

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1047 of 2008

Shravan Kumar, S/o Banmali Sahu, aged about 26 years,
Occupation – Agriculture, R/o Village Kunra, PS Dharsiwa,
District Raipur (CG) **-- Appellant**

Versus

State of CG, through Station House Officer, Police Station
Dharsiwa, District Raipur (CG) **--- Respondent**

For Appellant	:	Mr. Sachin Nidhi on behalf of Mr. Y.C. Sharma, Advocate and Mr. Pawan Shrivastava, Advocate
Respondent/State	:	Mr. Sameer Sharma, Dy. GA.

Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment On Board

01.07.2020

Case of the prosecution in nutshell is that on 23.05.2007 when complainant Baldau Sahu (PW-1) was sleeping in the barn to keep watch on un-thrashed paddy, at 11:15 PM the accused/appellant came there and opened an assault on him. During assault accused/appellant caused axe injuries on vital parts of the victim and then after taking him to be dead he left the spot and threw away the axe used in the commission of offence in the shrubs. On hearing the cries of Baldau (PW-1), Shiv Prasad (PW-3) reached the spot and took the victim home where he disclosed the entire incident of assault opened on him to Ashok Patel (PW-2), Shiv Prasad (PW-3), Radheshyam (PW-4) and other villagers as well. Thereafter he was taken to police station where FIR (Ex.P-1) came to be lodged. Victim was then taken to Primary Health Center, Daundekala from where looking to the injuries suffered by him he was referred to District Hospital, Raipur vide report Ex.P-9A.

However, instead of District Hospital, Raipur, victim was shifted to the clinic of Dr. Dhirendra Kumar Sao (PW-5) where he remained hospitalized up to 30.05.2007. During his hospitalization number of stitches were applied on various wounds on head, stomach and mouth extending to ear. This apart, on 28.05.2007 another surgery was required to be performed on the hands of the victim by Dr. Anil Verma. All this is evident from the discharge ticket (Ex.P-8). After completion of investigation charge-sheet was filed against the accused/appellant under Section 307 IPC and charge was also framed thereunder.

2. Learned Court below vide judgment impugned dated 20.08.2007 passed in Sessions Trial No.133/2007 convicted the accused/appellant under Section 307 IPC and sentenced him to undergo RI for 5 years with fine of Rs.500, plus default stipulation. Hence this appeal.

3. Counsel for the accused/appellant submits that there is no eyewitness to the incident and whatever has been stated by PW-2, PW-3 and PW-4 is based on the information provided to them by victim (PW-1). He also submits that from the material available on record it appears that there was no adequate light on the spot and therefore the identification of the accused by the witnesses who rushed to the spot after hearing the cries of victim (PW-1) becomes doubtful. According to the counsel for the accused/appellant the judgment impugned is based on conjecture and surmises and therefore liable to be set aside.

3. On the other hand counsel for the respondent/State supports the judgment impugned to be just and proper.

4. Baldau (PW-1) – the victim of assault opened by the accused/appellant has categorically stated that on the date of incident at 11:15 PM when he was sleeping in his grain-yard, the accused/appellant reached there and caused number of injuries on vital parts of his body including head, stomach etc. with the axe carried by him. He has further stated that when he became unconscious on account of injuries suffered by him the accused/appellant left the spot taking him to be dead. Ashok Patel (PW-2), Shiv Prasad (PW-3) and Radheshyam Patel (PW-4) who reached the place of incident on hearing the cries raised by the victim have also supported the case of the prosecution stating that as soon as they reached the spot, the victim was found lying there with number of bleeding injuries on his body. They have further stated that after they reached the spot and victim was taken home, he had informed that it is the accused/appellant who caused injuries to him with axe. They also saw the blood coming out of the head and stomach wounds of the victim. Dr. Dharendra (PW-5) who medically examined the victim from 24.05.2007 to 30.05.2007 during his hospitalization, has categorically stated that number of stitches were applied on head, stomach and mouth of the victim extending to ear. He has further stated that on 28.05.2007 another surgery was performed on hand of the victim by Dr. Anil Verma. He went on to state that the injuries suffered by him were grievous in nature and would have proved dangerous to life if the timely medical treatment was not provided to him. This Court does not find any force in the argument of the counsel for the appellant that how the victim came to identify the accused when the incident had taken place in the mid of night. It is for the reason that none of the witnesses has stated

that on the date and at the time of incident it was pitch dark on account of which it would have been difficult for one to identify the accused. Furthermore, the complainant has categorically stated that at about 11:15 PM when he was sleeping in his grain-yard, the accused/appellant came there and caused number of axe blows on various parts of his body such as head, stomach, mouth extending to ear. While describing the identity of the accused/appellant, he has clearly named him to be Shravan Kumar – son of Banmali Sahu. This apart, material on record shows that the accused and the victim happened to be of the same village and therefore, even if it was pitch dark, they could have identified each other even by their style of walking and movements made.

5. Thus from the above, it can safely be said that the act of the accused/appellant in assaulting the victim and causing number of grievous injuries on vital parts of his body falls within the ambit of Section 307 IPC. Therefore, the findings recorded by learned Court below are just and proper and cannot be interfered with by this Court. Being so, the conviction of the accused/appellant under Section 307 IPC is hereby maintained.

6. As regards sentence, the report received from the Superintendent, Central Jail, Raipur dated 22.05.2020 shows that after getting the benefit of remission the accused/appellant has already been released from jail on 19.04.2010, therefore, no observation regarding the sentence part is required to be made by this Court.

7. In view of what has been discussed as above, the appeal being without any substance is liable to be dismissed and is hereby dismissed as such.

Sd/-
(Vimla Singh Kapoor)

Judge

Jyotishi/Ajay