

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 02-12.2019

Delivered on 10-01-2020

CRA No. 952 of 2013

- Rajesh Kothari s/o. Tribhuwan Kothari, aged about 30 years, by Caste Satnami, r/o. Village Karamtara, Police Station Saja, District Bemetara, Revenue District Bemetara, Civil District Durg (CG).

– Appellant.

Vs.

- State of Chhattisgarh through the District Magistrate, Kabirdham, District kawardha (CG).

– Respondent

For appellant : Mrs. Indira Tripathi, Advocate

For respondent/State : Mrs. Smita Jha, PL.

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

1. The appeal is directed against judgment dated 13-9-2013 passed by the Sessions Judge, kabirdham (Kawardha) (CG) in Session Trial No. 22 of 2013 wherein the said Court convicted the appellant for commission of offence under Sections 458 and 307 (two times) of the Indian Penal Code, 1860 and sentenced him to

undergo rigorous imprisonment for ten years and to pay fine of 3000/- on each count with default stipulations.

2. In the present case, names of the victims are Chanda Bai and Bhagatram. As per version of prosecution, Bhagatram is having two daughters namely Hemanbai and Kalarbai. Appellant was married to Hemanbai in bangle form and said appellant was having habit of gambling and he has disposed of all his property as well as jewelery of Heman Bai. Heman Bai was withdrawn from the company of the appellant. Victims Bhagatram and Chanda Bai are father and mother of Heman Bai. On the date of incident i.e., on 23-1-2013 when both were sleeping in their house, appellant reached there, poured kerosene on them and set them ablaze with intention to cause death. 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) Ingredient of Section 307 of IPC is not established and charge leveled against the appellant is not proved by cogent evidence.

(ii) Ten years small child was also sleeping with the victims, but he did not receive any burn injury even not mark of burn which creates doubt upon the prosecution case.

(iii) Version of Bhagatram is not reliable while Chanda Bai (PW/6) deposed that she has not seen the appellant coming

towards her house. The witnesses have improved their version, 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. PW/4 Bhagatram deposed before the trial court that Heman Bai is wife of the appellant and said Heman Bai is his daughter. Heman Bai informed him that the appellant is beating her and demanded Rs.1,00,000/- from this witness, thereafter he went to the house of appellant along with police personnel and withdrew his daughter from the company of the appellant. As per version of this witness, on the date of incident when he and his wife were sleeping in their house, appellant poured kerosene on cloth and set them ablaze. Version of this witness is unrebutted during searching cross examination and it is supported by version of Chanda Bai (PW/6) who also sustained burn injuries. Version of these witnesses is supported by version of Balram (PW/8), Girdhar Jangde (PW/3), Ankul Satnami (PW/5), Heman Bai (PW/7) and Nohar (PW/12). Version of this witness is further supported by version of Dr.

Narendra Golan (PW/9) who examined Bhagatram and found 32% burn injuries on his body including face, throat and hands. Dr. Uday Kumar (PW/2) examined Bhagatram and found 40% burn injuries on face, throat of Bhagatram and found 30% burn injuries on face, throat, chest and in both hands of Chanda Bai. All these witnesses have been subjected to searching cross examination, but nothing could be elicited in favour of defence.

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 is cruelty who poured kerosene on the bodies of father-in-law and mother-in-law and set them ablaze which clearly shows his intention to cause their death. After evaluating the entire evidence, it is clear that Section 307 IPC has clear application in the present case. Lurking house-trespass or house-breaking after preparation for hurt is an offence under Section 458 of IPC. The trial court convicted the appellant for both offences and this court has no reason to substitute contrary view what is recorded by the trial court. 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 ten years on each count looking to the cruel act of the appellant 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 in jail, therefore, no further order for his arrest etc., is required.

Sd/-
(Ram Prasanna Sharma)
JUDGE

Raju