

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 19/11/2019

Delivered on 17/12/2019

CRA No. 2170 of 1999

Bhagwani Ram, S/o- Ram Prasad, Aged about- 49 years, R/o-
Gangaripar, Police Station- Gurur, District- Durg (M.P.) (Now C.G.)

---- Appellant

Versus

The State of Madhya Pradesh Now State of Chhattisgarh, Through-
Police Station- Gurur, District- Durg (C.G.)

---- Respondent

For appellant : Mr. B.P. Singh & Mr. Rudranath Mukharjee,
Advocates

For State : Mr. Aman Kesharwani, P.L.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Judgment

1. This appeal is preferred against the judgment dated 6th August, 1999, passed by Additional Sessions Judge, Balod, District-Durg (M.P.)(Now C.G.), in Sessions Trial No. 51/1998 wherein the said Court convicted the appellant for commission of offence under Section 307 of IPC, 1860 and sentenced him to undergo R.I. for 4 years for attempt to murder of Lekhan Ram(PW-1) on 13th July, 1996 at village Gangoripar, police station- Gurur, District- Durg.

2. On the date of the incident the victim had gone to the appellant's house for demanding money and at the same time hot talk between them took place and appellant assaulted him by club on his head by multiple times, thereafter the injured fell down. The matter was reported and investigated, the appellant

was charge-sheeted as mentioned above.

3. Learned counsel for the appellant submits as under:-

(I) Appellant had no intention to kill the victim therefore, it is not a case under Section 307 of IPC.

(II) Medical evidence is not sufficient to establish the said charge.

(III) The Trial Court has not evaluated contradictions, omissions and improvement in the statements of the prosecution witnesses therefore, finding recorded by the trial Court is not sustainable.

(IV) The incident took place all of a sudden and there was no intention to kill the victim therefore, finding of the Trial Court is liable to be set aside.

4. On the other hand, learned State counsel submits that finding of the trial Court is based on proper marshaling of the evidence and same is not liable to be interfered with while invoking jurisdiction of this appeal.

5. In the present case, date of the incident was 13th July, 1996, after the incident, report was lodged against the appellant on same day at police Station-Gurur, District- Durg in which act of the appellant was mentioned. There was no delay in lodging the FIR against the appellant. Lakhan Lal (PW-1) deposed before the trial Court that he demanded wages from the appellant and thereafter, appellant assaulted him by club on his head. Version of this witness was unrebutted and same is supported by the FIR. One club was seized from the possession of the appellant as per version of Ramsingh @

Mannu (PW-2). Again, it is supported by version of Dr. A.G. Sheikh (PW-4) who examined the victim on same date i.e. 13th July, 1996 at community health centre Palari and noticed following injuries.

(I) Bitter lacerated wound size 4'x1"x1" near scalp right parietal region, large in with irregular margins of surface with active bleeding.

(ii) There is lacerated wound sized 3"x2"x2" in scalp of left -parietal region, active bleeding.

(iii) A small lacerated wound sized 1/2"x1/2"x1/2", active bleeding in scalp of left -parietal region.

This witness opined that these injuries are caused by hard, blunt & sharp object.

6. As per version of this witness, the victim was serious and was in state of shock while brought before him, and as per version of this medical expert there was possibility of death if treatment was not provided in time. Further, he opined that all the injuries were caused within 1 to 2 hours of the examination. This witness deposed that one club was brought to him and he opined that injuries on the body could be caused by the said club. Version of this witness was unrebutted during cross examination and there is no other medical evidence contrary to the opinion.

7. The question for consideration of this Court is whether the act of the appellant falls within mischief of Section 307 of IPC, 1860.

8. Hon'ble the Supreme Court in the matter of **Sachin Jana and Another Versus State of West Bengal**, has observed as under:-

To justify a conviction under this section, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is

present an intent coupled with some overt act in execution thereof.

9. Determinative question is the intention or knowledge that will be caused by the act of the accused irrespective of the result. In the present case, appellant caused multiple injuries on the head of victim, which were grievous in nature and looking to the merciless beating and brutality, the appellant had knowledge that his act will cause death of the victim.
10. On an overall assessment of the evidence, it is clear that Section 307 off IPC has clear application in the present case therefore, argument advanced on behalf of the appellant is not sustainable. Conclusion arrived at by trial Court is not liable to be interfered with and conviction of the appellant under Section 307 of IPC is hereby affirmed. Considering the facts and circumstances of the case and further considering the act of the appellant, four years sentence awarded to the appellant by the trial Court cannot be termed as harsh, disproportionate or unreasonable.
11. Accordingly, the appeal is liable to be and is hereby dismissed. The appellant is reported to be on bail. His bail bonds stand cancelled. The trial Court will issue non-bailable warrant against the appellant for his arrest to send jail for serving out the remaining part of the sentence. The trial court to submit its compliance report on or before 30th April, 2020.

Sd/-

(Ram Prasanna Sharma)
Judge