

(2019) 01 CHH CK 0063
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 389 Of 2010

Dhal Chandra Gayakwad And Ors	Vs	APPELLANT
State Of Chhattisgarh		RESPONDENT

Date of Decision : 14-01-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 374(2)
Indian Penal Code, 1860 — Section 307

Citation : (2019) 01 CHH CK 0063

Hon'ble Judges : Ram Prasanna Sharma, J

Bench : Single Bench

Advocate : Amiyakant Tiwari, Ravish Verma

Final Decision : Dismissed

Judgement

1. Mr. Pushpendra Kumar Patel, Advocate has been engaged for arguing the case on behalf of the appellants. Despite repeated calls, he has not appeared when the case is called for final hearing, therefore, Mr. Amiyakant Tiwari, Advocate, who is present in the Court has been appointed as Amicus Curiae to argue the case on behalf of the appellants.

2. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against judgment dated 24.05.2010 passed by Eighth Additional Sessions Judge (FTC), Durg (C.G.) in Session Trial No. 186/2009, wherein the said court convicted both the appellants for commission of offence under Section 307 of IPC, 1860 and sentenced to undergo R.I. for 7 years and fine of Rs. 500/- each with further default stipulations.

3. In the present case, name of the victim is Yogendra Banjare. As per version of the prosecution, on 30.10.2009, the victim went to well situated near his house for bath. At that very time, the appellants reached the spot and saying the victim that he chatted too much, assaulted the victim on the point of knife in his chest and thrown him into the well. The matter was reported, the appellants were

charge-sheeted and after completion of trial, the trial court convicted as mentioned above.

4. This appeal is preferred on the following grounds :-

(i) Looking to the evidence adduced by the prosecution, charge under Section 307 of IPC is not made out.

(ii) Version of the victim is not supported by version of independent witnesses and there is material contradiction, omissions and improvement in version of the victim, therefore, finding arrived at by the trial court is not sustainable.

(iii) The trial court has not appreciated the entire evidence in its true perspective, therefore, finding arrived at by the trial court is liable to be reversed.

5. Learned State counsel submits that the finding arrived at by the trial court is based on proper marshaling of evidence and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.

6. Victim- Yogendra Banjare (PW-1) deposed before the trial court that both the appellants came near well where he was bathing at the time of incident and assaulted him by knife and then both the appellants thrown him into the well and flee away. On his crying, Prakash Jangde (PW-2) and others reached there and pulled out from the said well. Version of the victim is supported by version of Prakash Jangde (PW-2), who reached the spot after the incident and pulled out the victim from the well. Again, it is also supported by Santdas Bandhe (PW-3), Jeevan Lal Banjare (PW-4), Smt. Kaushilya Bai (PW-5) who reached the spot just after the incident and in whose presence, the victim was pulled out from the well.

7. Version of direct witnesses is supported by version of medical expert Dr. Vinu Tiwari (PW-11), who examined the victim on 30.10.2009 at about 2.45 p.m. in District Hospital, Durg and noticed (Ex.- P/9) incised wound 2 cm. x 1 cm. on left side of chest middle to nipple. Depth of the same could not be assessed (muscle exposed).

8. One knife was seized in the present case and the same was brought before the trial court. This medical expert opined that the injuries caused to the victim may be caused by this weapon. There is no material contradiction in the statement of any of the witnesses adduced by the prosecution. All the witnesses have been subjected to searching cross-examination, but nothing could be elicited in favour of the defence.

9. Evidence of the victim and other witnesses is quite natural, inspires confidence and merit acceptance. Dehati Nalsi (Ex.-P/7) is lodged on the date of incident naming both the appellants as culprit and their act of attempting murder of the victim is also mentioned in the said Dehati Nalsi on the basis of which, FIR (Ex.- P/8) was recorded.

10. Looking to the entire evidence, the trial court opined that the act of the appellants is cruel in nature and throwing the victim into the well which was

threatening to life, but the final result allured because of proper treatment in time. Act of both the appellants falls within mischief of Section 307 of IPC, 1860.

11. The trial court has elaborately discussed the entire evidence and after reassessing the evidence, this Court has no reason to record contrary finding. Commission of offence by the appellants is offence punishable under Section 307 of IPC for which the trial court awarded both the appellants with imprisonment for 7 years. Conviction of the appellants is hereby affirmed.

Heard on the point of sentence

12. The trial court awarded R.I. for 7 years which cannot be termed as harsh, disproportionate or unreasonable looking to the gravity of offence and the same is not liable to be interfered with. The sentence part is also not liable to be interfered with. Accordingly, the appeal is liable to be and is hereby dismissed.

13. It is reported that the appellants have suffered full jail sentence and have been released from jail after getting benefit of remission, therefore, no further order of arrest etc. is required.