

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 24.01.2020

Delivered on 17.02.2020

Criminal Appeal No.1144 of 2003

1. Sanjay Kumar aged about 24 years, S/o. Dude Prasad Sonvani (**Dead & Deleted**)
 2. Jayaprakash, aged about 25 years, S/o. Dude Prasad Sonvani
 3. Dude Prasad Sonvani, aged about 50 years, S/o. Dindyal Sonvani
- All are Resident of Village Chatta PS Lalpur Distt. Bilaspur (CG)

--- Appellants

Versus

- State Of Chhattisgarh

---Respondent

For appellants : Shri GS Ahluwalia, Advocate
 For respondent/State: Smt. Smita Jha, Panel Lawyer

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

1. The appeal is directed against judgment dated 18.10.2003 passed by Third Additional Sessions Judge (FTC), Mungeli Distt. Bilaspur (CG) in Session Trial No.202/1999 wherein the said Court convicted both the appellants for commission of offence under Sections 341 and 307 read with 34 of the Indian Penal Code, 1860 and sentenced them to undergo rigorous imprisonment for 01 month and to pay fine of 200/- and RI for 07 years and to pay fine of Rs.2000/- respectively with default stipulation.

2. During the pendency of the appeal, appellant Sanjay Kumar died and appeal filed by him is finally abated. This appeal is being heard with regard to remaining appellants.

3. In the present case name of the victim is Bhagwat. As per the version of the prosecution, on 10.3.1999 at about 5.00 pm near the bridge of village Parsakapa when victim Bhagwat was returning from Katili market, he was restrained by the appellants, they assaulted him by barchi (iron made sharp object) and knife as a result of which he sustained fatal injuries. FIR was lodged and the matter was investigated. After completion of the trial, both the appellants have been convicted as mentioned above.

4. Learned counsel for the appellants submits as under:

(i) As per the version of the investigating officer, he seized one knife from co-accused Sanjay Kumar and there is no evidence that appellant Jayaprakash was having any deadly weapon.

(ii) Discovery statement of Jayaprakash was not recorded in the present case and nothing has been seized from him.

(iii) Statement of victim Bhagwat (PW-2) is full of contradictions and omissions, therefore the same is not dependable.

(iv) The injured witness was examined during investigation by a margin of considerable delay which is not explained.

(v) The trial Court has not evaluated the evidence properly, therefore, finding of the trial Court is not sustainable.

(vi) To substantiate the arguments, he has placed reliance in the matters of **Jagdish and another vs. State of Haryana** reported in **AIR 2005 SC 2576**; **Pankaj Kumar vs. State (NCT) of Delhi** reported in **2013 2 Crimes(HC) 116**; **Nilamani Sahu vs. State of Orissa & Ors.** reported in **2011 2 Crimes(HC) 764**; **State of CG vs. Shivprasad** reported in **2010 2 CGLJ 469** and **Jumman alias Sikandar Ali vs. State of Madhya Pradesh** reported in **2013 Cri. LJ 697**.

5. 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 marshaling of the evidence and the same is not liable to be interfered with while invoking the jurisdiction of the appeal.

6. I have heard learned counsel for the parties and perused the record of the Court below.

7. In the present case date of incident is 10.3.1999. Report was lodged on the same day as per Ex-P/9 in which names of the appellants are mentioned as culprits and their act of assault on the victim is also mentioned. Bhagwat (PW-2) who is the victim in the case deposed before the trial Court that on the date of incident he went to market of village Kateli and while returning, all the appellants abused him, appellant Dude Prasad assaulted him by barchi (iron made sharp object)

on his abdomen and co-accused Sanjay assaulted him by knife which caused injury on his head and other parts of the body. Due to assault of appellant Jayaprakash, he sustained injury on his head, back, hand and shoulder. Version of this witness is unrebutted during cross-examination. His version is supported by Dhansai (PW-01) and Ramkumar (PW-7) who found him with injuries.

8. Version of this witness is supported by Dr. Bhattacharya (PW-8) who examined the victim on 10.3.1999 and noticed following injuries:-

- (i) Incised wound on the scalp vertex of 12 cm x 2 ½ cm x bone deep, periosteum bone cut
- (ii) Incised wound on the left Iliac fossa 3 x 2 ½ x 10 cm

As per the version of this witness, injuries caused to victim Bhagwat were grievous in nature and was caused by sharp object within six hours of the examination and the injuries were dangerous to the life. At that time the victim was not in a position to give any statement. Dr. S. Chatterjee (PW-9) who conducted the X-ray of the victim Bhagwat found no fracture on his scalp. From the evidence of medical expert Dr. R. Bhattacharya (PW-8), it is clearly established that injuries caused to the victim were dangerous to his life and both the appellants are involved in inflicting injuries on his abdomen and on his head. After assessing the entire evidence, it is not case where any discrepancies found in the statement of the victim goes to the root of the case. Any minor

discrepancy is insignificant because same is not going to the root of the case.

9. Now the question for consideration before this Court is whether the act of the appellants falls within mischief under Section 307 IPC. Hon'ble the Supreme Court in the matter of **Sachin Jana and Another Versus 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.

10. Injuries caused on the vital part of the body i.e. abdomen and head were dangerous to life, therefore, intention of the appellants can be gathered from the injuries caused to the victim. Taking into consideration the totality of the facts, Section 307 IPC has clear application in the present case. In view of the above, argument advanced on behalf of the appellants is not sustainable and the case laws cited on their behalf are distinguishable to the facts and circumstances of the present case.

11. Restraining a person from moving to any direction is an offence under Section 341 IPC and in the present case the appellants restrained the victim for which the trial Court has rightly convicted them. The conviction of the appellants under Sections 341 & 307 IPC is hereby affirmed.

12. The trial Court awarded sentence of seven years which cannot be termed as harsh, disproportionate or unreasonable, therefore, the sentence part is not liable to be interfered with.

13. Accordingly, the appeal being devoid of merit is liable to be and is hereby dismissed. The appellants are reported to be on bail. Their bail bonds stand cancelled. The trial Court will prepare super-session warrant against the appellants and same be issued against them for their arrest. After their arrest, the appellants will be sent back to concerned

jail for serving out the reminder of the jail sentence. The trial Court shall send its compliance report before this Court on or before **31.7.2020**.

Sd/-

(Ram Prasanna Sharma)

JUDGE

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