

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURCRA No. 789 of 2009

- Suraj Dewar @Videshi Dewar @ Rish Dewar, Shri Jaladhi Dewar, Aged About 22 years, R/o- Dewarpara, Abhanpur, P.S.- Rajim, District- Bilaspur (C.G.) ---- Appellant

Versus

- State of Chhattisgarh, through PS- Rajim, District- Raipur (C.G.) ---- Respondent

For Appellant : Ku. Preeti Jha, Advocate appears as Amicus Curiae.

For State/Respondent : Smt. Shubha Shrivastava, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment on Board

10/02/2020

1. This appeal is preferred against the judgment dated 4th October, 2008 passed by Additional Sessions Judge, Gariyaband, District- Raipur (C.G.) in Sessions Trial No. 11/2008 wherein the said Court convicted the appellant for commission of offence under Section 307 of Indian Penal Code (for short, "the IPC") and under Section 25(1b) of the Arms Act, 1959 and sentenced him to undergo R.I. for ten years and fine of Rs. 500/- and R.I. for one year and fine of Rs. 500/- respectively with default stipulations. Both the sentences shall run concurrently.
2. In the present case, name of the victim is Girish Kumar Ratre (PW-9). As per version of the prosecution, on the date of incident i.e. on 5th March, 2008, the victim was coming to High School to attend examination with his uncle Chandrahas and after examination, he was returning by motor cycle No. CG 24 ZA

1650 to his village- Darra, when he reached at the place of incident Gobra Nayapara Bus Stand at 12:15 pm., the appellant stopped the complainant, abused and gave him blow by sharp edged weapon in the stomach of the victim. The victim was admitted to the hospital and looking to the serious nature of injury, he was referred to Mekahara Hospital for proper treatment. The matter was reported and investigated, the appellant was charge-sheeted and after completion of trial, the trial court convicted as mentioned above.

3. Learned counsel for the appellant submits that the trial Court has not considered the statement of the witnesses properly and overlooked the contradiction and omission and improvement in the statements of the prosecution witnesses, therefore, finding of the trial Court is liable to be set aside.
4. On the other hand, learned State counsel submits that finding of the trial Court is based on proper marshaling of evidence which is not required to be interfered while invoking jurisdiction of the appeal.
5. I have heard learned counsel for the parties and perused the record of the Court below wherein judgment has been passed.
6. Girish Kumar Ratre (PW-9) deposed before the trial Court that at the time of incident he was returning in a motor cycle and when he reached at Gobra Nayapara Bus Stand, there was one fair that is why he stopped the motor cycle and at the same time, the appellant came there and abused him and also assaulted by knife. Version of this witness is supported by version of

Chandrahas Ratre (PW-1) and Ghanshyam Singh (PW-3). Version of this witness is subjected to searching cross examination but nothing could be elicited in favour of the defence. Version of these witnesses is further supported by version of Dr. Pushpa Guru (PW-8) who examined the victim on 5th March, 2008 at Civil Hospital, Gobara Nayapara and noticed following injuries (Ex. P-6):-

Incised wound on left side of stomach joint size
2.5" x 1.5" x 0.5".

7. As per version of this witness, if treatment would not have been provided in time, he would have succumbed to injury and the nature of injury was grievous. From the entire evidence, it is established that injury caused by the appellant was fatal in nature.
8. The question for consideration of this Court is whether the act committed by the appellant falls within mischief of Section 307 of IPC, 1860.
9. Hon'ble the Supreme Court in the matter of **Sachin Jana and Another Versus State of West Bengal**, 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.

10. Taking into consideration the direct and medical evidence, the injury was fatal in nature, therefore, act of the appellant falls within mischief of Section 307 of IPC for which the trial Court convicted him.

11. In view of the above, argument advanced on behalf of the appellant is not sustainable. Further, the trial Court opined that the knife which was seized in the present case was having length 12.5" and the same was sharp object which is prohibited as per Section 4 of the Arms Act, 1959, therefore act of the appellant falls within mischief of Section 25(1b) of the Act, 1959. Conviction

of the appellant for the said offences is hereby affirmed. The trial Court awarded sentence of 10 years for offence under Section 307 of IPC, 1986.

12. On an overall assessment of the evidence, it is clear that Section 307 of IPC has clear application in the present case therefore, argument on behalf of the appellant is not sustainable. Conclusion arrived at by trial Court is not liable to be interfered with and conviction of the appellant under Section 307 of IPC is hereby affirmed.
13. Considering the facts and circumstances of the case and further considering the act of the appellant, sentence awarded to the appellant by the trial Court cannot be termed as harsh, disproportionate or unreasonable. Accordingly, the appeal is liable to be and is hereby dismissed.
14. Appellant is reported to be suffered full jail term, therefore, no further order for his arrest etc., is required.

Sd/-
(Ram Prasanna Sharma)
Judge