

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 32 of 2010

Shivcharan Lodhi s/o Nathuram Lodhi aged about 42 years,
occupation labour, r/o village Milouni PS Nandghat, District Durg
(CG)

---- Appellant

Versus

State Of Chhattisgarh Through Station House Officer, Police
Station Nandghat, District Durg(CG)

---- Respondent

For Appellant : Shri Pramod Verma, Sr. Advocate with
Shri Virendra Verma, Advocate

For State/ Respondent : Shri Vinod Tekam, Panel Lawyer

HON'BLE SHRI JUSTICE RAM PRASANNA SHARMA

JUDGMENT ON BOARD

13/12/2018

1. Heard on admission.
2. Admit.
3. This appeal is preferred against the judgment dated 10.11.2009, passed in S.T.No.38/2008 by the Additional Sessions Judge (FTC) Bemetara, District Durg(CG) for commission of the offence under Section 307 of the IPC and sentenced to undergo R.I. for 10 years and fine of Rs.2000/- with default stipulation.

4. In the present case, name of the victim is Shankarlal Rajput. As per case of the prosecution, on 7.12.2007 in the evening at about 5.00 pm, Shankarlal Rajput was measuring his paddy. The appellant was stacking his paddy in his own Bayara. Particles of paddy being handled by the appellant were being carried by the wind towards victim Shankarlal Rajput. There upon a quarrel started between the two. The appellant came to Bayara of Shankarlal Rajput and dealt a blow by the handle of his Kalari (an iron made weapon) on the head of the victim and again he has been assaulted multiple times. The incident was intervened by the persons of locality. The victim was admitted to hospital. The matter was reported and investigated and the appellant was charge sheeted. After completion of trial, the appellant was convicted and sentenced as above.

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

6. Learned counsel for the appellant submits as under:

- (i) Ingredients of offence under Section 307 IPC are not proved.
- (ii) Even if the prosecution case is taken to be true it is an offence punishable under Section 325 IPC.

(iii) Version of victim is not supported by the statement of Raju (PW1) and Sitaram Lodhi (PW13), therefore, version of victim is not trustworthy.

(iv) The trial Court recorded finding of conviction on the basis of contradictory and improbable statement which is liable to be set aside.

7. 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.

8. Shankarlal Rajput deposed before the trial Court that the appellant was cleaning his paddy and some particles were flown in his region, therefore, he objected to the appellant and thereafter the appellant assaulted him by Kalari (iron made weapon) on head, hand, ear and other parts of the body by saying that he will kill him. Version of the victim is supported by the version of Onkar Verma (PW2), Narayan Prasad Verma (PW3), Panna Lal Chouhan(PW4), Mansir Bai(PW7), Bhuneshwar Singh Rajpur(PW8) and Sitaram Lodhi(PW13). All the witnesses have reached to the spot and saw the injured and they had taken him to hospital. All the witnesses have been subjected to searching cross-examination but nothing could be elicited in favour of the defence.

9. Version of direct evidence is supported by the version of Dr. Premchand Thakur(PW5) and Dr. Naresh Krishnani (PW14). As per version of Dr. Premchand Thakur (PW5), he examined the victim Shankarlal Rajput at Primary Health Centre, Maro on 7.12.2007 and noticed following injuries on his body:

- (i) Lacerated wound on the forehead of 2" x ½" x ½"
- (ii) Lacerated wound on the occipital region of 4" x ½" x ½"
- (iii) Lacerated wound on left ear of 3" x ½" x ½"
- (iv) Punctured wound just below left ear caused by hard and pointed object, bleeding from nose.

As per version of this witness, the injuries were caused by hard and blunt object and duration of injuries is since 3 hours of the examination. Again, Dr. Naresh Krishnani (PW14) who treated the victim deposed that the injuries sustained by the victim were dangerous in nature and if instant treatment would not have been provided, he would have succumbed to the injuries.

10. Version of both the medical experts is unshaken during cross-examination. There is no other expert opinion contrary to the opinion of these medical experts, therefore, from the evidence of medical experts, it is established that injuries caused to the victim are fatal in nature. Version of direct evidence and medical evidence is again supported by the FIR which is lodged on the date of incident i.e. 7.12.2007 at Police Station Nandghat

in which name of the appellant is mentioned as culprit and his act of assault is also mentioned.

11. Now the point for consideration 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. True it is that Raju Yadav (PW1) has not supported version of the victim but the fact remains that if he has not seen

the incident, he is not the real witness of the incident and if he has seen the incident and suppressing before the trial Court, his version is not reliable. There is no material contradictions in the statement of victim or other witnesses. Minor contradictions which do not go to the root of the case is insignificant and same is not adversely affecting the case of the prosecution. It is established the injuries caused to the victim were dangerous in nature and he would have succumbed to the injuries. It means the appellant has done every thing within his power to cause fatal injury and if proper treatment would not be provided in time, the victim could have succumbed to the injuries. In the facts and circumstances of the case it can be easily inferred that the appellant attempted murder of the victim and act of the appellant falls within mischief of Section 307 IPC for which the trial Court has convicted him and the same is hereby affirmed.

15. Heard on the point of sentence:

The trial court has awarded jail sentence of R.I. for 10 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.

16. 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