

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 22-01-2020

Delivered on 05-03-2020

CRA No. 474 of 2017

- Tarachand Vishvkarma, s/o. Saukilal Vishvkarma, aged about 31 years, resident of village Kenduwa, Police Station Saraipali, District Mahasamund, CG.

---- Appellant

Versus

- State of Chhattisgarh through its Police Station Saraipali, District Mahasamund, CG.

---- Respondent

For Appellant : Mr. Alok Kumar Pandey, Advocate

For respondent : Mr. Aman Kesharwani, Penal Lawyer
State

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Judgment

1. This appeal is preferred against the judgment dated 23-1-2017 passed by the Additional Sessions Judge, Saraipali, CG in Sessions Trial No. 58 of 2015 wherein the said Court has convicted the appellant for the commission of offence under Section 326-A of IPC, 1860 for voluntary causing hurt to victim namely Tarakram Shrivastava and sentenced him to undergo RI for ten years and fine of Rs.10,000/- with default stipulations.

2. In the present case, name of the victim is Tarakram Shrivastava (PW/3). As per version of prosecution, on 14-7-2015 wife of the appellant namely Smt. Latika Vishwakarma call the victim Tarakram Shrivastava to her home and when he reached at main road of the house of the appellant, appellant along with her wife poured acid upon his body as a result of which he sustained burn injuries and he ran away from the spot and reached to his house and called his father who immediately took him to Police Station where FIR was lodged. The matter was reported and investigated. After completion of trial, the trial Court convicted and sentenced the appellants as aforementioned.

3 Learned counsel for the appellant would submit as under:

- i) It is not proved from where acid was brought and where acid was seized.
- ii As per version of Latika (DW2) acid was brought by the complainant Tarakram but this factum was overlooked by the trial court.
- iii) Though Latika (DW/2) stated that he sustained acid injury, but there is no report that she sustained acid injury.

- iv) The trial court erred in relying the testimonies of prosecution witnesses because their version is full of suspicion.
- v) The incident occurred without pre-meditation, therefore, the offence levelled against the appellant is not established.
- vi) The circumstances would not be sufficient to hold the appellant guilty.
- Vii) The trial court has not evaluated the evidence in its true perspective, therefore, finding of the trial court is liable to be set aside.

4. On the other hand, learned counsel for the respondent 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 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. Complainant Tarakram Shrivastava (PW/2) deposed before the trial court that on the date of incident i.e., on 14-7-2015 at about 9.30 O'

clock wife of the appellant namely Latika called him through mobile phone to come to their house. When he reached to the house of the appellant, appellant and his wife poured acid on his body and his clothes were burnt. Version of this witness is supported by version of PW8 Kageshwar, PW/9 Rameshwari, PW/10 Revati Bai and Paramanand (PW/1). All these witnesses have been subjected to searching cross examination, but nothing could be elicited in favour of defence. Their version is further supported by FIR (Ex.P/1) which is lodged on 15-7-2015 at Police Station Saraipali naming the appellant as culprit and his act of pouring acid on the body of the victim is also mentioned in the said report. There is no delay in lodging the FIR and the victim Tarakram Shrivastava was firm to his version right from day of the incident to his statement before the trial court. Version of this witness is further supported by version of Dr.Prabath Toppo (PW/3) who examined the victim and noticed the following injuries.

- I) Burn wound over abdomen in the size of 5 inch x 7 inch x 1 cm.
- ii) Burn wound over right arm in the size of 2 ½ inch x 4 ½ inch x 1 cm.
- lii) Burn wound over left index finger in the size of 2 inch x ½ inch x skin deep.
- iv) Burn wound over left thigh in the size of 2

inch x 4 inch x skin deep.

- v) Burn wound over right thigh in the size of 3 inch x 5 inch x 2 cm.
- v) Burn wound over left face in the size of $\frac{1}{2}$ cm x 6 cm.

7. As per version of this medical expert, injuries were caused by acid and were grievous in nature. It is further supported by FSL report (Ex.P/19) in which seized article was found to be acid made of Sulphur. There is no material contradiction in the statement of the complainant and other witnesses. Minor discrepancy which does not go to the root of the case has no significance, therefore, it is not a case where the case of the prosecution can be damaged by any significant material.

8. On an over-all assessment of the evidence, argument advanced on behalf of the appellant is not sustainable. Though DW/1 Jeevanlal and Latika (DW/2) deposed that an attempt of rape was made against Latika by the complainant, but the fact remains that the trial court has evaluated the evidence of defence and recorded finding that their version is not dependable and same is unreliable. After assessing the entire evidence, this court has no reason to take a contrary view what is recorded by the-trial court. Causing grievous injury by acid is

punishable under Section 326-A of IPC for which the trial court convicted the appellant. Conviction of the appellant for the said offence is hereby affirmed. The trial court awarded sentence of ten years which is minimum prescribed for the said offence and less than minimum cannot be awarded. Sentence part is also not liable to be interfered with..

9. Accordingly, the appeal being devoid of merit 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

Raju