

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 19-12-2019
 Delivered on 30-01-2020

CRA No. 573 of 2017

- Pappi @ Jagdish Tambe S/o Late Shri Heeralal, Aged About 32 Years R/o Ward No. 20, Behind Shiv Temple, Deepupara, Police Station Tarbahar, District Bilaspur, Chhattisgarh.

---- Appellant

Versus

- State of Chhattisgarh Through District Magistrate, Bilaspur, District Bilaspur, Chhattisgarh.

---- Respondent

 For Appellant : Mr. Badruddein Khan, Advocate
 For respondent/State : Mr. Aman Kesharwani, P.L.

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

1. This appeal is preferred against the judgment of conviction and order of sentence dated 31-3-2017 passed by the 2nd Additional Sessions Judge, Bilaspur (CG) in Sessions Trial No. 142 of 2016 wherein the said Court has convicted the appellant for commission of offence under Section 307 of IPC and sentenced him to undergo rigorous imprisonment for ten years and to pay fine of Rs.5000/- with default stipulations.

2. In the present case, name of the victim is Smt. Pooja Tambe (PW/2) who was wife of the appellant. The marriage between the parties took place ten years ago. They are blessed with two children. Appellant was suspecting about the character of the victim and on the date of incident i.e., on 16-8-2016 appellant assaulted multiple knife injuries on the body of the victim including vital part. The victim was admitted to hospital in Incentive Care Unit and as per version of medical expert, if instant treatment would not have been provided to the victim, she would have succumbed to the injuries. The matter was reported and investigated. After completion of trial, the appellant was charge-sheeted and convicted as aforementioned.

3. Learned counsel for the appellant would submit as under:

- i) The trial court failed to appreciate the evidence of complainant/victim (PW/2) as well as the Doctor who admitted that if anyone falls from the motor-cycle then such type of injury could be possible.
- ii From the evidence it is established that the victim fell from the motor-cycle in drainage that is why she sustained injuries, therefore, the case does not fall within ambit of Section 307 of IPC.

Reliance has been placed in the matter of **Kamta Prasad vs. State of MP (Now CG), 2015(4) CGLJ 239, Thakur Ram vs. State of MP (Now CG), 2013 (4) CGLJ 299 and State of Chhattisgarh vs. Ram Bharos Rajwade (2012) 3 CGBCLJ 548.**

4. 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 marshalling 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. The first question for consideration of this court is whether the appellant assaulted the victim and his act is criminal act. In the present case, date of incident is 16-8-2016. Report was lodged on the same day at Police Station Tarbahar naming the appellant as culprit and his act of assault to victim Pooja Tambe by knife is also mentioned in the said report. Complainant/victim (PW/2) deposed before the trial court that 2- 4 days before the incident she left the house of the appellant after quarrel and reached to the house of her sister namely Kavita. As per version of this witness, on the date of incident appellant assaulted her by knife multiple times. Version of this witness is supported by version of Gudi Sonwani (PW/7) who is eye-witness account to the incident. Again it is supported by version of Mahesh Sonwani (PW/11) who saw the victim in pool of blood and she informed him that appellant assaulted her by knife in her abdomen. All the witnesses have been subjected to searching cross examination, but nothing could be elicited in favour of defence.

7. Dr. Anupam Kujur (PW/14) examined the victim on 16-8-2016 at District Hospital, Bilspur and noticed the following injuries.

- i) Two stab wounds over left side of abdomen (2 x 1 1/2 cm x depth upto muscle) and (3 cm x 1cm x depth upto muscle).
- ii) Stab wound over right lumbar side of abdomen (1 cm x 1cm x 1 cm).

- lii) Stab wound over right medial side of thigh (2 cm x 1 cm).

As per version of this witness, injuries were grievous in nature and same were caused by pointed and sharp object. He further deposed that one knife was brought by Police Constable Narendra Marko for examination and after examination he opined that the injuries caused to the victim may be caused by this knife. This witness further opined that if instant treatment would not have been provided to her, she would have succumbed to the injuries.

8. Dr. Ram Krishna Kashyap (PW/14) deposed before the trial court that he treated the victim due to complaint of abdominal pain and breathing problem. Dr. Pupspendra Kumar Sarwa (PW/8) conducted operation of the victim and he deposed before the trial court that he operated the abdomen of the victim. There is nothing on record to say that the victim suffered injuries due to fall in drainage. Again, there is no material contradiction in the statement of eye-witness account to the incident. Any minor discrepancy in the statement of any witness is insignificant because same occurs due to lapse of time and loss of memory. When there is no material contradiction which goes to the root of the case, it is clearly established that the appellant assaulted the victim by knife and looking to the medical evidence, it was a case of multiple assaults by knife.

9. Now, the question for consideration of this court is whether the act of the appellant falls within mischief of Section 307 of IPC. Hon'ble the Supreme Court in the matter of **Sachin Jana and another vs. 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. In the present case, act of the appellant shows brutality against his wife in assaulting by knife in her abdomen and other parts of the body. Doctor has clearly opined that if instant treatment would not have been provided to her, she would have succumbed to the injuries, therefore, act of the appellant falls within ambit of Section 307 of IPC. After re-assessing the entire evidence, argument advanced on behalf of the appellant is not acceptable and case laws cited on his behalf are clearly distinguishable to the facts of the present case. The conclusion arrived at by the trial court is not liable to be interfered with and same is hereby affirmed. The trial court awarded sentence of ten

years and looking to the criminal act of the appellant/husband against his wife, same cannot be termed as harsh or unreasonable or disproportionate. Sentence part is also not liable to be interfered with.

11. Accordingly, the appeal being devoid of merits is liable to be and is hereby dismissed. Appellant is reported to be in jail, therefore, no further order for his arrest etc., is required.

Sd/-

(Ram Prasanna Sharma)

Judge

Raju