

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 16-11 -2018

Judgment delivered on 28-11-2018

CRA No. 234 of 2009

- Shashikant Patra @ Dhuru s/o. Banbihari Patra, aged about 58 years, r/o. Toshgaon, Police Station Basna, District Mahasamund (CG).

---- **Petitioner**

Versus

- State of Chhattisgarh Through P.S. Basna, Distt.- Mahasamund CG

---- **Respondent**

For Appellant : Mr. Sunil Otwani, Mr. Manoj Paranjpe
and Mr. Bharat Sharma, Advocates

For State : Mrs. M . Asha, P.L.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Judgment

1. This appeal is preferred against the judgment dated 20-3-2009 passed by the Sessions Judge, Mahasamund (CG) in Session Trial No. 65 of 2008 wherein the said Court has convicted the appellant for the commission of offence under Section 307 of IPC and sentenced him to undergo RI for seven years and to pay fine of Rs.1,000/- with default stipulations.

2. In the present case, name of the victim is Narsingh Rana (PW/1). The date of incident is 14-10-2008 and report

was lodged by son of the victim namely Bhojraj Rana on the same day i.e., 14-10-2008 at Police Station Basna.

3. As per version of prosecution, on 14-10-2008 at about 6.00 p.m., the appellant/accused namely Shashikant Patra @ Dhuru assaulted Narsingh Rana by knife and caused grievous hurt on chest and stomach of the victim. The matter was 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 would submit as under:

- i) The act of the appellant is not intentional or with knowledge and it is not a case where death of the victim was resulted by the act of the appellant, therefore, offence under Section 307 of IPC is not made out.
- ii Statement of the victim is not wholly reliable and same is not corroborated by independent witnesses. Injury caused was not grievous as per report of medical expert and it is not on vital part of the body, therefore, finding of the trial Court is not sustainable.
- lii) Seizure of the article has not been proved,

therefore, version of the prosecution becomes doubtful. The incident occurred due to sudden grave provocation, but the injury of the appellant was not explained, therefore, appellant is entitled for acquittal.

- iv On the date of incident, victim was in badly drunken condition and there was scuffle between the appellant and the victim and in the said quarrel both have sustained injuries, but this part of the evidence is not appreciated by the trial Court, therefore, finding of the trial Court is not sustainable.
- v) The trial Court overlooked the contradictions and omissions in the statements of the prosecution witnesses. Counter case was filed against the victim for offence under Section 324 of the IPC which goes to show that the victim was the aggressor, therefore, finding of the trial Court is liable to be set aside.

4. On the other hand, learned counsel for the respondent would submit that the finding of the trial Court is based on proper marshaling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

6. PW/1 Narsingh Rana who is the victim has deposed before the trial Court that on the date of incident i.e., 14-10-2008 he was going towards the street of the village namely Toshgaon and when he reached near the house of Kanhaiya, the appellant came out of the house of Kanhaiya and assaulted him by knife thrice. He assaulted on his stomach, chest and rib. He further deposed that he asked Subhash, Bhagwatiya and Duryodhan to provide water for drinking and when he drunk the water he felt unconscious and regained conscious at Mekhara Hospital, Raipur. Version of this witness is supported by version of PW/2 Bhojraj Rana, PW/3 Bhagwatiya, Raj Kumar Rana PW/4 and Subhash Dedsena (PW/5) who have been informed about the incident and saw the victim in a pool of blood. Version of victim is supported by the dying declaration recorded by Smt. Poonam Sharma, PW/9 (Executive Magistrate) in which he has clearly stated that it is the appellant who assaulted him by knife. All these witnesses have been subjected to searching cross examination, but nothing could be elicited in favour of the defence. No witness has been suggested regarding any assault by the victim to the appellant. No

document goes to show that the appellant sustained injury during the course of the incident. Therefore, argument advanced on behalf of the appellant that the victim was the aggressor, is without substance. Version of this witness is supported by FIR which was lodged on 14-10-2008 naming the appellant as culprit. Again, it is supported by the version of medical evidence of Dr. B.R. Malik (PW/7) who examined the victim on 14-10-2008 at Primary Health Centre, Basna and noticed the following injuries.

- i) Stab wound over middle of mid axillary line in front of left chest (Horizontal) in the size of 3x2x4cm caused by fine shape edged object. - dangerous.
- ii) Incised wound over lateral left nipple (Horizontal) in the size of 6x3x4cm, caused by fine shape edged object. - advised for x-ray.
- lii) Incised wound over antero superior to left costal region in the size of 3x3x5cm – caused by fine shape edged object – advised for x-ray.
- iv) Incised wound over posterior to left elbow in the size of 3x1x5cm – caused by fine shape edge object – advised for x-ray – simple.

As per version of this witness, injuries were caused by sharp object and caused within four hours of the

examination. He referred the victim to Medical College, Raipur for further treatment and as per version of this witness, victim felt unconscious.

7. As per version of Asst. Sub Inspector Ramnivas Saxena PW/8, he seized one knife from the appellant and same was sent to Dr. B.R. Malik (PW/7) for examination and as per opinion of medical expert, injuries caused to the victim can be caused by this knife. As per version of this medical expert, treatment of the victim was not possible in hospital at Basna that is why he has been referred to hospital at Raipur and the injuries were dangerous in nature. There is no material contradiction in the statement of victim or other witnesses. Minor contradictions which do not go to the root of the case are insignificant for deciding the matter.

8. 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.

9. To constitute an offence under Section 307 of IPC, two ingredients of the offence must be present.

- (a) (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 of 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.

10. In the present case, the victim sustained the injuries closed to chest and as per opinion of the medical expert, same was dangerous in nature. The other injury was also

found near the chest and both injuries were caused by sharp object, medical expert of Primary Health Centre, before whom the victim was brought was unable to treat and as per opinion of this medical expert, if proper treatment was not provided to the victim in time, there was every possibility of his death.

11. Looking to the entire evidence, it is clear that the injuries were fatal in nature, it means the appellant has done everything within his power to cause injury but the final result allures because of proper treatment at Raipur. From the facts and circumstances of the case, it can be inferred that the appellant had intention/knowledge that it may cause death to of the victim. Looking to the facts and circumstances of the case, argument advanced on behalf of the appellant is not sustainable and the case of the appellant clearly falls within the ambit of Section 307 of the IPC for which the trial Court has convicted him and this Court has no reason to record contrary finding. Conviction of the appellant under Section 307 of IPC is hereby affirmed.

12. Heard on the point of sentence.

Offence under Section 307 of IPC is punishable with imprisonment for life. The trial Court awarded RI for seven

years which cannot be termed as harsh or unreasonable or disproportionate.

13. Accordingly, the appeal being devoid of merits is liable to be and is hereby dismissed. The trial Court will prepare super-session warrant and issue non-bailable warrant against the appellant and after his arrest he be sent to jail for serving out remainder of the sentence. The trial Court to submit its compliance report on or before 5-2-2019.

Sd/-
(Ram Prasanna Sharma)
Judge

Raju