand, learned State counsel submits that finding of the trial Court is based on proper marshaling of the evidence and same is not liable to be interfered with invoking jurisdiction of appeal.
5. As per version of the Arjun (PW-1) he has been assaulted by the appellant. On the date of incident Dr. Devdhar (PW-11) examined the victim Arjun Ram on 13th of December, 2002 and noticed following injuries (Ex.P-10).

(i) Incised wound of 3cm x ½ cm on middle 1/3rd of right upper arm.

(ii) Incised wound of 2.5 cm.x 1cm x ½ cm. on right sternoclavicular joint region.

(iii) Incised wound of 2cm x ¾ cm x ½ cm. On left upper arm, Middle aspects.

(iv) Contusion of 5cm(Long) x 3 cm (wide) on middle 1/3rd of right upper arm.

As per version of this witness the injuries were caused within 12 to 18 hrs of the incident which can be cured within 7 to 10 days. This witness also found injury on the body of the appellant. After examination he noticed incised wound of 1 and $\frac{1}{2}$ cm x $\frac{1}{4}$ cm x $\frac{1}{4}$ cm on ring finger of right hand ventral aspect. As per version of this witness injuries caused within 36 to 41 hrs. of the examination and it can be cured within 7 to 10 days.

6. From the entire evidence of medical expert, it is clear that appellant had also sustained injury but the prosecution has not explained the injuries caused on the body of the appellant which created doubt in the story of the prosecution.
7. Version of Hemlal (PW-3) takes the case into different angle, as per version of this witness Arjun Ram tried to outrage modesty of the wife of the appellant and she made hue and cry and came outside of the house. If version of Hemlal is accepted then it is a case of right of private defence of body and as per Section 101 of IPC, 1860 "the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does extend, under the restrictions mentioned in section 99, to the voluntary causing to the assailant of any harm other than death."
8. In the present case, injuries caused to the appellant is simple in nature. Therefore, it cannot be said that appellant extended his right of private defence.

9. After reassessing the entire evidence the story of the prosecution is under cloud and there is possibility of invoking right of private defence which comes within exception and same is not an offence.
10. Accordingly, the appeal is allowed. Conviction and sentence of the appellant is hereby set-aside. He is acquitted of the charge under Section 307 of I.P.C.

Sd/-
(Ram Prasanna Sharma)
JUDGE

N.Mohle