

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 804 of 2008**

Bide Singh Mandavi, S/o Charan Singh Mandavi, aged about 32 years, R/o Village- Paleba, P.S. Narhar Pur District- Kanker (C.G.)

---- Appellant

Versus

State of Chhattisgarh, through P.S- Charama, District- Kanker (C.G.)

---- Respondent

For Appellant : Mrs. Savita Tiwari, Advocate.

For State/respondent : Mr. Vinod Kumar Tekam, PL.

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

22/11/2018

1. This appeal is preferred under Section 374 of the Code of Criminal Procedure, 1973 against judgment dated 25.07.2008 passed by Additional Sessions Judge, North Bastar, Kanker (C.G.) in Session Trial No. 108/2007, wherein the said court convicted the appellant for commission of offence under Sections 307 & 459 of IPC, 1860 and sentenced to undergo R.I. for 5 years and fine of Rs. 10,000/- and R.I. for 5 years and fine of Rs. 1,000/- respectively with further default stipulations.
2. In the present case, name of the victims are Fuleshwari & Rahmatbai. It is alleged that the appellant caused grievous assault to both the victims in the intervening night of 30.06.2007 to 01.07.2007 in village- Tarasgaon at about 12:30 in the midnight by iron rod which was dangerous/ fatal to their life.

3. Learned counsel for the appellant submits that version of the prosecution witnesses are not reliable, therefore, there is no justification in convicting the appellant.
4. Learned State counsel submits that the finding arrived at by the trial court is based on proper marshaling of evidence and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.
5. Rahmatbai (PW-1), Fuleshwari Bai (PW-2), Madhuri @ Malti (PW-4) have clearly stated before the trial court that it is the appellant who assaulted Fuleshwari Bai & Rahmatbai with iron rod. Both the injured were examined by Dr. Arvind Korram (PW-5) on 01.07.2007 at Community Health Centre, Charama and noticed following injuries on body of Rahmat Bai (Ex. P/6):-
 - (i) Lacerated wound about 3 cm. x 0.5 cm. x 0.5 cm. upto bone deep on left side of head.
 - (ii) Lacerated wound about $\frac{3}{4}$ cm. x 0.3 cm. upto bone deep in middle of forehead.
6. Again, Dr. Arvind Korram (PW-5) examined Fuleshwari Bai and noticed following injuries on body of Fuleshwari Bai (Ex. P/8).
 - (i) Lacerated wound about 1" x $\frac{1}{2}$ " upto bone deep on upper part of nose.
 - (ii) Lacerated wound 3x4" x $\frac{1}{2}$ " upto bone deep on left side of forehead.
 - (iii) Lacerated wound about 1" x $\frac{1}{2}$ " upto bone of left eyeball.

- (iv) Left eye swelling with sub-conjunctival hemorrhage with black eye.
 - (v) Right eye swelling with red eye.
 - (vi) Deformity on second finger of left hand due to injury.
7. He further opined after study of CT Scan of Fulehwari that there was fracture on zygomatic part and found blood clot in both eyes. He again found blood clot on inner membrane of head.
 8. Dr. Smt. Ranjana Agrawal (PW-6) examined Fulehwari Bai and noticed fracture on inner orbit area of left eye. She also found fracture on her cheekbone. Dr. Veena Chatterji (PW-8) opined that injuries found on body of Fulehwari Bai was dangerous to life and it may be fatal. She again opined about injuries found on body of Rahmat Bai that looking to injuries on her head and face, the same was dangerous to life and it may be caused by iron rod.
 9. 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.

10. To constitute an offence under Section 307 of the 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.

11. In the present case, injuries on body of both the victims were dangerous to life and it was fatal in nature. Looking to the injuries, it can be easily inferred that the appellant did everything in his power to eliminate the victims, but final result allured because of proper treatment in time. The case of the appellant falls within mischief of Section 307 of IPC for which the trial court convicted the appellant for commission of offence under Section 307 of IPC.
12. From the evidence, it is established that he entered into house at night and his act is either house-breaking or house trespass and he attempted to commit death of both the victims which falls within mischief of Section 459 of IPC. For both the offences, the trial court has convicted the appellant as mentioned above and this Court has no reason to record contrary finding. Conviction of the appellant for offences punishable under Sections 307 & 459 of IPC are hereby affirmed.

Heard on the point of sentence

13. Offence under Section 307 of IPC is punishable with imprisonment for life. The trial court awarded R.I. for 5 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 that the appellant has suffered full jail sentence and has been released from jail after getting benefit of remission, therefore, no order for his arrest etc. is required.

Sd/-
(Ram Prasanna Sharma)
Judge