

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.68 of 2010**

Mahil Dhruv S/o Shobhitram Dhruv, aged about 40 years, R/o village Tekari, Police Station Bhatapara Gramin, District Raipur (CG)

---- Appellant**Versus**

State Of Chhattisgarh Through: Police Station- Bhatapara Gramin, District Raipur (CG)

---- Respondent

For Appellant : Shri A.P. Sharma, Advocate

For State/ Respondent : Shri Vinod Tekam, Panel Lawyer

HON'BLE SHRI JUSTICE RAM PRASANNA SHARMA**JUDGMENT ON BOARD****03/10/2018**

1. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against the judgment dated 4.1.2010, passed by the Additional Sessions Judge, Bhatapara, Sessions Division Raipur(CG) in Sessions Trial No. 16/2009, whereby the appellant has been convicted under Section 307 of the Indian Penal Code, 1860 (for short the IPC) and sentenced to undergo R.I. for 6 months and to pay fine of Rs.5000/- with default stipulation for attempting to commit murder of one Luman Singh on 22.12.2008 at village Tekari.

2. Case of the prosecution is that on the date of incident, injured Luman Singh was constructing some portion of his house and at the same time, the appellant and some other co-accused persons came there and assaulted Luman Singh. It is alleged that the present appellant assaulted Luman Singh on his head by a crowbar. The matter was reported and investigated and after completion of trial, the appellant was convicted and sentenced as aforementioned.

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

4. Learned counsel for the appellant submits as under :

(i) The witnesses adduced by the prosecution are interested witnesses and no one is the eye-witness except the victim;

(ii) The victim was digging the land of the appellant and it is a case of right of defence of property;

(iii) A civil dispute is pending between the parties and therefore, finding arrived at by the trial Court is not sustainable and same is liable to be reversed.

5. On the other hand, learned counsel for the State submits that the finding arrived at by the trial Court is based on proper marshalling of the evidence and the same is not liable to be interfered with.

6. To substantiate the charge prosecution has examined as many as 13 witnesses.

7. Luman Singh Dhruv (PW4) is the victim of the incident. As per version of this witness he was removing stones from the square of his house and at the same time, the appellant tried to stop him from removing the stone and one Fagu caught him and the appellant assaulted him on his head by the crowbar. He further deposed that he sustained head injury. Version of this witness is subjected to searching cross-examination but nothing could be elicited in favour of the defence. Version of this witness is again supported by the version of Purushottam Dhruv (PW1), Sarswati (PW5), Kumari Bai (PW7) and Gita Dhruv (PW8). From the evidence of all these witnesses, it is established that the appellant is the person responsible for assaulting the victim on his head. His version is also corroborated by the version of medical evidence. Dr. Rajesh Maheshwari (PW9) examined the victim and noticed the following injuries:

- (i) Lacerated wound of 8cm x 1 cm on sagittal area of skull;
- (ii) Contusion of 3cm x 2cm on right eyebrow

This witness has confirmed that the head injury was sustained by the victim could be caused by crowbar.

8. Now the point for consideration is whether the act of the appellant falls within the mischief of Section 307 IPC. 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.

9. In the case on hand, the appellant has inflicted injury to the victim on his head by a deadly weapon like crowbar and the victim was referred to hospital. Looking to the injury it can be said that the appellant did everything within his power to eliminate the victim, but the final result alludes because of proper treatment provided to the victim in time.

10. From the totality of the fact, it can be easily inferred that the appellant attempted to kill the victim and mischief of the appellant falls for offence under Section 307 of the IPC. Therefore, the arguments advanced on behalf of the appellant is not substantiated by the record because it is not proved that the victim has intervened in the property of the appellant.

11. It is a settled law that minor discrepancy in the statement of any witness is not material if it is not going to the root of the case. The trial Court after evaluating the entire evidence, convicted and sentenced the appellant for the offence under Section 307 IPC and this Court has no reason to substitute the finding recorded by the trial Court. Accordingly, the appeal is dismissed and conviction of the appellant under Section 307 IPC is hereby affirmed.

12. Heard on the point of sentence:

The trial Court has already awarded the sentence with lenient view, therefore, the sentence part is also not liable to be interfered with.

13. It is reported that the appellant is on bail and his bail bonds are cancelled. The trial Court will prepare super-session warrant and issue warrant of arrest against the appellant and after his arrest, he be sent to the concerned jail for serving out the remaining part of the jail sentence. The trial Court shall submit compliance report on or before 04.01.2019.

Sd/

(Ram Prasanna Sharma)
JUDGE