

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 10-01-2020

Delivered on 17-02-2020

CRA No. 974 of 2015

- Parmeshwar Rajwade S/o Dhansai Rajwade Aged About 35 Years R/o Anujnagar, Police Station - Jaynagar, District Surguja Chhattisgarh.

---- Appellant

Versus

- State of Chhattisgarh through The Station House Officer, Police Station, Gandhinagar, District - Surguja Chhattisgarh .

---- Respondent

For Appellant : Mr. Bhupendra Singh, Advocate

For respondent/State : Mrs. Smita Jha, Panel Lawyer

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

1. This appeal is preferred against the judgment of conviction and order of sentence dated 29-7-2015 passed by the Additional Sessions Judge, (FTC), Surguja (Ambikapur) (CG) in Sessions Trial No. 142 of 2011 wherein the said Court has convicted the appellant for commission of offence under Section 307 of IPC and Section 25 (1-B) of the Arms Act, 1959 sentenced him to undergo rigorous imprisonment for seven years and to pay fine of Rs.2000/- and RI for one year and to pay fine of Rs.100/-, with

default stipulations. Both sentences are directed to run concurrently.

2. As per version of prosecution, marriage of victim namely Rajdhani was performed with appellant at Anuj Nagar but she was residing with her mother namely Rambai since Durga worship. Appellant is husband of victim Rajdhani. On the date of incident i.e., on 6-4-2010 at about 11.00 a.m., appellant visited the house of Rambai for taking his wife Rajdhani with him, but on refusal by Rajdhani appellant assaulted said Rajdhani by sword and also assaulted Ram Bai, Shobhnath and Reena Bai who intervened in the matter. 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 has failed to appreciate the statement of Dr. K.S. Toppo (PW/3), Dr. Arvind Paik (PW/13) and Dr. Rachna Arthur (PW/14). As per their version injuries were simple in nature and same was not capable to cause their death..
- ii The trial court committed error in convicting the appellant under Section 307 of IPC because case does not fall within ambit of that Section.

- lii) The trial Court has overlooked the material contradictions and omissions in the statements of the prosecution witnesses and independent witnesses have not supported the version of prosecution, therefore, case of the prosecution is not proved beyond reasonable doubt.

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. In the present case, date of incident is 6-11-2010 and report was lodged on the same day by Vijay Kumar Nishad (PW/2) in Police Station Gandhinagar naming the appellant as culprit and his act of fatal assault to victim is also mentioned. From version of Rambai (PW/1), Phool Bai (PW/5), Rajdhani (PW/6), Shobhnath Rajwade (PW/7) and Reena Rajwade (PW/12), it is established that the appellant entered into the house of Rambai who is mother-in-law of the appellant and he asked his wife

namely Rajdhani to leave the house of her mother and move with him and when she replied that she will move after-noon, appellant assaulted her by sword and again assaulted Rambai, Shobhnath and Reena Bai. All these witnesses have been subjected to searching cross examination, but nothing could be elicited in favour of defence. Direct evidence is supported by version of Dr. Arvind Paik (PW/13) who examined Rambai on 6-11-2010 at Mission Hospital, Ambikapur and noticed the following injuries.

- i) Incised wound about 8 cm x 4 cm over right forearm and blood was oozing from muscle to bone deep.
- ii) Incised wound about 7 cm x 4cm, and 5cm and 3 cm and 4cm and 3 cm over left forearm and blood was oozing from muscles.

As per version of this witness, injuries caused to Rambai were grievous in nature. Version of this witness is unrebutted during cross examination and there is nothing on record contrary to the opinion of this expert.

7. Dr. Rachna Arthur (PW/14) examined Shobhnath on 11-11-2010 at Mission Hospital, Ambikapur and noticed the following injuries.

- i) Incised wound in the size of 8"x3"x3" over right side neck and bleeding.

- ii) Incised wound in the size of 7" x 1" x 1" over left shoulder.
- lii) Incised wound over occipital scalp in the size of 6" x 2" x 2".

As per version of this witness, injuries caused to Shobhnath were repaired by operation. Version of this witness is also unrebutted during cross examination and there is nothing on record contrary to the opinion of this expert. As per version of this witness, incised wound on the neck of the victim Shobhnath was found to be 8" x 3" x 3" with bleeding and again he found 6" x 2" x 2" of wound on his back side of scalp which shows that injuries caused to Shobhnath were brutal act of the appellant and taking into consideration the incised wound on vital part and magnitude of the assault, it can be inferred that the appellant had intention to kill the said victim Shobhnath.

8. From the evidence of Assistant Sub Inspector Narendra Tiwari (PW/11) it is established that sword was seized from possession of the appellant which was 12" in length and same was sharp object. Taking into consideration the incised wound caused by the appellant, it is clear that weapon was sharp edged weapon.

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. Taking into consideration the injuries caused to Shobhnath on vital part and magnitude of the assault, it is clear that intention on the part of the appellant to kill victim Shobhnath by multiple assault by deadly weapon sword, Section 307 of IPC has clear application in the present case. The sword which was seized was in contravention of notification issued under Section 4 of the Arms Act, 1959, therefore, possession of the said weapon without licence is an offence punishable under Section 25(1B) of the Act, 1959 .

11. On overall assessment of the entire evidence, argument advanced on behalf of the appellant is not sustainable. Conviction of the appellant for the said offences is hereby affirmed. The trial court awarded sentence of seven years and looking to the gravity of the offence, same cannot be termed as harsh or unreasonable

or disproportionate. Sentence part is also not liable to be interfered with.

12. 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