

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 613 of 2005

Akbar Ali, S/on of Kasim Ali, Aged about 23 years, Caste Muslim, R/o
Nayapara Ward No.4. Mahasamund, Thana Mahasamund, District
Mahasamund (CG)

---- Appellant

Versus

State of Chhattisgarh, Through P.S.Mahasamund, District
Mahasamund (CG)

---- Respondent

For Appellant	:	Mr. Suresh Tandon, Advocate.
For Respondent/State	:	Mr. S.K. Mishra, Panel Lawyer.

SB:Hon'ble Shri Justice Ram Prasanna Sharma

Judgment on Board

Per Ram Prasanna Sharma, J.

28/10/2017

1. This appeal is directed against the judgment of conviction and order of sentence dated 27.6.2005 passed by the Special Judge {Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989}, Raipur (C.G.) in Special Sessions Trial No. 146 of 2003, convicting the accused/appellant under Section 307 IPC and sentencing him to undergo R.I. for 10 years and fine of Rs. 25,000/-, in default of payment of fine to further undergo R.I. for 2 years.
2. Case of the prosecution, in brief, is that the appellant is a Rikshaw Puller and there was some dispute between Rikshaw owners and Rikshaw Pullers regarding

the daily hiring rate of rikshaw pulling which is increased. The Rikshaw Pullers' Union decided that none of the Rikshaw Puller would pull the rikshaw unless hiring rate of rikshaw is reduced. The present appellant was not inclined to participate with the group and some members of the Union compelled the appellant to obey the decision of the Union. It is alleged that when the appellant made altercation with the members of the Union, complainant Trimukho/Sirmukho accompanied the person to take the appellant to Police Station and at that time, the appellant assaulted Trimukho/Sirmukho by knife. The matter was reported to Police Station, Mahasamund on the date of incident i.e. 2.8.2003. After registration of FIR police started investigation. Victim Trimukho / Sirmukho was sent for medical examination. Certain articles were seized during investigation. Statements of the witnesses were recorded under Section 161 Cr.P.C. and after completion of investigation, charge sheet was filed against the accused/appellant under Section 307 IPC and some other Sections of the Special Act, to which the appellant did not plead guilty. Thereafter, trial was conducted and statement of the accused/appellant under Section 313 Cr.P.C. was recorded. After hearing counsel for both the parties, the accused/appellant was convicted and sentenced as above.

3. Learned counsel appearing for the accused/appellant submits as under:

- (i) That case of the prosecution is based on the statement of complainant Trimukho @ Sirmukho, but his statement is full of contradictions and omissions and the same cannot be relied on.
- (ii) That the seizure of articles is not proved in accordance with law and the same cannot be taken into account while deciding the case.
- (iii) That at the most it is a case under Section 323 or 324 IPC, but the trial Court has convicted and sentenced the appellant under Section 307 IPC.
- (iv) That the sentence awarded by the trial Court is

harsh looking to the facts and circumstances of the case and the same is not liable to be maintained.

4. *Per contra*, learned State counsel supporting the impugned judgment has submitted that conviction of the appellant is strictly in accordance with law and the same is not liable to be interfered with invoking the jurisdiction of appeal.

5. I have heard counsel for the parties and perused the material on record.

6. Trimukhio @ Sirmukho (PW3) is victim of the incident. He deposed that the appellant was quarreling with Jalsai (PW4) near Nehru Chowk and he along with Premlal, Ramesh and Jalsai has taken the accused/appellant towards Police Station on a rikshaw. When the accused/appellant alighted from the rikshaw, he stabbed knife to his stomach. The version of this witness is supported by the version of Ramesh(PW1), Premlal(PW2) and Jalsai (PW4).

