

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 14-01-2020
 Delivered on 17-02-2020

CRA No. 1040 of 2015

- Mahar Singh S/o Mansharam Nureti Aged About 35 Years
 R/o Picchekatta, Thana And Tahsil Bhanupratappur, Distt.
 Uttar Bastar Kanker Chhattisgarh.

---- Appellant

Versus

- The State of Chhattisgarh Through Police Station
 Bhanupratappur, Distt. U. B. Kanker Chhattisgarh.

---- Respondent

 For Appellant : Mr. Parag Kotecha, Advocate

For respondent/State : Mr. Raghavendra Verma, Govt. Adv.

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

1. This appeal is preferred against the judgment of conviction and order of sentence dated 31-7-2015 passed by the Additional Sessions Judge, Bhanupratappur (CG) in Sessions Trial No. 37 of 2015 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.1000/- with default stipulations.

2. As per version of prosecution on 9-4-2015 at about 8.30 pm appellant caused fatal injury to victim Rejoram Markam (PW/3).

Appellant was suspecting that victim had illicit relation with his wife. 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) There was dispute between appellant and his wife on the date of incident where the victim reached and the incident happened immediately and there was no intention on the part of the appellant to kill the victim.
- ii) The trial court has overlooked the material contradictions and omissions in the statements of the prosecution witnesses, therefore, finding of the trial court is not sustainable.
- lii) The trial Court has not evaluated the evidence properly, therefore, finding of the trial court is liable to be set aside and in alternate the sentence imposed by the trial court should be reduced to the period already undergone by appellant.

Reliance has been placed in the

matter of **Rajendra Harakchand Bhandari and others vs. State of Maharashtra and another, reported in (2011) 13 SCC 311 and Brijesh @ Ghanti Sharma and another vs. State of CG, decided by this court on 4-12-2019 in CRA No.949 of 2001.**

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 9-4-2015 and report was lodged on the same day by the father of the victim namely Kanturam Markam in Police Station Bhanupratappur naming the appellant as culprit and his act of fatal assault to victim Rejuraam Markam is also mentioned. Complainant Rejuraam Markam (PW/3) deposed before the trial court that the appellant had altercation with his wife and he went to the house of the appellant with his father to settle the dispute and there appellant assaulted him by axe on his throat and thereafter he became unconscious. Version of this witness is supported by version of PW/1

Vishnuram and PW/5 Kanturam. 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. Akhilesh Kumar Dhruw (PW/7) who examined the victim on 9-4-2015 at 11.00 pm at Community Health Centre, Bhanupratappur and noticed the following injuries.

- i) Incised wound 6"x 3" x 3" on back of mid neck to below.
- ii) Incised wound 1 1/2" x 1/2" x 1/2" over right side of forehead.

As per version of this witness, injuries were grievous in nature and same were caused by hard and sharp object within six hours of the examination. This witness deposed (para 4) that injuries caused on the neck and head of the victim were sufficient to cause his death. There is nothing on record to say that the appellant has been roped in a false charge. There is nothing to reject testimony of the witnesses and other supportive evidence. The statement of the victim is quite natural and inspires confidence which is supported by ample corroborative piece of evidence, therefore, it is clearly established that the appellant caused fatal injuries on the neck and head of the victim.

7. 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.

8. In the present case, act of the appellant shows brutality against the victim in assaulting by axe on his neck and head. Taking into consideration the expert opinion that the injuries were sufficient to cause death, therefore, Section 307 of IPC has clear application in the present case, 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 brutal criminal act of the appellant against victim, same cannot be termed as harsh or unreasonable or disproportionate. Sentence part is also not liable to be interfered with.

9. 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