

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 278 of 2017

Reserved on : 19.02.2020

Delivered on : 08.05.2020

Maya Ram Suman, S/o Panch Ram Suman, aged about 55 years, R/o Kohrooda, P.S.- Masturi, District- Bilaspur (C.G.)

---- Appellant

Versus

State of Chhattisgarh, Through: Station House Officer, P.S.- Masturi, District- Bilaspur (C.G.)

---- Respondent

For Appellant : Mr. V.C. Ottalwar & Mr. Akhtar Hussain, Adv.
For State/respondent : Mrs. Smita Jha, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This appeal is preferred under Section 374(2) of the Code of Criminal Procedure, 1973 against judgment dated 03.01.2017 passed by Additional Session Judge, Bilaspur (C.G.) in Session Trial No. 17/2015, wherein the said court convicted the appellant for commission of offence under Sections 307 & 323 of IPC, 1860 and sentenced to undergo R.I. for 10 years and fine of Rs. 20,000/- & R.I. for 6 months and fine of Rs. 500/- respectively with further default stipulations.
2. In the present case, victim for offence under Section 307 of IPC is

Badri Prasad while victim for offence under Section 323 of IPC is Suruj Bai. As per version of the prosecution, on 31.08.2014, Suruj Bai had gone to field with her husband namely Badri Prasad and they were removing grass etc. from the field where the appellant reached and some altercation took place between them for flowing of water in their respective field. At the same time, the appellant gave spade blow on head of victim- Badri Prasad as a result of which, he fell down and became unconscious. When Suruj Bai intervened into the matter, the appellant also assaulted her. The matter was reported and investigated, the appellant was charge-sheeted and after completion of trial, convicted as mentioned above.

3. Learned counsel for the appellant submits as under:-

(i) As per version of Suruj Bai (PW-8), injuries were caused by sharp portion of axe to Badri Prasad while the medical expert- Dr. P.K. Ghosh (PW-4) found lacerated wound, therefore, version of Suruj Bai is contrary to the version of the medical expert.

(ii) Intention to kill Badri Prasad is not established, therefore, it is not a case which falls within mischief of Section 307 of IPC.

(iii) The trial court has not evaluated the evidence properly, therefore, the finding arrived at by the trial court is liable to be set aside.

4. On the other hand, learned State counsel submits that the finding arrived at by the trial court is based on relevant material placed on

record and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the records.
6. In the present case, date of incident is 31.08.2014 and report was lodged on same day by Suruj Bai who is eye-witness account to the incident and injured in the present case. Name of the appellant is mentioned by the victim in the said report and his act of assault to victim Badri Prasad and Suruj Bai is also mentioned in the said report. There is no delay in lodging the report. Suruj Bai (PW-8) is eye-witness account to the incident. As per version of this witness, she and her husband namely Badri Prasad were working in their field and at the same time, the appellant reached there and there was some altercation between them for watering their respective field. At the same time, the appellant assaulted Badri Prasad on his head by axe (Rapa which is sharp weapon made by iron).
7. As per version of this witness, the blow was severe and head of the victim was badly injured and there was profuse bleeding. After assault, Badri Prasad fell down and got unconscious. As per version of this witness, when she intervened into the matter, the appellant assaulted her. Version of this witness is subjected to searching cross-examination, but nothing could be elicited in favour of defence. Version of this witness is supported by version of Gunmani Bai Satnami (PW-9) & Rajesh Kumar Sonwani (PW-10) who found injury on head of the victim. All these witnesses have been subjected to

searching cross-examination, but the same is unrebutted. Version of these witnesses is supported by version of Dr. P.K. Ghosh (PW-4) who examined the victim- Badri Prasad on 31.08.2014 at Community Health Centre, Masturi and noticed following injuries (Ex.P/4):-

(i) Lacerated wound size 5 x 0.5 x 0.5 c.m. on left side of scalp post side.

8. As per version of this witness, the injury is caused within 8 hours of the examination and the same is caused by hard and blunt object and the victim was sent for surgical treatment. This witness opined that there is possibility of death of the victim.

9. This witness further examined Suruj Bai on the same day and noticed following injuries (Ex.P/5):-

(i) Abrasion 5 cm. linear on right forearm.

(ii) Abrasion 5 cm. linear on left forearm.

As per version of this witness, the injury is caused within 8 hours of the examination and the same is caused by hard and blunt object.

10. Dr. Siddharth Verma (PW-7) who examined the victim- Badri Prasad and found extradural hematoma in brain of the victim. As per opinion of this witness, patient namely Badri Prasad was in critical condition and injury on his head was grievous in nature. This witness deposed before the trial court that patient- Badri Prasad was unable to speak. Dr. Aditi Sahgal (PW-17) who treated victim- Badri Prasad opined that because of unconsciousness, he was not able to give statement. Dr.

Kumar Devasis (PW-18) found blood clot on occipital and thalamus part in brain of the victim.

11. There is nothing on record that the appellant has been roped in false charge. There is nothing to disbelieve evidence of eye-witness account to the incident who is also injured in the present case namely Suruj Bai who is wife of the victim. Her evidence is of sterling quality and the same can be safely acted upon. The trial court opined that because of severe blow given by the appellant, the victim has become totally deaf, dumb and blind and his life is not less than hell. The view taken by the trial court is not liable to be interfered with looking to the entire evidence on record. There is nothing on record which adversely go to the root of the case. Minor contradiction which do not go to root of the case are insignificant and case of the prosecution cannot be thrown out on the basis of insignificant contradiction. On overall assessment, argument advanced on behalf of the appellant is not sustainable.
12. Now the point for consideration before this Court is whether the act of the appellant falls within mischief of Section 307 of IPC. Hon'ble the Supreme Court in the matter of **Sachin Jana & another Vs. 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.

13. From direct and medical evidence, it is clearly established that death is possible for injury caused on head of the victim, therefore, case of the appellant clearly falls within mischief of Section 307 of IPC. Again, from the entire evidence, it is clearly established that the appellant caused simple injury to victim- Suruj Bai, therefore, case of the appellant also falls within mischief of Section 323 of IPC for which the trial court convicted the appellant for both the offences and his conviction for both the offences is hereby affirmed.

Heard on the point of sentence.

14. The trial court awarded R.I. for 10 years for offence under Section 307 of IPC which cannot be termed as harsh, disproportionate or unreasonable looking to the gravity of offence and the factual matrix of the case. The whole sentence part is also not liable to be interfered with. Accordingly, the appeal is liable to be and is hereby dismissed.
15. The appellant is reported to be in jail, therefore, no further order of arrest etc. is required.

Sd/-
(Ram Prasanna Sharma)
Judge