

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 28-01-2020

Delivered on 05-03-2020

CRA No. 120 of 2011

1. Shankar Prasad Kanwar s/o. Katul Kanwar, aged about 38 years.
 2. Mahajan Kanwar s/o. Katul Kanwar, aged about 50 years.
- Both are residents of village Chalgali, Police Station Lundra, District Surguja C.G.

---- Appellants.

Versus

- State of Chhattisgarh through Police Station Lundra, Dist. Surguja (CG).

---- Respondent

For Appellants : Mr. Shakti Raj Sinha, Advocate

For respondent/State : Mr. Dinesh Tiwari, Dy. Govt. Adv.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Judgment

1. This appeal is preferred against the judgment of conviction and order of sentence dated 25-1-2011 passed by 4th Additional Sessions Judge (FTC), Ambikapur (CG) in Sessions Trial No. 531 of 2009 wherein the said Court has convicted the appellants for commission of offence under Section 307 read with Section 34 of the IPC and sentenced them to undergo rigorous imprisonment for seven years and to pay fine of Rs.500/- each with default stipulation.

2. In the present case, name of the victim is Kailash Kanwar who is brother of both appellants. As per version of prosecution, on 15-7-2009 at about 1.00 pm when victim Kailash (PW/2) went to the appellants for informing some trivial issue and for taking care of their children, appellant Shankar Prasad Kanwar came with spade and assaulted him multiple times on his head and appellant Mahajan also came with one stick of axe and assaulted Kailash on his back. When wife of Kailash namely Shiv Kumari (PW/1) made hue and cry for rescue, some persons reached to the spot. The matter was reported and investigated. After completion of trial, the trial Court convicted and sentenced them as aforementioned.

3. Learned counsel for the appellants submits as under:

- i) Appellants and victim are real brothers and there is dispute of land, therefore, victim has deposed on account of jealousy .
- ii The trial court has not evaluated the entire evidence in its true perspective, 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 marshalling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

6 The question for consideration of this court is whether the appellants assaulted the victim Kailash. As per version of Kailash (PW/2) the children of the appellants made his kitchen dirty that is why he complained to them and for that issue appellant Shankar assaulted him by spade on his head and back side whereas appellant Mahajan assaulted him by axe. Version of this witness is supported by version of Shiv Kumari (PW/1) who is wife of the victim. Both witnesses have been subjected to searching cross examination but nothing could be elicited in favour of defence. Their version is further supported by version of Talikram (PW/4) and Baniyaram (PW/5).

7. From the evidence of these witnesses, it is established that the victim Kailash was assaulted by the appellants. In the present case date of incident is 15-7-2009 and report was lodged on the same day at Police Station Lundra naming the appellants as culprits and their act is also mentioned in the said report. There is no delay in lodging the report. From the oral and documentary evidence, it is established that the victim was assaulted by the appellants. Version of these witnesses

is supported by version of Dr. Y.K. Kindo (PW/10) who examined the victim on 15-7-2009 at Primary Health Centre, Raghunathpur and noticed the following injuries.

- I) Lacerated wound present over parietal region in the size of $3\frac{1}{2} \times \frac{1}{2} \times \frac{1}{2}$ cm.
- li) Lacerated wound present over parietal region in the size of 10 cm above the left ear.
- lii) Lacerated wound present over right occipital region in the size of $4 \times \frac{1}{2}$ cm.
- iv) Abrasion present over left scapular region in the size of $3 \times \frac{1}{2}$ cm.
- v) Abrasion present over left lower scapular region in the size of $1\frac{1}{2} \times \frac{1}{2}$ cm.
- vi) Abrasion present over right lower scapular in the size of $3 \text{ cm} \times \frac{1}{2} \text{ cm}$.
- Vii) Swelling on lower part of right scapular region.

He opined that all the injuries were caused by hard and blunt object and same were caused within four hours of the examination. This witness has advised for x-ray examination but no one proved the x-ray report, therefore, it is not proved that assault was caused by

force. The injury which endangers life is grievous injury as per Section 320(8) of IPC.

8. Taking into consideration the totality of the fact, it is a case which falls within mischief of Section 325 of IPC, 1860. Accordingly both appellants are convicted under Section 325 of IPC instead of Section 307 read with Section 34 of IPC. Their conviction and sentence for offence under Section 307 read with Section 34 of IPC is set aside. They are acquitted of the said charge framed against them. Appellants have suffered jail term from 18-6-2009 to 24-9-2009 which comes out three months and eight days and after conviction on 25-1-2011 they suffered jail term upto 10-4-2012 which comes out to about one year and three months. In all they have suffered jail term of 1 year and six months. In view of this court, no useful purpose would be served if the appellants are again sent to jail. Sentence awarded to the appellants is reduced to the period already undergone by them for offence under Section 325 of IPC. However, fine amount imposed by the trial court shall be treated as fine amount for offence under Section 325 of IPC and same shall remain intact.

9) With the aforesaid modification, the appeal is partly allowed.

Sd/-

(Ram Prasanna Sharma)

Judge

