

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 482 of 2014**

1. appellant No.1-Ramlal s/o Mohit Ram Sarthi, aged about 40 years,
2. appellant No.2-Santoshi Baiw/o appellant No.1-Ramlal Sarthi, aged about 36 years,

Both appellants are R/o Gurda, Police Station
Kharsiyani, Tahsil Raigarh, Civil and Revenue
District Raigarh (CG)

---- Appellants**Versus**

State of Chhattisgarh Through Station House Officer,
P.S. Kharsiyani Civil and Revenue District Raigarh (CG)

---- Respondent

For Appellants : Shri Kunal Das, Advocate

For the respondent/State: Shri Wasim Miyam, Panel Lawyer

HON'BLE SHRI JUSTICE RAM PRASANNA SHARMA**JUDGMENT ON BOARD****01/09/2018**

1. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against the judgment dated 14.3.2014, passed by the 1st Additional Sessions Judge, Raigarh (CG) in S.T.No.82/1999, whereby, the said Court has convicted both the appellants for commission of offence under Sections 307/34, 323/34 and 450 of the I.P.C. and sentenced to undergo R.I. for 10 years and fine of Rs.2,000/-; imprisonment for 6 months and fine of Rs.200/-;

and R.I. for 10 years and fine of Rs.2,000/- respectively with default stipulations, with a direction to run the sentences concurrently.

2. As per the case of prosecution, on 22.3.1999 in night at about 12.00 O'clock, both the appellants entered into the house of victim Samaynath with club and other articles and assaulted the said victim on vital part i.e. head. On examination, fracture of mandible bone of the victim was found by the medical expert. The matter was reported and after completion of investigation, the appellants were charge-sheeted. After hearing both the parties, the trial Court has convicted and sentenced the appellants as aforementioned.

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

4. Learned counsel for the appellants submits as under :

(i) It was dark night and therefore, it was not possible to see the culprit and version of the prosecution is not so much reliable.

(ii) There are material contradictions and omissions in the statements of the witnesses and evidence tendered by the prosecution is insufficient to bring home the guilt.

5. 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 just marshaling of evidence which is not liable to be interfered with.

6. To substantiate the charge prosecution has examined as many as 10 witnesses.

7. Jamlabai (PW7) is wife of the victim, who was present at the time of incident. As per version of this witness, she was sleeping in the night in her house and at the same time, both the appellants entered into her house with club and appellant No.1-Ramlal assaulted the victim Samaynath on forehead resulting in severe injury on that part of the body and instantly he fell down. She further deposed that appellant No.2-Santoshi Bai assaulted her daughter on hand and leg. Version of Jamlabai (PW7) is supported by the version of Samaynath (PW8) and again it is supported by the version of Rameshwari (PW9). All the witnesses have been subjected to searching cross-examination, but nothing could be elicited in favour of the appellants.

8. Dr. M.D. Joshi (PW2), who conducted x-ray examination of Samaynath found fracture of mandible bone and further found that there was no sign of repairing the same, but from the medical evidence it is established that the injuries caused on head of the victim were serious in nature and that fact is unrebutted. Again, Dr. Sajjan Kumar Agrawal (PW6) examined Rameshwari and found abrasion on her left arm and as per opinion of this expert, injuries were caused by hard and blunt object within 12 hours of the examination. As per version of this witness, injuries were simple in nature.

9. Now the point for determination is whether the act committed by both the appellants against victim Samaynath constitutes an offence under Section 307 I.P.C.

10. 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.

11. 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.

12. In the present case, both the appellants entered into the house of Samaynath in night with club and while appellant Ramlal

assaulted Samaynath, the another appellant Santoshi Bai assaulted Rameshwari.

13. Looking to the evidence it can be inferred that both have facilitated in commission of offence and the victim was rescued by treatment. It appears that both have committed crime within their power to cause fatal injury but the final result alludes because of the proper treatment in time. Considering the entire evidence, case of the appellants falls under Section 307 I.P.C. for which the trial Court has convicted them. Again, looking to the injuries on the body of Rameshwari, case of the appellants does not fall in any of the exceptions mentioned in the I.P.C. and they knew the consequences of their assault, therefore, it is established that they have voluntarily caused simple injury to Rameshwari in furtherance of common intention.

14. House trespass for committing attempt to murder is punishable under Section 450 I.P.C. and voluntarily causing simple injury is an offence under Section 323 r/w Section 34 I.P.C. and the appellants are liable for the offence under Section 307 r/w Section 34 I.P.C. for which the trial Court has convicted them and same is hereby affirmed.

15. Heard on the point of sentence :

Looking to the article used in crime i.e. club and further looking to the fact that one injury was caused on head of the victim,

this Court is of the opinion that ends of justice would serve if the jail sentence awarded to the appellants is reduced to the period of 5 years. Accordingly, the appeal is partly allowed and the jail sentence awarded for commission of offence under Section 307 r/w Section 34 I.P.C. is reduced to R.I. for 5 years. Sentence for commission of offence under Section 450 I.P.C. is also reduced to R.I. for 5 years while the fine amount imposed by the trial Court shall remain intact. Again, the sentence awarded by the trial Court for commission of offence under Section 323 r/w Section 34 I.P.C. is maintained.

16. With these modifications, the appeal is partly allowed.

Sd/-

(Ram Prasanna Sharma)
JUDGE