

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 27.11.2019

Delivered on 10 -01-2020

CRA No. 324 of 2011

- Ramgopal @ Gopal Aditya S/o Buddhu Aditya, R/o Village Kharud Manjhapara, P.S.-Sheorinarayan, Distt.-Janjgir-Champa, C.G.

---- Appellant

Versus

- State of Chhattisgarh through Police Station Sheorinarayan, District Janjgir Champa (CG).

---- Respondent

For appellant : Shri Vaibhav A. Goverdhan, Advocate

For respondent/State: Shri Ishwar Jaiswal, P.L.

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

1. The appeal is directed against judgment dated 13-9-2010 passed by the Sessions Judge, Janjgir (CG) in Session Trial No.135 of 2010 wherein the said Court convicted the appellant for commission of offence under Section 307 of the Indian Penal Code, 1860 and sentenced him to undergo rigorous imprisonment for four years and to pay fine of 3000/- with default stipulation.

2. In the present case, name of the victim/injured is Laxman Aditya. As per version of prosecution, on 29-6-2010 at about 8,.00

a.m., when the victim Laxman Aditya was coming with his wife from temple, appellant started quarreling with him by saying that he had bad intention towards his wife and assaulted the victim by knife repeatedly. On hearing the screaming, Balram and Mukesh went there for disentangle and thereafter the appellant ran away from the spot. The matter was reported and investigated and the appellant was charge sheeted and convicted as mentioned above.

3. Learned counsel for the appellant submits as under:

- (i) The trial court has not evaluated the evidence of Balram (PW/9) who deposed that there was scuffle between the appellant and victim.
- (ii) The appellant had no intention to kill the victim, therefore, charge under Section 307 of IPC is not established.
- (iii) Two material eye witnesses of the incident i.e., wife of the victim and one Mukeksh have not been examined.
- (iv) Weapon of the incident was not exhibited before the trial court, therefore, finding of the trial court is liable to be set aside.

4. 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 marshaling of the evidence and the same is not liable to be interfered with while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record of the Court below.

6. The question for consideration of this court is whether the appellant assaulted the victim namely Laxman Aditya. PW/10 Laxman Aditya deposed before the trial court that at the time of incident i.e., on 29-6-2010 at about 8.00 a.m., he was returning from temple with his wife and at the same time appellant assaulted him by knife on his head, abdomen and other parts of the body. Version of this witness is unrebutted during cross examination which is searching in nature. It is supported by version of Dilip Kumar (PW/1), Lakhanlal Sai (PW/2), Guruvari Aditya (PW/3), Khagendra Aditya (PW/8) and Balram (PW/9) who have seen the injuries on the body of the victim. It is further supported by version of Dr. N. Prasad (PW/6) who examined the victim on 29-6-2010 at Primary Health Centre, Kora and noticed the following injuries:

- (i) Lacerated wound of 7x4 x deep abdominal cavity part of admonitory canal protruded through the wound
- (ii) Lacerated wound of 3 x 2 cm over the frontal region.
- (iii) Lacerated wound of 1 ½ x 1 x ½ inch on anus
- (iv) Lacerated wound of 3 x 2 cm over the right side of the nose.

As per the version of this witness, all the injuries were grievous in nature and it is caused by hard and blunt object. It is further supported by version of Dr. R. Bhargav (PW/4) who examined the victim and noticed deep injury on his abdomen and

intestine was also found cut. From the evidence of these witnesses, injuries were dangerous to life and grievous in nature.

7. Now the next question for consideration before this Court is whether the act of the appellant falls within mischief under Section 307 IPC. Hon'ble the Supreme Court in the matter of **Sachin Jana and Another Versus 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.

8. In the present case, act of the appellant shows brutality and looking to the medical evidence, it was dangerous to life. It can be easily inferred that the appellant had knowledge that death will be caused by his act. After evaluating the entire evidence, it is clear that Section 307 IPC has clear application in the present case. In view of the above, arguments advanced on behalf of the appellant is not sustainable. The conclusion arrived at by the trial Court is not liable to be interfered with and the same is hereby affirmed.

9. The trial Court awarded sentence of four years which cannot be termed as harsh, disproportionate or unreasonable, therefore, sentence part is not liable to be interfered with.

10. Accordingly, the appeal is liable to be and is hereby dismissed. The appellant is reported to be on bail. His bail bonds stand cancelled. The trial Court will prepare super-session warrant and issue non-bailable warrant against the appellant and after his

arrest he be sent to jail for serving out remainder of the sentence.

The trial Court to submit its compliance report on or before 6-5-2020.

Sd/-

(Ram Prasanna Sharma)

JUDGE

Raju