

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 257 of 2009**

- Ram Kumar s/o. Shri Malikram Sahu, aged about 30 years, resident of Naya Kharwe, Police Station Kasdol, District Raipur (CG).

---- Appellant

Versus

- State of Chhattisgarh Through P.S. Kasdol, Distt.- Raipur CG

---- Respondent

 For Appellant : Mr. Arun Shukla, Advocate appears
 as Amicus Curiae

For respondent : Mr. Lave Sharma, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment on Board.****14-12-2018**

1. This appeal is directed against the judgment of conviction and order of sentence dated 13-2-2009 passed by First Additional Sessions Judge, Baloda Bazar (CG) in Sessions Trial No. 39 of 2008 wherein the said Court convicted the appellant for the commission of offence under Section 307 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for ten years and to pay fine of Rs.500/- with default stipulations.

2. In the present case, name of the victim is Tikaram who was dead. As per version of the prosecution on 12-5-2008 at about 8.00 p.m., when the victim Tikaram was taking his meals, the appellant came there and assaulted him by axe behind his neck and also on the left side of the cheek accusing him for not sending his wife (victim's daughter) with him. The matter was reported and investigated and after completion of investigation charge sheet was filed, the appellant did not plead guilty and the trial was conducted. After completion of trial, the trial Court convicted and sentenced the appellant as aforementioned.

3. Learned counsel for the appellant submits as under:

- i) The victim remained alive for 28 days after the incident and was able to speak but the prosecution willfully did not make any effort to record his statement.
- ii) Case of the prosecution is based on the statement of PW/2 Sunita who has not heard conversation between the victim and the appellant and she is not the witness of assault.
- lii Important witnesses Yogesh, Hari and also the mother of the appellant who were present in the house, were not examined by the prosecution.

- iv) There is serious suspicion with regard to seizure of weapon alleged to be used by the appellant.
- v) The trial Court has not evaluated the evidence in its true perspective, therefore, finding of the trial Court is liable to be set aside.

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. Rajesh PW/1 is eye-witness to the incident. As per version of this witness, when he was taking his meals in his house, the appellant came into his house and when his wife cried he saw that the appellant assaulted the victim by axe and thereafter fled away from the spot. Version of Rajesh is supported by version of Sunita PW/2. Again it is supported by version of Hari Shankar (PW/3). Direct evidence adduced by the prosecution is supported by version of Dr. Sunil Singh (PW/8) who examined the victim Tikaram on 12-3-2008 at

Community Health Centre, Kasdol and noticed the following injuries on the body of the victim.

- i) Deep incised wound on left side of the head on temporal region in the size of 3" x 1/2" x 1/2"
- ii) Deep incised wound on right index finger.
- lii) Deep incised wound on the back side of neck in the size of 4"x2"x2"

He opined that the injuries were fatal and the same could be caused by sharp edged object.

7. From the evidence of the medical expert, it is established that the appellant used deadly weapon and assaulted on head of the victim which is vital part. From the evidence it is clear that after 28 days of the incident victim died due to injuries. Version of direct and medical evidence is supported by FIR (Ex.P/1) which is recorded on same day of the incident i.e., 12-3-2008 at Police Station Kasdol naming the appellant as culprit and his act of assault is also mentioned in the said FIR.

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

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 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.

10. 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.

11. Looking to the fact that the victim died after 28 days of the incident and looking to the injuries sustained by the victim on vital part, it appears that the injuries were fatal in nature. It can be easily inferred that the appellant attempted to kill the victim which is offence under Section 307 of IPC for which the trial Court convicted him and this court has no reason to record contrary finding. Conviction of the appellant under Section 307 of IPC is also hereby affirmed.

12. Heard on the point of sentence.

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

13. Accordingly, the appeal being devoid of merits is liable to be and is hereby dismissed. As per report of the jail authorities, the appellant has suffered full jail term and has been released from jail, therefore, no further order for his arrest etc., is required.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju