

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 9-1-2020

Delivered on 6-2-2020

CRA No. 766 of 2017

- Neelu @ Nilesh Dubey s/o. Ramesh Dubey aged about 23 years, resident of village Nunera, Police Station Pali, District Korba (CG).

--Appellant.

Vs.

- State of Chhattisgarh through Station House Office, Police Station Pali, District Korba (CG).

--Respondent

 For Appellant : Mrs. Laxmi Tondey, Advocate
 For respondent/State : Mr. Aman Kesharwani, P.L.

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

1. This appeal is preferred against the judgment of conviction and order of sentence dated 25-6-2016 passed by the Additional Judge to the court of Additional Sessions Judge, Katghora, (CG) in Sessions Trial No. 39 of 2015 wherein the said Court has convicted the appellant for commission of offence under Section 307 of IPC and sentenced him to undergo rigorous imprisonment for seven years and to pay fine of Rs.5000/- with default stipulations.

2. In the present case, name of the victim is Yashwant Kumar. As per version of the prosecution on 1-3-2015 the injured

Yashwant Kumar along with his mother and aunty was returning to his house and at the same time appellant who equipped by knife assaulted Yashwant Kumar by knife due to previous dispute. The injured shouted for help and intervention by his mother, aunty and persons namely Mahesh, Bharat, Arun, Chandraprakash and Sushil, appellant ran away from the spot. The matter was reported and investigated. After completion of trial, the appellant was charge-sheeted and convicted as aforementioned.

3. Learned counsel for the appellant would submit as under:

- i) There is no enmity between appellant and victim, therefore, appellant had no intention to kill the victim.
- ii Version of prosecution witnesses is full of contradictions, omissions and exaggerations but the trial court has overlooked the same and recorded finding contrary to the factual matrix of the case.
- lii) Medical expert has not deposed that he found blood stains on knife, therefore, seizure of article is not connecting piece of evidence.
- iv) The trial Court has not evaluated the

evidence properly, 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 first question for consideration of this court is whether the appellant assaulted the victim Yashwant Kumar and his act is criminal act. In the present case, PW/1 Leelabai and PW/4 Mahesh are eye-witnesses to the incident. Both have deposed before the trial court that the appellant assaulted the victim Yashwant Kumar by knife. Multiple times and victim sustained injury on abdominal part, shoulder and neck. Version of this witness is supported by version of Shiv Shankar (PW/2), Arun Kumar (PW/3), Chandra Prakash (PW/5) and Bharat Singh (PW/6). Victim Yashwant (PW/8) also deposed before the trial court that appellant assaulted him by knife in his abdomen twice. All these witnesses have been subjected to searching cross examination but nothing could be elicited in favour of defence. Version of these witnesses is supported by version of Dr. Pradeep Agrawal (PW/7) who examined the victim on 2-3-2015 at 10.45

a.m., in Community Health Centre, Pali, District Korba and noticed the following injuries.

- i) Incised wound over right right shoulder lateral aspect 5 cm x 0.5 cm x 0.5 cm transversely placed failing posteriorly bleeding;
- ii) Incised wound on left scapular region transversely placed 3.5 cm x 1.5 cm x 4.5 cm deep going upward bleeding.
- lii) Incised wound on left side of neck over supra scapular region 3 cm x 0.5cm x0.5cm.
- iv) Incised wound on left side of neck transversely placed 2.5 cm x 1 cm x 2.5 cm bleeding.
- v) Incised wound on left inframamarry region of chest in mid clevicular line over last rib 3 cm x 1cm x 5 cm deep going upward bleeding.
- vi) Incised wound in front of left lumsan region 2 cm x 1cm x 2.5 cm.

As per version of this expert, injuries were caused by hard and sharp object within six hours of the examination. This witness also seized knife and opined that the injuries might by caused by this knife. This witness has further opined that if instant proper

treatment would not have been provided to the victim, it was dangerous to his life.

7. Taking into consideration multiple incised wounds on neck, abdomen and chest, back side and shoulder, it is clearly established that the act of the appellant is brutal in nature. Now, the question for consideration of 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 and 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.

8. Taking into consideration the multiple injuries found on vital parts of the body of the victim and further taking into consideration the opinion of the medical expert, it is clearly established that the appellant had intention to kill the victim. Section 307 of IPC has clear application in the present case. In view of the above, finding arrived at by the trial court regarding commission of offence is not

liable to be interfered with and argument advanced on behalf of the appellant is not sustainable.

9. Accordingly, conviction of the appellant for the said offence is hereby affirmed. The trial court awarded sentence of seven years and looking to the brutal act of the appellant, same cannot be termed as harsh or unreasonable or disproportionate. Sentence part is also not liable to be interfered with.

10. Accordingly, the appeal being devoid of merits is liable to be and is hereby dismissed. Appellant is reported to be in jail, therefore, no further order for his arrest etc., is required.

Sd/-

(Ram Prasanna Sharma)

Judge

Raju