

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 846 of 2010**

Prem Kumar Verma S/o Dharmu Ram Verma aged 45 years, employed as Junior Assistant II and Checker Serving since thirteen years in the LAFARGE INDIA LIMITED Sonadih (Cement Factory now illegally removed) in the Police Station Baloda Bazar District Raipur (CG)

---- Appellant

Versus

State Of Chhattisgarh Through the (Police Station House Officer Baloda Bazar) Collector, District Raipur(CG)

---- Respondent

For Appellant : Shri T.K. Tiwari, Advocate

For State/ Respondent : Shri Vinod Tekam, Panel Lawyer

HON'BLE SHRI JUSTICE RAM PRASANNA SHARMA**JUDGMENT ON BOARD****13/12/2018**

1. Shri J.R. Verma, Santosh Sahu, Shri O.P. Yadav, Shri Mahish Sharma and Arvind Singh, Advocates have been engaged by the appellant, but despite repeated calls, none appeared, therefore, Shri T.K. Tiwari, Advocate present in the Court is appointed as amicus curiae to argue the matter on behalf of the appellant.

2. This appeal is preferred against the judgment dated 29/10/2010, passed in S.T.No.68/2008 by the 2nd Additional Sessions Judge, Balodabazar, District Raipur(CG) for

commission of the offence under Sections 307 and 452 of the IPC and sentenced to undergo R.I. for 7 years and fine of Rs.1000/- and R.I. for 3 years and fine of Rs.1000/- with default stipulation.

3. In the present case, name of the victim is Kiran Patil is Vice President of Lafarge Cement Factory, Sonadih. On 18.5.2009, at about 10.40 am, he was in office where the appellant entered with Gupti (iron weapon) and inflicted injury on the abdomen of the victim. Workers of the said institution intervened into the matter and protected the victim and later on he 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.

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

5. Learned counsel for the appellant submits as under:

- (i) Only one assault is sustained by the injured therefore, ingredients of offence under Section 307 IPC is not made out,
- (ii) Evidence of prosecution witnesses is contradicting to each other and looking to the material contradictions and omissions the offence charged is not established and as per version of the

witnesses true story is not possible, therefore, finding of the trial Court is not liable to be sustained.

(iii) The trial Court has not evaluated the evidence in its true perspective which is liable to be set aside.

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. Kiran D. Patil (PW2) is victim of the incident. As per version of this witness, he was sitting in the office on 18.5.2009 at about 10.30 am, at the same time, the appellant pushed the door of the chamber with force and he saw the appellant in possession of Gupti (iron weapon) and when he asked him as to what happened the appellant by saying that he will kill him penetrated the said Gupti on his abdomen. As per version of this witness, one J.K. Pandey and other Security Guard entered into his chamber and they took the appellant out of the chamber. Version of this witness is supported by the version of M. Krishnamurty (PW3), Jayendra Kumar Pandey(PW4), Sanjeev Kumar Shrivastava (PW5). All the witnesses have been subjected to searching cross-examination but they are not deviated from material point and their version is unshaken in lengthy cross-examination.

8. Version of direct evidence is supported by the version of Dr. Devashish Mandal(PW7), Yadram Sahu (PW8) and Dr. Sandeep Dave(PW10). As per version of Dr. Devashish Mandal (PW7), he examined the victim and found one lacerated and perforated wound caused by sharp edged weapon on right part of his abdomen. As per version Lal Chand Mohale (PW11) one Gupti was seized from the appellant which was brought for examination before Dr. Devashish Mandal, who opined after examination that the injuries caused to the victim could be caused by this weapon. He further opined that the injury was fatal in nature and it could have caused death of the victim.

9. 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 injury caused to the victim was fatal in nature. The direct evidence and medical evidence is again supported by the FIR which is lodged on the date of incident in which name of the appellant is mentioned as culprit and his act of assault is also mentioned.

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

11. 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.

12. 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.

13. Looking to the direct and medical evidence it appears that the appellant has done every thing within his power to cause fatal injury but the final result alludes because of proper treatment in time. In the facts and circumstances of the case it can be easily inferred that the appellant was knowledge that the injury may cause death of the victim. Act of the appellant falls within ambit of Section 307 IPC. Again it is established that he entered into the office of the victim with preparation of assaulting him with iron made weapon and act of the appellant falls within the ambit of

Section 452 IPC for which the trial Court has convicted him and this court has no reason to record a contrary finding and the same is hereby affirmed.

14. Heard on the point of sentence:

The trial court has awarded jail sentence of R.I. for 7 years and R.I. for 3 years for the offences under Sections 307 and 452 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.

15. 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