

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 1548 of 2019

- Laxmikant Sahu @ Golu aged about 34 years, son of Chhotelal Sahu, resident of Talabod, Police Station Balod, District Baload (CG).

---- Appellant

Versus

1. State of Chhattisgarh Through Station House Officer, Police Station Chhawani, District Durg, Chhattisgarh.

---Respondent

For appellant : Mr. Manoj Kumar Jaiwal, Advocate

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

Hon'ble Shri Justice Ram Prasanna Sharma

ORAL JUDGMENT

06-01-2020

1. The appeal is directed against judgment dated 7-6-2019 passed by the Sessions Judge, Durg (CG) in Session Trial No. 153 of 2018 wherein the said Court convicted the appellant for commission of offence under Sections 450 and 307 of the Indian Penal Code, 1860 and sentenced him to undergo rigorous imprisonment for two years and to pay fine of Rs. 500/- and RI for five years and to pay fine of Rs.500/- with default stipulations.

2. In the present case name of the victim is Neha Sahu who is wife of the present appellant. As per the case of the prosecution, on 23-4-2018 at about 8.45 a.m., appellant entered into the

parental house of Neha Sahu and asked her to go to her matrimonial house. When she refused, appellant strangled her and caused multiple injuries on her abdomen and other parts of the body by sickle (sharp iron made object). The matter was reported and investigated and the appellant was charge sheeted and convicted as mentioned above.

3. Learned counsel for the appellant submits that the trial Court failed to appreciate that there is no intention on the part of the appellant and also failed to appreciate the deposition of the independent witnesses, therefore, finding of the trial Court may be set aside.

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 marshaling of the evidence and the same is not liable to be interfered with while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record of the Court below.

6. Neha Sahu (PW-1) who is the victim deposed before the trial Court that on the date of incident i.e., 23-4-2018 appellant asked her to go with him and when she refused and asked him to come with members of society, appellant pressed her neck and assaulted her by sickle several times as a result of which she fell down. Version of this witness is unrebutted during cross examination and it is supported by

version of Mamta Sahu (PW/2), Padarth Sahu (PW/5) and Madanlal Sahu (P/9). Version of victim is supported by version of Dr. S.S. Verma (PW/6) who examined the victim at Chandulal Chandrakar Hospital, Bhilai, District Durg and noticed the following injuries.

- (i) Incised wound over supra umbilical area
5 x 6 cm.
- (ii) Incised wound of 2 x 3 cm over organic
region.
- (iii) Incised wound 3 x 3 lateral to mid-line
upper abdomen.

As per the version of this witness, victim was in serious condition and profuse bleeding was on from her injuries.

7. Dr. Tarun Kumar Naik (PW/7) deposed that he noticed injury on the abdomen of victim which is caused by sharp object and he found number of holes in her small intestine which is caused by sharp object. Dr. Pushpanju Claimies (PW/11) also examined the victim and noticed the following injuries:

- (i) Victim's pulse rate 100 per minute and BP 90 systolic
- (ii) Incised wound of 10 cm (l) x 5 cm (b) and 5
cm (d) left iliac region.
- (iii) Incised wound 5 cm(l) x 2 cm (b) and 5 cm(d) exgastric
region 2 in number

As per opinion of this expert, if instant treatment would not have been provided to the victim, she would have succumbed to injuries. From the entire evidence, it is clearly established that the appellant is author of the crime.

8. Now the question for consideration before this Court is whether the act of the appellant falls within mischief under Section 307 IPC. Hon'ble the Supreme Court in the matter of **Sachin Jana and Another Versus 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.

9. In the present case, appellant assaulted the victim multiple injuries on her abdomen and looking to her merciless assault and brutality, it can be easily inferred that the appellant had knowledge that death will be caused by his act. After evaluating the entire evidence, it is clear that Section 307 IPC has clear application in the

present case. In view of the above, arguments advanced on behalf of the appellant is not sustainable. The conclusion arrived at by the trial Court is not liable to be interfered with and the same is hereby affirmed.

10. The trial Court awarded sentence of five years which cannot be termed as harsh, disproportionate or unreasonable, therefore, sentence part is not liable to be interfered with.

11. Accordingly, the appeal being devoid of merit is liable to be and is hereby dismissed at motion stage itself.

Sd/-
(Ram Prasanna Sharma)
JUDGE

Raju