

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1169 of 1999

Reserved on : 11.12.2019

Delivered on : 06.02.2020

1. Saradhu, S/o Panchram, aged about 35 years (Dead).
2. Baratu, S/o Panchram, aged about 38 years.
3. Ashok Kumar, S/o Baratu, aged about 22 years.
4. Uttara Kumar, S/o Panchram, aged about 25 years.

All R/o Village- Piparadih, P.S.- Palari, District- Raipur (M.P.)
(Now C.G.)

---- Appellants

Versus

The State of Madhya Pradesh (Now Chhattisgarh) through- District
Magistrate, Raipur (C.G.)

---- Respondent

For Appellants : Mr. N.K. Malaviya, Advocate.
For State/respondent : Mr. Ishwar Jaiswal, 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 19.03.1999 passed by Second Additional Sessions Judge, Balodabazar, District- Raipur (C.G.) in Session Trial No. 439/1996, wherein the said court convicted all the appellants for commission of offence under Sections 307/34 & 323/34 of IPC, 1860 and sentenced to undergo R.I. for 10 years and fine of Rs. 1000/- & R.I. for 6 months respectively each with further default stipulations. During pendency of this appeal, appellant No. 1-

Saradhu died and his appeal is finally abated. Now the appeal is posted for hearing for rest of three appellants.

2. As per version of the prosecution, all the appellants assaulted Rohit & Neerabai on 13.03.1996 at about 4:00 p.m. at Village-Bijradih that is why the matter was investigated, the appellants were charge-sheeted and after completion of trial, the trial court convicted as mentioned above.
3. Learned counsel for the appellants submits as under:-
 - (i) No grievous injury was caused in body of the victims, therefore, case of the appellant may fall within mischief of Section 323 of IPC.
 - (ii) No appellant had intention to kill the victim namely Rohit and he sustained only simple injury, therefore, finding arrived at by the trial court is not sustainable.
 - (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 proper marshaling of evidence 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 record.

6. In the present case, date of incident is 13.03.1996 and report was lodged on next day i.e. on 14.03.1999 at Police Station-Palari as per Ex. P/8 in which name of the appellants were mentioned as culprit. From evidence of Rohit (PW-6), Neerabai (PW-2), Jhajhabai (PW-3) and Poorandas (PW-5), it is established that all the appellants including dead appellant-Saradhu assaulted victim Rohit by club. Version of this witness is unrebutted during cross-examination, therefore, participation of the appellants in assaulting Rohit and Neerabai is established by their unrebutted evidence.
7. Dr. B.R. Deshlahara (PW-1) examined Rohit and found injuries on his head, left ear, waist and near left eye. He referred the matter to Medical College, Raipur and he opined that causing of death is depending upon force use during assault. There is no other medical expert opinion except opinion of this medical expert. This witness has referred the case to Medical College, Raipur. From evidence of direct evidence, there is nothing to say that any of the appellant had intention to kill victim- Rohit. Four persons were charge-sheeted and injuries found in body of the victim is four in numbers. No injury was grievous in nature. Though, as per version of the medical expert, it may endanger life and as per Section 320 sub-clause 8 of IPC, 1860, any injury which is endangered life is grievous hurt.
8. Taking into consideration the direct and medical evidence, act of the appellants falls within mischief of Section 325 of IPC for

causing injury to Rohit and falls within mischief of Section 323 of IPC for causing injury to Neerabai, therefore, conviction for commission of offence under Section 307 of IPC is not sustainable. Conviction passed by the trial court for offence under Section 307 of IPC is set aside. The appellants are acquitted of the charge under Sections 307 of IPC. Now, the appellants are convicted for commission of offence under Section 325 of IPC instead of Section 307 of IPC.

Heard on the point of sentence

9. The appellants have suffered jail sentence from 19.03.1999 to 20.09.1999 i.e. for more than 6 months. Considering the facts and circumstances of the case, this Court is of the opinion that the ends of justice would be met if the appellants are sentenced to the jail sentence of the period already undergone by them. Accordingly, their sentence is reduced to the period already undergone by them. However, the fine amount imposed by the trial court for offence under Section 307 of IPC shall remain intact and the same shall be treated for offence under Section 325 of IPC.
10. With these modifications, the appeal is partly allowed.

Sd/-
(Ram Prasanna Sharma)
Judge