

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 12-01-2020

Delivered on 17-02-2020

CRA No. 1500 of 1999

1. Walter Drek alias Johnny son of Melcom Drek, resident of Quarter No. 146, E.W.S. Housing Board Colony, Dist. Durg, MP ((now CG).
2. George Francis alias Georgi son of Mr.HJ. Francis, aged about 33 years, resident of Subhash Nagar, Kesari, Dist. Durg MP (Now CG) (deleted vide court order dated 5-9-2018)

---- Appellant

Versus

- State of Madhya Pradesh (Now CG).

---- Respondent

For Appellant No.1	:	Mr. Brijesh Singh, Advocate.
For Appellant No.2	:	Mr. Afroj Khan, Advocate appears on behalf of Mr. Manish Upadhyay, Advocate.
For respondent/State	:	Mr. Ishwar Jaiswal, PL.

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

1. This appeal is preferred against the judgment of conviction and order of sentence dated 15-4-1999 passed by the Additional Sessions Judge, Durg (CG) in Sessions Trial No. 104 of 1997 wherein the said Court has convicted the appellant No.1 Walter Drek for commission of offence under Sections 148, 452, 307

read with Section 149 and Section 324 of IPC and sentenced him to undergo rigorous imprisonment for six months and fine of Rs.200/-, RI for six months and fine of Rs.200/-, RI for ten years and fine of Rs.2000/- and RI for six months with default stipulations respectively. All the sentences are directed to run concurrently. During course of arguments, name of appellant No.2 is deleted. This appeal is heard for appellant No.1 Walter Drek @ Johnny.

2. In the present case, names of the victims are Ramkishore, Rakesh and Mukesh. As per version of prosecution, there was some dispute between co-accused Munna Bihari and victim Rakesh on 7-5-1989. The said Munna Bihari along with other co-accused including the present appellant entered into the house of victim Rakesh on 9-5-1989 at 12.20 pm and they assaulted Rakesh, Ramkishore @ Chhotbabu and Mukesh. 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 was no motive at all for commission of murder of any of the victim.
- ii The statement of the prosecution witnesses is full of contradictions and omissions and as per medical evidence, Section 307 of IPC has no application in the present case,

- lii) Identification of the appellant is not done, therefore, version of prosecution witnesses regarding identification is not acceptable.
- iv) Independent witnesses have not supported the version of prosecution, 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. In the present case, date of incident is 9-5-1989 and report was lodged on the same day in Police Station Durg as per Ex.P/1. Gendsingh Tamrakar (PW/1), Ramkishore Tamrakar (PW/2) and Mukeksh Tamrakar (PW/3) are eyewitness account to the incident. Ramkishore (PW/2) deposed before the trial court that appellant entered into his house and assaulted him by knife (para 1). This witness has clearly identified the present appellant which is supported by version of Gendsingh Tamrakar (PW/1) and Mukesh Kumar Tamrakar (PW/3). 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. K.P. Chandrakar (PW/10) who examined Ramkishore on 9-5-1989 at 11.30 1.m., at Government Hospital, Durg and noticed one stab wound over right hypochondriac region in the size of 3 cm x 1/2 cm x 1/2 cm. As per version of this witness, injury was caused by hard and sharp object and injury was grievous in nature. He further opined that if instant surgical treatment would not have been provided to the victim, he would have succumbed to injury. This witness has also examined Rakesh on 9-5-1989 and noticed the following injuries.

- i) Incised wound in the size of 3"x1/2"x1/2" over forehead.
- ii) Abrasion over right feet 1 cm long.

This witness also examined Mukesh Kumar Tamrakar and noticed the following injuries.

- i) Stab injury in the size of 1cm x 1cm 1/2 cm over right genital region.
- ii) Incised wound over left forehead in the size of 3 cm x 1 cm x 1/2 cm.

As per version of this witness, injuries were caused to Mukesh Kumar Tamrakar by sharp object. From the evidence of

these witnesses, it is clear that fatal injuries were caused to Ramkishore and simple injuries were caused to Rakesh and Mukesh by sharp object. From evidence of these witnesses, it is established that more than five persons entered into the house of victim with deadly weapons with preparation to cause fatal injuries.

7. 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. In the present case, injuries caused to Ramkishore on vital part were fatal in nature as per report of medical expert and there is no other opinion contrary to the opinion of this medical expert. Section 307 of IPC has clear application in the present case. Taking into consideration totality of the fact, all the offences for

which the appellant was convicted, have been established by the prosecution.

9. On overall assessment of the entire evidence, argument advanced on behalf of the appellant is not sustainable. Conviction of the appellant for the said offences is hereby affirmed. The trial court awarded sentence of ten years and looking to the brutal act of the appellant in causing fatal injuries by knife on vital parts of the body of the victim Ramkishore, 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 No.1 Walter Drek is reported to be on bail. His bail bonds stand cancelled. The trial Court will prepare super-session warrant and issue non-bailable warrant against the appellant No.1 Walter Drek and after his arrest he be sent to jail for serving out remainder of the sentence. The trial Court to submit its compliance report on or before 31-7-2020.

Sd/-

(Ram Prasanna Sharma)

Judge

Raju