

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 974 of 2012**

Kanwar Singh Rathiya, s/o Kanshiram Rathiya, aged about 50 years, village Kaya, Police Station Gharghoda, District Raigarh(CG)

**---- Appellant****Versus**

State Of Chhattisgarh Through Police Station Gharghoda, District Raigarh(CG)

**---- Respondent**

---

For Appellant : Shri Subhash Yadav, Advocate

For State/ Respondent : Shri Vinod Tekam, Panel Lawyer

---

**HON'BLE SHRI JUSTICE RAM PRASANNA SHARMA****JUDGMENT ON BOARD****14/12/2018**

1. Shri Ashish Gupta and Shri Manish Upadhyay, Advocates have been engaged by the appellant, but despite repeated calls, none appeared, therefore, Shri Subhash Yadav, Advocate present in the Court is appointed as amicus curiae to argue the matter on behalf of the appellant.

2. This appeal is preferred against the judgment dated 10.10.2012, passed in S.T.No.14/2011 by the 1<sup>st</sup> Additional Sessions Judge, Raigarh(CG) for commission of the offence under Section 307 of the IPC and sentenced to undergo R.I. for 10 years and fine of Rs.1000/- with default stipulation.

3. In the present case, name of the victim is Ramsingh Rathiya. As per version of the prosecution on 14.11.2010, the victim went to village Kaya and at about 4.30 pm, the appellant holding crowbar in his hand, caused multiple injury in the vital part of the victim including neck on account of some land dispute. The victim was admitted to Hospital where injuries were found to be dangerous for life. The matter was reported and investigated and the appellant was charge sheeted. After completion of trial, the appellant was convicted and sentenced as above.

4. I have heard learned counsel for the parties and perused the record.

5. Learned counsel for the appellant submits as under:

(i) There is no cogent and reliable evidence to establish the charge under Section 307 IPC.

(ii) Ingredients of the offence are lacking in record and the trial Court has not appreciated the witnesses in its right perspective and came to a wrong conclusion.

(iii) Report of medical expert is not sufficient to hold guilty the appellant for the said offence, therefore, conviction is liable to be set aside.

6. On the other hand, learned counsel for the State supporting the judgment submits that the finding arrived at by

the trial Court is based on cogent and reliable evidence and the same is not liable to be interfered with.

7. Ramsingh Rathiya (PW5) deposed that he went to field of one Bhuneshwar for cutting paddy and returned at about 4.00 pm in the evening and at that time, the appellant came from back side and assaulted thrice him on his neck by the crowbar. Thereafter, he fell down and admitted to Gharghoda hospital and at Raigarh Hospital. Version of this witness is supported by the version of Maharam (PW9) who is also eye-witness to the incident. Again, it is supported by the version of Bhukhal Rathiya (PW3), Manglai Bai (PW1) and Bhuneshwar Rathiya (PW2) who reached to the spot and were informed about the incident. Direct evidence of these witnesses is supported by the version of Dr. V.K. Lakda (PW7) who examined the victim on 14.11.2010 and noticed following injuries :

- (i) Five incised wounds on the neck in the size of 12 x 3 cm x bone deep
- (ii) Four incised wounds on right scapular region in the size of 7 x 0.5 cm
- (iii) One incised wound on the right parietal region in the size of 10 x 1 cm.

As per version of this witness, if treatment would not have been provided instantly, the appellant would have succumbed to the injuries. From the direct evidence and medical evidence, it is

clear that the injuries were fatal in nature and death was possible result of the injuries caused to the victim. All the witnesses have been subjected to searching cross-examination but nothing could be elicited in favour of the defence.

8. Version of defence is plain denial and same is merit less.

9. Now the point for consideration is whether the act committed by the appellant constitutes offence under Section 307 of IPC.

10. An attempt is an intended, but unfinished crime, tending but failing to effect its commission. Specific intention to commit the crime of murder is a necessary prerequisite of this section. In so far as the offence relates to an attempt, the overt act must necessarily be left unaccomplished because otherwise the prosecution would be for the completed crime. Apart from the necessary *mens rea*, *actus reus* must be more than a preliminary preparation. The attempt must have gone so far that it would result in the commission of the crime intended unless frustrate by the intervention of extraneous circumstances, independent of the will of the accused. So, in order to constitute an offence under this section, it must be established that the offender did an act (the *actus reus*) and that act was actuated by an intention (the *mens rea*) to go further and to achieve a definite end, which is a specific crime, namely, murder. The prosecution has to establish both the elements of the crime by proving that the accused did

something, which, in point of law, would be an intention of the commission of an offence and in taking that step, he was inspired by an intention to achieve the definite objective which constituted the particular crime.

11. 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 Section 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.

12. In the present case, the appellant has caused fatal injury to the victim and he did every thing within his power but the final result alludes because of proper treatment in time. In the facts and circumstances of the case it can be easily inferred that the appellant was knowledge that the injury may cause death of the victim. Act of the appellant falls within ambit of Section 307 IPC. The arguments advanced on behalf of the appellant is not sustainable. Conviction of the appellant under Section 307 IPC is hereby affirmed.

13. Heard on the point of sentence:

The trial court has awarded jail sentence of R.I. for 10 years, which cannot be termed as harsh, disproportionate or unreasonable 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.

14. It is reported by the jail authorities that the appellant has suffered full term of his jail sentence and has been released after getting remission, therefore, no order for his arrest etc. is required.

**Sd/**

**(Ram Prasanna Sharma)**

**JUDGE**

