

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 03.3.2020

Delivered on 08.05.2020

Criminal Appeal No. 290 of 2011

Hussain Khan, son of Shri Habib Khan, aged about 35 years, R/o. Ward No.14, Police Station Khamariya, Distt. Durg (CG)

---- Appellant

Versus

State of Chhattisgarh, through Police Station Khamariya, Distt. Durg (CG)

---Respondent

For the appellant : Smt. Swati Verma, Advocate
For the respondent/State : Smt. Smita Jha, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Judgment

1. The appeal is directed against judgment dated 30.8.2010 passed by Additional Sessions Judge, Bemetara Distt. Durg in Session Trial No.14/2010 wherein the said Court convicted appellant for commission of offence under Section 307 of the Indian Penal Code, 1860 and sentenced him to undergo rigorous imprisonment for 05 years and to pay fine of Rs.500/- with default stipulation.

2. In the present case, name of the victim is Ramji Yadav. As per the version of the prosecution, on 31.12.2009 at about 9.00 pm when victim Ramji Yadav along with other persons doing the work of decorating the road by writing "Happy New Year" for celebrating new year, the appellant came there and used filthy words and asked what he is writing. Quarrel took place between the appellant and the victim and the appellant hit the victim on his stomach by knife resulting which he fell down. The victim was admitted to Sector 9 Hospital, Bhilai. The matter was reported and the appellant was charge sheeted. After completion of trial, the appellant has been convicted and sentenced as mentioned above.

3. Learned counsel for the appellant submits as under:

(i) Width of the knife is not proved by the evidence of medical expert, therefore, injury found on the body of the victim is not comparable with the knife seized in the present case.

(ii) The doctor who conducted surgery of the victim has not been examined, therefore, adverse interference should be drawn against the prosecution.

(iii) Version of the prosecution witnesses is full of contradictions and omissions, 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. Ramji Yadav (PW-6) deposed before the trial Court that he was writing greeting of the new year on the road and at that time the appellant came there and assaulted on his stomach by knife. Thereafter he fell down and become unconscious. Version of this witness is supported by version of Kedarnath Tiwari (PW-1), Monu Sinha (PW-2) and Uttam (PW-3). All these witnesses have been subjected to searching cross-examination, but nothing could be elicited in favour of the defence. From their statement it is established that the appellant is the sole author of the crime in question. Version of the eyewitness account is supported by version of Dr. RP Sharma (PW-9) who examined the victim and noticed stab wound of 3cm x 1.5 cm x unknown (not measured) on right margin of stomach with fresh bleeding. Knife was brought before this witness who examined the knife and opined that injury caused to the victim may have caused by the knife. He further

opined that if instant treatment would not have been provided to the victim, he would have succumbed to the injuries. Version of this witness is again supported by version of Dr. Gourav Kholi (PW-10). There is nothing on record to show in the statement of the eyewitnesses which go to the root of the case adversely against the prosecution. Minor discrepancies which do not go to the root of the case has no significance. Therefore, arguments advanced on behalf of the appellant is not sustainable and it is established that the appellant is the author of the crime.

7. Now the point for consideration of this Court is whether the act of the appellant falls within mischief under Section 307 of 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.”

8. From the evidence of the medical expert, it is clear that injury sustained by the victim is fatal in nature because it was caused on the vital part of the body by a deadly weapon and there was possibility of death of the victim. Therefore, case of the prosecution falls within mischief under Section 307 IPC for which the trial Court convicted the appellant and the same is hereby affirmed.

9. The trial Court awarded sentence of 05 years which cannot be termed as harsh, disproportionate or unreasonable, therefore, the sentence part is not liable to be interfered with.

10. Accordingly, the appeal being devoid of merit 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 supersession warrant against the appellant and same be issued against

him for his arrest. After his arrest, the appellant will be sent back to concerned jail for serving out the reminder of the jail sentence. The trial Court shall send its compliance report before this Court on or before **30.9.2020**.

Sd/-

(Ram Prasanna Sharma)

JUDGE

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