

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 860 of 2001

Suresh Tandi, S/o. Nabhi Tandi, Aged about 22 years, Resident of
Veerbhadra Nagar, Near Marwadi Kabrasthan, Police Station
Tikrapara, Raipur (C.G.) ----- **Appellant**

Versus

State of Chhattisgarh, Through Police Station- Tikrapara, Raipur
District Raipur (C.G.)

----- **Respondent**

For Appellant : Ms. Juhi Jaiswal, Advocate
For Respondent : Mr. Rajenda Tripathi, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma

Judgement on Board

13.04.2018

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 24.07.2001 passed by the Fifth Additional Sessions Judge, Raipur, Session Division Raipur (C.G.) in Sessions Case No. 111/2001, wherein the said Court convicted the appellant for commission of offence under Section 307 of the IPC 1860 and sentenced him to undergo R.I. for 5 years for attempting to commit murder of one Vishnu Tandi.

2. As per prosecution case, there was quarrel between the appellant and victim Vishnu Tandi. On 25.02.2001, on account of said quarrel, the appellant along with co-accused Padumnath Chandrakar reached the house of victim Vishnu Tandi and

knocked the door, when the door was opened by victim Vishnu Tandhi the appellant inflicted knife injury on the left rib and left thigh of the victim, thereafter, the matter was reported to Police Station Tikrapara, Raipur. After completion of the investigation, charge sheet was filed against the appellant in the Court of Judicial Magistrate First Class, Raipur who, in turn, committed the case to the Sessions Court to which the appellant did not plead guilty, therefore, trial was conducted. After completion of evidence of the prosecution side, statement of the appellant under Section 313 of the Cr.P.C. was recorded and after completion of trial, the trial Court considering the material available on record by the impugned judgement convicted and sentenced the accused/appellants as mentioned above.

3. To substantiate the charge prosecution has examined as many as 14 witnesses in their support. To nullify the charge the defence side has not examined any witness in his support.

4. Dr. A. A.Saife (PW-1) examined victim Vishnu Tandi on 27.02.2001 at Medical College Hospital, Raipur and noticed the following injuries:-

(I) Incised wound in the size of 2cmx2cm on the left side of chest near post auxiliary line.

(ii) Incised wound in the size of 3cmx1cm on the left thigh posterior lateral side bleeding into muscle deep.

(iii) Incised wound in the size of 2cmx .5cm on the right thigh are middle side upper third part and bleeding into skin deep.

(iv) Incised wound in the size of 2cmx 1 cm on the postero cut on right thigh into third part and bleeding into skin deep.

(v) Incised wound in the size of 1cmx 1 cm on the right thigh lower third part of auxiliary into skin deep.

5. As per opinion of the expert, the injuries were caused by sharp object and duration of injury since six hours of the examination. He further opined that knife brought before him by the police authorities could be caused by such injury.

6. Looking to the injury, it appears that the victim sustained one injury on his left chest which is a vital part of the body. As per evidence of this witness, length of the knife was 17 inches and it was having blade and pointed. Dr. K.K. Gajbhiye (PW-7) conducted X-ray of the victim and as per X-ray report, he opined that there was fracture on the right part of the chest. From the evidence of this witness, it is established that the injuries were grievous in nature.

7. Vishnu Tandi (PW-9) is the victim, as per version of this witness on 25.02.2001, his friend informed him that someone was beating his brother. When he reached the spot and inquired about the matter till then the appellant returned to his home. He further deposed that after two days of the incident on 27.02.2001, the appellant came and knocked the door and when he opened the door the appellant inflicted several knives injuries on rib, left thigh, and right thigh. The appellant inflicted six knife injuries on his body and when he fell down on the spot thereafter some people of the locality reached the spot and he was admitted in the hospital for

medical treatment. Version of this witness is supported by version of Madanlal Tandi (PW-11), Akash Bai (PW-8), Tulsi (PW-6) and Mannu Nayak (PW-5). It is contended on behalf of the appellant that the injuries were not sufficient to cause death, therefore, offence under Section 307 of the IPC is not made out.

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 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.

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. In the present case, the appellant assaulted the victim by knife on his chest which is vital part of the body. Looking to the injuries inflicted by knife it can be easily inferred that the appellant was

keeping in furtherance of common intention or the knowledge in order to kill the victim. Case of the appellant falls under Section 307 of the IPC for which the trial Court convicted him, therefore, this Court has no reason to disturb the findings awarded by the trial Court, the conviction of the appellant and is hereby affirmed.

12. Heard on the point of sentence.

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

14. Accordingly, the appeal being devoid of merits is liable to be and is hereby dismissed. It is submitted by Superintendent of Central Jail, Raipur vide Momo No. 233/warrant/2018 dated 13.04.2018, the appellant suffered full term of jail sentence, therefore, no further order of his arrest is required.

Sd/-
(Ram Prasanna Sharma)
JUDGE