

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.420 of 2010**

- Akhilendra Kumar Panika, S/o. Bandhu Panika, Aged about 26 years, R/o. Badan Singh Mohalla, Ward No.4, Manendragarh Police Station Manendragarh, Distt. Korea (CG)

---- Appellant**Versus**

State of Chhattisgarh Through Station House Officer, Police Station Jhagrakhand, Distt. Korea (CG)

---Respondent

For Appellant	: Shri Santosh Bharat, Advocate
For respondent/State	: Shri Sameer Behar, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Order On Board****28.10.2017**

This appeal is preferred against the judgment of conviction and order of sentence dated 31.03.2010 passed by the Additional Sessions Judge (FTC), Manendragarh, Distt. Korea (CG) in Session Case No.69/2007 wherein the trial Court convicted the appellant under Section 307 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for five years and to pay fine of Rs.500/- with default stipulations.

2. As per the prosecution case, Police Officer of Police Station Jhagrakhand received information regarding robbery of some computers on 21.12.2006 and after receiving information they swung into action and process of checking on the bus were on. In the process, computers were found in one Capital Bus bearing registration No.MP-18/7181 and when they enquired about the

matter some passengers fled away. When the police Officers tried to chase them, the appellant fired at Police Constable namely Basant Ekka by revolver and he was caught on the spot with arms. Dehati nalishi was recorded on the spot and thereafter First Information Report was recorded at Police Station Jhagrakhand. The injured was sent for medical examination at Community Health Centre, Manendragarh . Certain seizures were made, statement of the witnesses were recorded and after completion of investigation, charge sheet was filed against the appellant. The trial Court framed charges under Section 307 of the Indian Penal Code and under Section 27 of the Arms Act, 1959 on which the appellant plead innocent and thereafter trial was conducted and after completion of evidence of the prosecution side, statement of the appellant under Section 313 of the Cr.P.C. was recorded. After hearing the parties, the trial Court convicted and sentenced the appellant as aforementioned.

3. Learned counsel for the appellant submits as under:

- (i) Case of the prosecution is based on the evidence of eye witness Basant Ekka (PW-1). His version is full of contradictions and omissions and the same is not to be relied.
- (ii) At the most it is a case of causing simple injury and the offence under Section 307 IPC is not made out.
- (iii) Sanction of District Magistrate regarding prosecution under Arms Act is not strictly in accordance with law and the same cannot be acted upon.

4. On the other hand, learned counsel for the State submits that judgment of the trial Court is strictly in accordance with law and the same is not liable to be interfered with invoking the jurisdiction of the appeal.

5. Basant Ekka (PW-1) deposed that he was posted in Police Outpost Khogapani, Police Station Jhagrakhand as Constable. On 21.12.2006, Incharge Police Outpost informed him on telephone that some robbers have entered into Central School Jhagrakhand and robbed computer sets and other articles and they have to chase them. Upon receiving the information, he accompanied the Police Officers and searched the Capital Bus which was going to Shadol via Jhagrakhand and Manendragarh. On search computers were found in the bus and when he was checking the computer sets, some of the passengers of the bus fled away from the bus. He chased them and at that time the appellant fired at him by revolver. When he again fired, this witness assaulted him by club and he fell down and the appellant/accused was caught on the spot. The matter was recorded in the dehati nalishi as Ex-P/1 and thereafter FIR was recorded. Version of this witness is supported by the version of Nandlal Sahu (PW-8) and also Janardan Yadav (PW-5), who saw injury on the right shoulder of Constable Basant Ekka. These witnesses have been subjected to searching cross examination but nothing could be elicited from them in favour of the appellant.

6. Again the version of eye witness was supported by the version of Dr. Suresh Tiwari (PW-13), who examined the victim Basant Ekka on 21.12.2006 at 8.15 am and found a gun shot wound of 2.0 x 1.0 x 0.5 cm with old clotted blood over right arm 3 + 03.4 cm above right cubital fossa anteriorly. He further stated that Basant Ekka was subjected to operation and bullet was removed from his body. Version of this witness is unshaken during cross examination and there is no other expert opinion in this regard to rebut the same and there is no reason to disbelieve same.

7. To constitute an offence under Section 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.

8. In the case in hand, the accused/appellant fired on the victim with fire arm revolver and it is established that he fired two shots. It is proved by the medical evidence that the injuries found on the body of the victim were bullet injuries and the appellant was caught on the spot only when he had been assaulted by victim by a club. It means that the appellant has done everything within his power to kill victim Basant Ekka but the final result alludes because he was assaulted and it can be easily inferred that the appellant caused bodily injury to the victim with intention or knowledge and in such circumstances to kill him.

9. It is true that there is some minor contradictions in the statement of witnesses and such contradictions are bound to occur because the witnesses are stating before the Court after the lapse of time and therefore their version is not same as tape recorder. From the totality of the facts, it can be easily inferred that the appellant attempted to kill Basant Ekka and the same comes under an offence under Section 307 IPC for which the trial

Court has convicted the appellant and the same is not liable to be inferred with, hence, the conviction of the appellant is hereby affirmed.

10. Heard on Sentence.

The trial Court awarded sentence of RI for five years while as per the provisions of Section 307 IPC, he can be convicted upto imprisonment for life. It cannot be said that the sentence awarded by the trial Court is harsh/disproportionate or unreasonable and the same is also not interfered with.

11. The appeal is liable to be and is hereby dismissed.

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

**Sd/-
(Ram Prasanna Sharma)
JUDGE**