

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 412 of 2010**

Dhanurjay Soni, S/o Goverdhan Soni, Aged about 32 years, R/o Khaspara, Kumhali, Thana Bhanpuri, District Bastar (CG)

---- Appellant**Versus**

State Of Chhattisgarh Through Police Station Bhanpuri, District Bastar (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****11/12/2018**

1. Shri Alok Dewangan and Shri Hemant Kesharwai, Advocated 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 under Section 374 (2) of the Code of Criminal Procedure, 1973 against the judgment dated 28.4.2010, passed in S.T.No.109/2008 by the 3rd Additional Sessions Judge Bastar at Jagdalpur(CG) for commission of the offence under Section 307 of the IPC and sentenced to undergo R.I. for 7 years and fine of Rs.2000/- with default stipulation.

3. In the present case, name of the victim is Ku. Sushila (PW3). As per case of the prosecution, the victim was working in Aanganbai Center where raw material was provided for preparation of food for children. The appellant entered into the said Center and demanded 2 bags of rice and oil for his own consumption. When the victim denied to supply the rice to the appellant on the ground that same is provided for inmates of the center, the appellant later on came with a knife and assaulted the victim mercilessly in vital part of her body. Her 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 that the trial Court has overlooked the statements of Manmati(PW4), Roopdhar(PW5) and Shridhar(PW6), who have not supported the version of prosecution. Necessary ingredients of the offence are not established and statement of Doctor regarding injuries was not considered by the trial Court in its proper perspective. The other piece of evidence regarding seizure is also doubtful, therefore, finding arrived at by the trial Court is not liable to be sustained.

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. Prosecutrix (PW3) has deposed that the appellant demanded 2 bags of rice and oil for preparation of mutton and when she denied on the ground that raw material is supplied for preparation of food for women and children of the center, the appellant went away from that place, but after 10 minutes, he again reached there and assaulted her multiple times by a sharp object like knife(Kadri). As per version of this witness, she sustained 13 injuries. Version of this witness is supported by the version of Satwati (PW2). Again it is supported by the version of Yogendra Kumar (PW1) before whom the appellant admitted his guilt. All the witnesses have been subjected to searching cross-examination but nothing could be elicited in favour of the defence.

8. Dr. Basudeo Rai (PW11) examined the victim and noticed following injuries on her body:

- (i) A cut injury on neck below left clavicle
- (ii) A cut injury on left arm and left axillary region
- (iii) A cut injury on right palm below right thumb and index finger.

(iv) Three cut injuries on the left scapular region

9. As per version of this witness, the injuries were dangerous to life. As per version of Sub-Inspector, JP Pandey (PW9), he seized one knife from the appellant and same was sent to Dr. Basudeo Rai (PW11), who opined that the injuries could be caused by this weapon. Again Dr.KK Singh (PW12) who treated the victim at Maharahi Hospital, Jagdalpur opined that the injuries were dangerous in nature.

10. From the direct and medical evidence it is clearly established that the appellant caused dangerous injuries on the body of the victim. Again it is supported by FIR Ex. P1 which is lodged on the same day of incident naming the appellant as culprit and his act of assault against the victim.

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

12. 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.

13. 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.

14. It is established from the evidence that the appellant assaulted the victim mercilessly and he has done everything within his power to cause fatal injury and if proper treatment would not be provided in time, it could be easily inferred that the appellant was having knowledge to kill the victim.

15. The trial Court has elaborately discussed the entire evidence and came to conclusion that charge under Section 307 IPC is established against the appellant. Accordingly, conviction of the appellant under Section 307 IPC is hereby affirmed.

16. Heard on the point of sentence:

The trial court awarded jail sentence of R.I. for 7 years and fine of Rs. 2000/- for commission of offence under Section 307 of IPC. Looking to the gravity of the offence, it 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.

17. 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