

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 264 of 2017

1. Laxmiprasad Sarthi And Anr. S/o Sonkeshwar Sarthi, Aged About 26 Years R/o Bade Bhandar, Police Station Pusaour District Raigarh Chhattisgarh.
2. Golu @ Bhagirathi Sarthi, S/o Sonkeshwar Sarthi, Aged About 21 Years R/o Bade Bhandar, Police Station Pusaour District Raigarh Chhattisgarh. **---- Appellants**

Versus

State of Chhattisgarh Through S. H.O. Police Station Puasour,
District Raigarh Chhattisgarh. **---- Respondent**

For appellant : Mr. Rishikant Mahobia, Advocate

For State : Mrs. Smita Jha, P.L.

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board

31/01/2020

1. This appeal is preferred against the judgment dated 05/08/2014 passed by First Additional Sessions Judge, Raigarh (C.G.), in Sessions Trial No. 154/2013, wherein the said Court convicted the appellants for charge under Section 307 read with Section 34 of Indian Penal Code, 1860 and sentenced him to undergo R.I. for 10 years and fine of Rs. 5000/- with default stipulation.
2. In the present case, name of the victim is Vishikeshan(PW-1). As per version of the prosecution on 16th of June, 2013 at about 9 pm when complainant was sitting near a pond, the accused namely Laxmi Prasad came there and has raised dispute in respect of fishing, thereafter, he came from his house alongwith one iron rod. The co-accused Golu also came there with a sickle and in furtherance of their common

intention both the appellants have assaulted the complainant by means of iron rod and sickle, due to which, the complainant has sustained injuries. As per version of medical expert the injuries were dangerous to life. Thereafter, the matter was reported and charge-sheeted as mentioned above.

3. Learned counsel on behalf of appellants submits that evidence adduced by the prosecution side is not reliable because the same is full of omission and contradiction. The Trial Court has overlooked the fact that one other injured namely Shiv Kumar Sidar (PW-2) deposed before the trial Court that he received injury from co-accused Sonkeshwar. The trial court has not evaluated the evidence, therefore, finding arrived by the trial Court is liable to be set-aside.
4. On the other hand, learned State counsel submits that finding of the trial Court is based on proper marshaling of the evidence and same is not liable to be interfered with invoking jurisdiction of appeal.
5. In the present case, date of incident was 16th of June, 2013 F.I.R was lodged on same day as per Ex.P-1 at police Station Puosuor naming both the appellants as culprit and their act of assault was also mentioned in the said report. vishikeshan(PW-1) deposed before the trial Court that both the appellants have assaulted him by sickle and club. Version of this witness is supported by version of Shiv Sidar (PW-2) these witnesses have been subject to searching cross

examination but nothing could be elicited in favour of defence. Dr. Dr. A.K. Bhagat (PW-5) who examined the injured on 17th of June, 2013 in community health centre Puosuor and noticed following injuries which in mentioned in Ex.P-3.

(I) Lacerated wound bleeding out, obliqually on parietal region of scalp of 15 cm x1 cm x bone deep.

(ii) Sharp cut injury with bleeding on the parietal region of scalp of 3 cmx1cm.

(iii) Penetrating wound with bleeding on the right cheek of 0.5cm x 0.5 cm.

(iv) Sharp cutting wound with bleeding on the right side of neck of 6 cm. X 5 cm.

As per version of this witness, injuries caused to the Vishikeshan (PW-1) were dangerous, because, if, instant treatment would not have been provided to him, he would have succumbed to injuries. From the entire evidence, it is clearly established that both the appellants have participated in crime in question.

6. The question for consideration of this Court is whether act of the appellants falls within mischief of Section 307 of IPC.
7. Hon'ble the Supreme Court in the matter of **Sachin Jana and Another Versus State of West Bengal**, 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. On an overall assessment of the evidence, it is clear that Section 307 of IPC has clear application in the present case therefore, argument on behalf of the appellants is not sustainable. Conclusion arrived at by trial Court is not liable to

be interfered with and conviction of the appellant under Section 307/34 of IPC is hereby affirmed.

9. Appellants are reported to be in jail since 18th of June, 2013 and they have suffered jail term of more than 5 years and 7 months. Taking into consideration the facts and their detention period, their jail sentence is reduced to period already undergone by them. However, fine amount imposed by the trial Court shall remain intact.

10. With this modification, the appeal is partly allowed. Appellants shall be set at liberty forthwith, if fine amount is paid.

Sd/-
(Ram Prasanna Sharma)
Judge

N.Mohle