

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 991 of 2012**

Vishwanath Kashyap, S/o Ghassu Ram Kashyap, Aged About 45 Years, R/o Village Mavliguda, Khuttiguda, Police Station-Bhanpuri, District - Bastar (C.G.)

---- Appellant

Versus

State of C.G. Through - Police of police station- Bhanpuri, Distt. - Bastar (C.G.)

---- Respondent

 For Appellant : Mr. Keshav Dewangan, Advocate.
 For State/respondent : Mr. Suryakant Mishra, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board**

05/09/2018

1. Ms. Sonali Bose, Advocate has been engaged by the High Court Legal Aid for arguing the case on behalf of the appellant. Despite repeated calls, she has not appeared when the case is called for final hearing, therefore, Mr. Keshav Dewangan, Advocate, who is present in the Court has been appointed as *Amicus Curiae* to argue the case on behalf of the appellant.
2. This appeal is preferred under Section 374(2) of the Code of Criminal Procedure, 1973 against judgment dated 25.08.2012 passed by First Additional Sessions Judge, Bastar at Jagdalpur (C.G.) in Session Trial No. 69/2011, wherein the said court convicted the appellant for commission of offence under Section 307 of IPC and sentenced to R.I. for 7 years and fine of Rs. 1000/- with further default stipulations.

3. In the present case, name of victim is Sudru Ram. It is alleged that the appellant committed attempt to murder upon said victim by causing injury on his neck and back by axe on 25.02.2011 at about 2.00 p.m. at village- Gavtiguda, Khuttigudapara, police station- Bhanpuri, District-Bastar (C.G.).
4. To substantiate the charge, the prosecution examined as many as 7 witnesses. To nullify the charge, the defence side examined no witness. Sudru Ram (PW-1) deposed that at the time of incident, he was about to go to market for bringing articles of worship, when he went to house of the appellant for demanding his cycle, the appellant said that he accompany him and thereafter, he went to inner part of the house and brought an axe and assaulted on neck and back of the said victim due to which he felt unconscious.
5. Version of this witness is unrebutted during cross-examination. Version of this witness is supported by version of Sukhdev (PW-2), Subas (PW-3) & Ishwar Lal Dhruv (PW-6). All the witnesses have deposed in one voice that after the incident, victim informed him regarding assaulted by the appellant.
6. Dr. R.B.P. Gupta (PW-7) examined the victim on 25.02.2011 and found injury as under:-
 - (i) 8x4 cm. over & cervical area at Nape of Neck, at 6th vertebra upto muscle deep, bleeding.

(ii) 6x2 cm. on medial side of left scapula bleeding, deep upto muscle touching bone.

7. After examination, the medical expert opined that injury are caused by hard and sharp object. Looking to the injuries at nape of neck at 6th vertebra over cervical area upto muscle deep and second one is on medial side of left scapula upto muscle deep touching bone, it appears that the injuries caused on body of the victim are serious in nature. Now the point for consideration of this Court is whether the act of the appellant falls under Section 307 of IPC.
8. To constitute an offence under Section 307 of the 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 S. 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.

9. In the case on hand, the appellant inflicted injury on the neck and back of the victim by deadly weapon. It appears that the appellant has done everything within his power to eliminate the victim, but final result alludes that proper medical treatment was provided to the victim in time.
10. It is well settled that for conviction under Section 307 of the IPC, it is not essential that bodily injury capable of causing death should have been inflicted. From the totality of the fact, it can be easily inferred that the appellant attempted to kill the victim and mischief of the appellant falls for offence under Section 307 of the IPC for which the trial court has convicted the appellant and the same is not liable to be interfered with. Conviction of the appellant for offence punishable under Section 307 of the IPC is hereby affirmed.
11. Heard on point of sentence:

From the jail record, it appears that the appellant has suffered full jail term after deduction, as per rules and also deposited fine amount. Looking to this aspect of the matter, the sentence part is also not liable to disturb.
12. Accordingly, the appeal is liable to be and is hereby dismissed.

Sd/-
(Ram Prasanna Sharma)
Judge