

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 03.02.2020

Delivered on 05.03.2020

CRA No. 425 of 2017

Varun Nishad S/o Mohan Nishad, Aged About 22 Years R/o Village Ranigaon, Police Station Shihawa, District Dhamtari Chhattisgarh. **--- Appellant**

Versus

State of Chhattisgarh Through District Magistrate, Police Station Shihawa, District Dhamtari Chhattisgarh. **--- Respondent**

For appellant : Mr. Sanjeev Sahu, Advocate

For State: Mr. Dinesh Tiwari, Dy. Govt. Advocate

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

1. This appeal is preferred against judgment dated 4th of March, 2017 passed by the Sessions Judge, Dhamtari (C.G.) in Sessions Trial No. 12/2016 wherein the said Court convicted the appellant for commission of offence punishable under Sections 450 & 307 of the Indian Penal Code, 1860 and sentenced him to undergo R.I. for 10 years and fine of Rs. 2000/-, R.I. for 10 years and fine of 2000/- with default stipulation.
2. In the present case, name of the victim is Smt. Bharti Bai. As per version of the prosecution on 29th of January, 2016 at about 3 pm in place on Sadakpara Sankara when the victim was in her home the appellant forcibly entered into the said house and started quarreling with her and attacked her by means of knife on her stomach and ran away. Thereafter,

the matter was reported and investigated and appellant was charge-sheeted as mentioned above.

3. Learned counsel for the appellant submits that as per version of the prosecution Smt. Bharti Patel (PW-1) (para-11) she was admitted in hospital for 2 days and thereafter, discharged which shows that injury caused to her was not fatal in nature and case under Section 307 of IPC is not made out. It is case of single blow therefore, there was no intension to commit murder of the victim. The victim and the appellant were known to each other therefore, it is not a case of house trespass. 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. In the present case, date of the incident is 29th January, 2016 and report was lodged against the appellant on same day there naming the appellant as culprit and his act of assault by knife to the victim was also mentioned in the said report and there is no delay in lodging the F.I.R.
6. As per version of the Bharti Patel (PW-1) she was in her house at about 2.30 pm, when bail of the house was rung, she opened the door of the house then the appellant entered into her house and try to make her escape with him

on her refusal she was assaulted with knife in her abdomen and also pressed her neck and flee away. Version of this witness was supported by version of the Rudreshwar Patel (PW-2) to whom the victim informed about the incident and she was taken to the hospital by him. Version of this witness was further supported by Dr. A.K. Gaur (PW-3) who examined the victim in community health centre on 29th of January, 2016 at about 3.50 pm and noticed stab/puncture wound of 1.5 x0.5 cm. Umbilicus (Ex.P-7) and opined that these injuries were caused before 3 hrs of examination, if medical treatment would not have been provided in proper time she would have been succumbed to injuries. As per version of this witness the injuries could have been fatal and it was grievous in nature. Version of this witness is again supported by Dr. Prafulla Kumar Painkra (PW-5) who also found injury on abdominal part of the victim.

7. From the evidence, it is clearly established that appellant entered into the house of the victim with knife and assaulted on her vital part i.e. abdominal part.
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 intension or knowledge that will be caused by the act of the accused irrespective of the result.
11. On an overall assessment argument, advanced on behalf of the appellant is not sustainable. Act of the appellant falls within mischief of both the Sections 307 & 450 of IPC for which the trial Court awarded sentence of 10 years to the appellant. Entering into the house of the victim and causing her fatal injury by knife is challenge to the rule of law.

12. Accordingly, Sentence awarded by the trial Court cannot be termed as harsh, disproportionate or unreasonable. Therefore, appeal filed by the appellant is hereby dismissed. As per report of jail authority the appellant is in jail therefore, no further order for his arrest etc. is required.

**Sd/-
(Ram Prasanna Sharma)
JUDGE**

N.Mohle