

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.161 of 2002**

1. Bodka @ Lakhmuram, S/o. Nohru Bhatra, aged about 20 years, R/o. Hatakchora, Mundapara, PS Bodhghat, District Baster.
2. Debri @ Debra, S/o. Sukhdev Ghasia, Aged about 19 years, R/o. Hatakchora, In front of the house of Appal Naidu, PS Bodhghat, Distt. Baster.

---- Appellant

Versus

- The State of Chhattisgarh Through District Magistrate, Baster.

---- Respondent

For the appellant : Shri KK Singh, Advocate
 For the respondent/State : Shri Vinod Tekam, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****31.3.2018.**

1. This appeal is directed against the judgment of conviction and order of sentence dated 15.12.2001 passed by Third Additional Sessions Judge, Bastar at Jagdalpur, Session Division Bastar (CG) in Sessions Trial No.63/2001 wherein the said Court convicted the appellants for the commission of offence under Section 307 read with Section 34 of the Indian Penal Code and sentenced them each to undergo rigorous imprisonment for five years, for attempting to commit murder of one Sonuram, S/o. Sukalu on 07.10.2000 at about 7.30 pm at village Taraipara Hatakachora.

2. In the present case, name of the victim is Sonuram. On the date of incident, both the appellants reached to the house of the

victim, called him out, thereafter appellant Debri @ Debra caught hold him and appellant Bodka @ Lakhmuram assaulted him by sword on his stomach and on other parts of the body. The matter was reported to the Police and after completion of investigation charge sheet was filed, the appellants did not plead guilty and the trial was conducted. After completion of trial, the trial Court convicted and sentenced the appellants as aforementioned.

3. Learned counsel for the appellants submits as under:

(i) All the prosecution witnesses have turned hostile including relatives of the complainant

(ii) The prosecution has utterly failed to attract the ingredients of Section 307/34 IPC against the appellants and there was no motive for the appellants to commit murder of the victim.

(iii) The prosecution has failed to establish by which weapon the injuries were caused. Though it is alleged that the injuries were caused by sword, but during the course of investigation, one knife was seized, therefore, the finding arrived at by the trial Court is arbitrary and illegal. Further he placed reliance in the matter of **1993 Supp(2) SCC 33 Pashora Singh and another Vs. State of Punjab**.

4. On the other hand, learned counsel for the State submits that the finding recorded by the trial Court is based on proper marshaling of evidence and the same is not required to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the material available in the record.

6. Date of incident is 07.10.2000 at about 7.30 pm and report was lodged in Police Station Bodhghat after five hours of the incident, i.e. on 08.10.2000 at about 00.30am. The incident took place at Taraipara Hatakchora which is at a distance of 2 km from the Police Station Bodhghat. In the FIR both the appellants are named and it is mentioned that appellant Debri caught hold the victim and appellant Bodka assaulted him by sword.

7. Sonuram (PW-3) deposed before the trial Court that appellant Bodka called him out and at the time of the incident appellant Debri caught hold him and thereafter appellant Bodka inflicted sword on his stomach. Appellant Bodka assaulted him twice by sword, but he resisted the first assault and appellant Bodka succeeded in the second assault. In the first assault, he sustained injuries on his left thumb. He further deposed that by the sword injury his intestine came out. This witness has been subjected to searching cross-examination but nothing could be elicited in favour of the defence.

8. Version of the victim is supported by the version of Dr. Sunil Kumar Yadav (PW-6). As per the version of the doctor, he examined Sonuram on 07.10.2000 and noticed following injuries:

- (1) soft prolapsed small gut about 1 1/2" - 2" with multiple bleeding wounds over prolapsed gut stab wound over left paraumbilical region

(2) lacerated wound of 1/4" x 1/2" on the left thumb

(3) lacerated wound of 1/4" x 1/2" on left index finger

He opined that the injuries were fatal if not remedied in time. Version of this witness is unshaken during cross-examination and from the evidence of this witness it is established that the victim would have succumbed if no proper treatment was available to him on time.

9. It is contended on behalf of the appellants that independent witnesses Sukhmati (PW-1) and Purni Bai (PW-2) have not supported the version of the victim, therefore, case of the prosecution is doubtful. These two witnesses are not eye witnesses. As per the Criminal jurisprudence, only quality of the evidence is weighed and not quantity. When the victim is the sole eyewitness of the incident, no other person can claim to be the eye witness. From the direct evidence of Sonuram and as per the report of medical expert, it is established that the injuries were caused on vital part of the victim due to which intestine came out.

10. Now the point for determination is whether the act committed by both the appellants constitute offence under Section 307 of IPC.

11. 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 frustrated 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.

12. 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.

13. In the present case, appellant Bodka assaulted the victim on his vital part of the body. It is also established that appellant Debri caught hold the victim to facilitate Bodka to inflict fatal injuries. It is also established that appellant Bodka assaulted twice, but the first attempt failed because the victim prevented the assault. It means both the appellants have done everything within their power to cause fatal injury but the final result alludes because of the proper treatment in time. In the facts and circumstance of the case, it can be easily inferred that both the appellants were keeping in furtherance of common intention or the knowledge in order to kill the victim. Arguments advanced on

behalf of the appellants are not sustainable. Case of the appellants falls under Section 307 of the IPC for which the trial Court convicted them.

14. Heard on the point of sentence.

Offence under Section 307 IPC is punishable with imprisonment for life. The trial Court awarded rigorous imprisonment for five years which cannot be termed out as harsh or unreasonable or disproportionate.

15. Accordingly, the appeal being devoid of merits is liable to be and is hereby dismissed. The trial Court will issue non-bailable warrant against the appellants and after their arrest, they be sent to jail for serving out the remainder of the jail sentence.

Sd/-

(Ram Prasanna Sharma)

JUDGE