

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.1365 of 1999**

Vinod Mehar, S/o Vaishaku Ram, aged about 25 years, resident of
Kamasipara, Distt.Raipur

---- Appellant

State of M.P. Through S.O. City Kotwali, Raipur

---- Respondent

For Appellant	:	Mrs. Indira Tripathi, Advocate
For Respondent	:	Mr. Neeraj Jain, G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

15/06/2016

1. Appellant-Vinod Mehar stands convicted for commission of offence under Section 307 of the IPC by the 4th Additional Sessions Judge, Raipur, in S.T.No.351/96 vide judgment dated 15.3.99 and sentenced to undergo R.I. for ten years and fine of Rs.1000/-, in default of payment of fine to further undergo R.I. for six months.
2. Case of the prosecution, in brief, is that on 5.6.96 at about 9.30 p.m., while complainant Saroj Mehar (PW-2) was returning back from her duty to her home, found the appellant/accused herein standing near her door with knife, to which the complainant being relative of the accused directed him not to stand and go back to his work, by which the appellant became annoyed and caused injuries by knife to the complainant. Other acquitted accused Shilan Mehar was also present there. First Information report Ex.P/8 was lodged on 5.6.1996 by injured Saroj Mehar (PW-2) and thereafter wheels of

investigation started running. Complainant Saroj Mehar (PW-2) was medically examined vide Ex.P/2. Query report was Ex.P/5. Memorandum of appellant was recorded vide Ex.P/13 and seizure of knife was made vide Ex.P/14. After investigation, the Police filed charge-sheet before the Court of Judicial Magistrate First Class, Raipur for offence punishable under Section 307/34 of the IPC against both the accused persons.

3. The appellant abjured the guilt and entered into defence by stating that he has falsely been implicated in crime in question.
4. Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (hereinafter called as "CrPC"). After completion of investigation, charge-sheet was filed before the jurisdictional Court.
5. In order to prove the guilt of the appellant and one accused person, the prosecution examined as many as twelve witnesses and exhibited P-1 to P-17 documents, whereas the defence has neither examined any witness nor exhibited any document.
6. The trial Court by its impugned judgment acquitted Shilan Mehar, whereas found the present appellant guilty for offence under Section 307 of the IPC and sentenced him as mentioned in opening paragraph of the judgment.
7. Feeling aggrieved against the judgment of conviction and order of sentence, this appeal has been filed questioning the same as unsustainable and bad in law.
8. Mrs.Indira Tripathi, learned counsel appearing for the appellant

would submit that finding of conviction recorded by the learned Additional Sessions Judge holding the appellant guilty for offence under Section 307 of the IPC i.e. attempt to murder is clearly perverse and bad in law in view of the fact that firstly the alleged injuries were not caused by the appellant to the complainant, secondly injuries were not sufficient to cause death of the complainant and thirdly there was no intention or knowledge that such injury would cause death. She would further submit that the appellant is close relative of Saroj Mehar (PW-2) and as such, there was no intention to cause her death. The appellant remained in jail since 5.6.1996 to 19.7.2002 i.e. for more than six years, therefore, the period already undergone by him be held sufficient sentence.

9. On the other hand, Mr. Neeraj Jain, learned Government appearing for the State, would submit that the prosecution has proved the ingredients of offence under Section 307 of the IPC beyond reasonable doubt and would further submit that sentence awarded i.e. R.I. for ten years and fine of Rs.1000/- is reasonable and fair, which is not required to be interfered with.
10. I have heard learned counsel appearing for the parties and perused the record of the trial Court with utmost circumspection.
11. The following two questions fall for consideration in this criminal appeal:-
 - (i) Whether the prosecution has proved the aforesaid offence against the appellant beyond reasonable doubt?
 - (ii) Whether the sentence awarded is just and proper?

12. The appellant has been convicted for commission of offence under Section 307 of the IPC. At this stage, it would be necessary to notice Section 307 of the IPC, which provides as under:-

“307. **Attempt to murder.**-Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.”

13. In order to prove the offence under Section 307 of the IPC, it must be proved that the accused caused injury to the injured with intention or knowledge to cause his/her death and act was one capable of causing death in natural and ordinary course. For the purpose of Section 307 of the IPC what is material is the intention or the knowledge and not the consequence of the actual act done for the purpose of carrying out the intention. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted and the Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the Section.
14. In the present case, Dr.D.K.Sakya (PW-1) has clearly opined that two injuries were caused. One was simple in nature and other was grievous in nature and death was very likely to be caused by injury

No.1. Complainant Saroj Mehar (PW-2) has clearly stated that injuries were caused by appellant Vinod Mehar, who is her cousin sister's son. She has clearly stated that when she was returning her home, Shilan and Vinod were standing near Vishal Pan Shop, Vinod Mehar armed with knife and when she asked the appellant not to stand on the road with knife, then the appellant became angry and inflicted her knife blow by which she suffered injuries. Complainant Saroj Mehar (PW-2) has been declared hostile as she has failed to explain as to why knife blow was caused to her by appellant Vinod Mehar. It is important to note that Dharam (PW-3), son of complainant Saroj Mehar (PW-2), Asha Lahri (PW-4), sister of complainant Saroj Mehar and Chandraoushi Bai (PW-8) are eye witnesses, but all of them have been declared hostile by the prosecution.

15. The trial Court has clearly recorded the finding on the basis of testimony of complainant Saroj Mehar (PW-2) that she has caused injuries by the appellant which are grievous in nature.
16. It appears from the statement of complainant Saroj Mehar (PW-2) that there was no intention of the appellant to cause death of complainant Saroj Mehar and only on account of some fishy dispute, the appellant inflicted injuries to complainant Saroj Mehar (PW-2).
17. Since the intention on the part of the appellant has not been proved by the prosecution as the appellant and complainant Saroj Mehar (PW-2) both are said to be relatives, it is held that conviction recorded by the trial Court for offence under Section 307 of the IPC

is not sustainable and is altered to Section 325 of the IPC.

18. This brings me to the question of sentence. According to learned counsel for the appellant, the appellant remained in jail since 5.6.1996 to 19.7.2002 i.e. the date on which his bail application for suspension of sentence has been allowed and he was granted bail by this Court. In the facts and circumstances of the case, the appellant remained in jail for more than six years, he has suffered the trauma of uncertainty and appeal is pending since 1999, in the considered opinion of this Court, the period already undergone i.e. more than six years is sufficient sentence for offence under Section 325 of the IPC.
19. Accordingly, the appeal is partly allowed and while altering the conviction under Section 307 of the IPC to Section 325 of the IPC, the appellant is hereby sentenced to undergo for the period already undergone by him i.e. since 5.6.1996 to 19.7.2002. The appellant is on bail. His bail bonds shall remain in force for a period of six months from today in view of the provision contained in Section 437-A of the CrPC.

Sd/-

(Sanjay K. Agrawal)
JUDGE

B/-