

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 29/01/2020

Delivered on 05/03/2020

CRA No. 860 of 2015

Jamuna Prasad S/o Goverdhan Aged About 56 Years R/o
Ahirapara Korja, P.S. Lakhanpur District Surguja Chhattisgarh.
---- **Appellant**

Versus

State of Chhattisgarh S/o Through Station House Officer P.S.
Lakhanpur, District Surguja Chhattisgarh. ---- **Respondent**

For Appellant : Mr. Rashmi Sen, Mr. Sumit Singh Rathore &
Ms. Soni Mishra, Advocates

For respondent: Mr. D.K. Tiwari, Dy. G.A. for the State.

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

1. This appeal is preferred against judgment dated 03.07.2015 passed by the Additional Sessions Judge, Ambikapur, Surguja (C.G.) in Sessions Trial No.410/2010 wherein the said Court convicted the appellant for commission of offence punishable under Section 307 read with Section 34 of the Indian Penal Code, 1860 and sentenced him to undergo R.I. for 7 years and fine of Rs. 200/- with default stipulation.
2. In the present case, name of the victim is Shraddha who is merely age of 8 years. As per version of the prosecution on 5th of June, 2010 at about 6.00 pm the appellant Jamuna Prasad along with his daughter namely Budhani poured kerosene on the victim Shradha and fired her. The victim sustained injuries over chin, neck, chest, stomach and other parts of the body. She made hue and cry, listening which his

brother came and stopped the fire by pouring water on her. The matter was reported and investigated and the appellant was charge-sheeted and convicted as mentioned above.

3. Learned counsel for the appellant submits that the present appellant is having previous enmity with the family of the victim and on that account he has been falsely implicated in the case in question. There is delay of four days in lodging F.I.R. and no plausible explanation was given by the prosecution which shows that F.I.R. was lodged after manipulation. The case of the prosecution is not proved by the victim witnesses and by version of the other witnesses, because version is suffered from various omission and contradiction. 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 State counsel submits that finding of the trial Court is based on proper marshaling of the evidence and same is not liable to be interfered with invoking jurisdiction of appeal.
5. The question for consideration of this Court is whether the appellant caused burn injuries in the body of the victim. The victim Shraddha (PW-4) deposed that she was paying in her neighboring place where daughter of the appellant namely Budhani asked her to come with her inside home and there they will play together in the house. The appellant/accused Jamuna directed his daughter to caught hold both hands of the victim shraddha thereafter, the appellant poured kerosene on her and lit the match stick.

Version of this witness is supported by version of Bhuneshwar Yadav (PW-7) who is father of the victim, Meena Yadav (PW-9) mother of the victim who found burn injuries on the body of the victim. Version of the victim is further supported by Umesh Kumar (PW-11) who found the victim in the house of the appellant in burned state and he poured water on her body. All these witnesses have been subjected to searching cross examination but nothing could be elicited in favour of the defence. Though defence witnesses namely Radheshyam (DW-1) and Geeta Ram (PW-1) deposed different story regarding incident but their version is not sufficient to reject testimony of the victim who is eye witness account to the incident and there is nothing in testimony of the victim that appellant has been roped in false charge. There is nothing to disbelieve on testimony of the prosecutrix and other supportive piece of evidence.

6. Version of the victim is supported by version of Dr.P.S. Kerketta (PW-5) who examined her on 5th June, 2010 and noticed burn injuries on chin, neck, chest, stomach and other parts of the body and opined that victim sustained 20-30% burn injuries. As per version of this witness in absence of the treatment the injuries may cause her death. Dr. Faijul Hasan Firdausi (PW-2) also supported the version of this medical expert.
7. From the entire evidence, it is established that the appellant is author of the crime. Looking to the direct evidence and medical evidence which is further supported by F.I.R. (Ex.P-11) which was lodged after four days of incident, naming the

appellant as culprit and his act of pouring kerosene on her and burning her was supported.

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. Determinative question is the intention or knowledge that will be caused by the act of the accused irrespective of the result.

11. Act of the appellant appears to be cruel in nature and he poured kerosene on 8 years old girl, who have to go a long way in her life. As per medical expert, it could have been fatal therefore, act of the appellant squarely covers within Section 307 of I.P.C.
12. On an overall assessment argument advanced on behalf of the appellant is not sustainable and conviction of the appellant for the said offence is hereby affirmed.
13. Considering the facts and circumstances of the case and further considering the act of the appellant, the trial Court awarded jail sentence of 10 years to the appellant, which cannot be termed as harsh, disproportionate or unreasonable.
14. Accordingly, the appeal is liable to be and is hereby dismissed. The appellant is reported to be in jail therefore, no further order for his arrest etc. is required.

Sd/-
(Ram Prasanna Sharma)
JUDGE