7. Jalsai (PW4) deposed that the appellant earlier assaulted him by a chain and that is why they have taken him to the Police Station. Versions of all these 4 witnesses is subjected to searching cross examination, but nothing could be elicited from their statements in favour of the appellant. Version of these witnesses is supported by the FIR Ex. P/1 which is recorded on the same day of incident i.e. on 2.8.2003 and seizure of shirt and Baniyan of the victim Trimukho @ Sirmukho as per Ex. P/2 which was torn due to injury by knife. The knife was seized from the possession of the appellant as per Ex. P/4 and factum of seizure is proved by Jalsai (PW4).

8. Again oral and documentary evidence is supported by the medical evidence of Dr. O.P Dubey (PW5) who examined the victim on 2.8.2003 at

about 8.10 pm brought by Constable Dinesh Giri of Police Station Mahasamund and noticed following injuries:

- i. Lacerated wound on right side of extra mandible region chest of 1 ½" x ½" x ½" in depth- muscle deep.
- ii. Pleura deep, rupture of pleura on right arm.
- iii. Lacerated wound on left palm closer aspect of 3 ½" x ½" x ¼".

As per opinion of the Doctor, injuries seems to be fatal if not remedied immediately, death would have been caused. Version of this witness is unshaken during cross examination and there is no expert opinion in the record to rebut the same. From the opinion of the expert, it is established that the injuries were fatal in nature.

9. To constitute an offence under s. 307, IPC, two ingredients of the offence must be present:-

- (a) an intention of or knowledge relating to commission of murder; and
- (b) the doing of an act towards it.

The essential ingredients required to be proved in the case of an offence under s.307, IPC are :

- (i) That the death of a human being was attempted;
- (ii) That such death was attempted to be caused by, or in consequence of the act of the accused;
- (iii) That such act was done with the intention of causing death, or that it was done with the intention of causing such bodily injury as; (a) the accused knew to be likely to cause death; or (b) was sufficient in the

ordinary course of nature to cause death, or that the accused attempted to cause death by doing an act known to him to be so imminently dangerous that it must in all probability cause (a) death, or (b) such bodily injury as is likely to cause death, the accused having no excuse for incurring the risk of causing such death or injury.

(iv) To justify conviction under this section it is not essential that bodily injury capable of causing death should have been inflicted.

10. Thus, it is established from the direct evidence and medical evidence that the accused/appellant assaulted the victim Trimukho @ Sirmukho (PW3) on vital part i.e. chest and the same was fatal in nature. It means the appellant has done the act of killing the victim but the final result alludes because of proper treatment in proper time.

11. There are minor contradictions in the statements of prosecution witnesses but the same bound to occur because the statement is recorded before the Court after a lapse of time and there is restriction of memory of a person and statement of witness is not parallel to tape recorder. When there is nothing on record to discard the direct evidence and medical evidence, in the facts and surrounding circumstances of this case, it can be easily inferred that the accused has caused bodily injuries to the victim with the intention or knowledge that the victim may die of the consequences. Act of the accused/appellant falls within the ambit of Section 307 IPC for which the trial Court has convicted him and in the considered opinion of this Court, the same is not liable to be interfered with invoking jurisdiction of the appeal.

12. Conviction of the appellant under Section 307 IPC is hereby affirmed.

13. Heard on the sentence imposed by the trial Court which is R.I. for 10 years and fine of Rs.25,000/- with default stipulation. In view of this Court, sentence of R.I. for 5 years would be proportionate for the act of the appellant.

14. Thus, the appeal is partly allowed. The appellant is sentenced to R.I. for 5 years for the offence under Section 307 IPC while the fine amount imposed by the trial Court shall remain intact.

15. With these modifications, the appeal is allowed in part.

16. The trial Court will confirm from the jail authorities as to whether the accused/appellant has suffered full term jail sentence i.e. 5 years or not and if the appellant has not suffered 5 years jail sentence, the trial Court will issue non-bailable warrant against him and after his arrest he be sent to serve out the remaining part of the jail sentence.

Sd/
(Ram Prasanna Sharma)
JUDGE