

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Reserved on 1-2-2019****Delivered on 8-2-2019****Criminal Appeal No. 858 of 2011**

Chayaram Barman s/o. Premalal Caste Satnami aged about 35 years, r/o,. village Dhangaon, Police Station Pamgarh, District Janjgir Champa CG.

---- Appellant**Versus**

- The State of Chhattisgarh Through Police Station Pamgarh, District Janjgir Champa (CG)

---- Respondent

For the appellant : Mr. Sumit Singh, Advocate
For the respondent/State : Mr. V.B. Singh, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**CAV Judgment**

1. This appeal is directed against the judgment of conviction and order of sentence dated 1-9-2011 passed by the Sessions Judge, Janjgir, Session Division Janjgir-Champa (CG) in Sessions Trial No. 49 of 2011 wherein the said Court convicted the appellant for the commission of offence under Sections 323, 307, 25(1)(B) and Section 27 of the Arms Act, 1959 (for short, "the Act, 1959") and sentenced him to undergo rigorous imprisonment for 3 months, RI for five years and to pay fine of Rs.10,000/-, RI for one year and

to pay fine of Rs.1000/- and RI for three years and to pay fine of Rs.2000/- with default stipulations.

2. In the present case, names of the victims are Manoj Kumar and Punam. As per version of the prosecution on 10-1-2011 appellant assaulted his wife namely Punam at village Dhangaon. The above incident came to the knowledge of father and brother of Punam namely Anandram and Major Kumar Khare. They rushed to the spot on the same day at about 5.00 pm . Father and brother of the victim Punam wanted to take her to hospital for providing treatment which was objected by the appellant. Some altercation took place between Manoj Kumar and the appellant and the appellant took out a pistol and fired at Manoj which injured him at Collar-bone. The matter was reported to the Police 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 submits as under:

- I) Ingredients of Section 307 of IPC are completely absent, even though the trial Court convicted the appellant for the said offence.
- II) There is major development and embellishment in the statement of PW-1 Anand Ram and PW/3 Manoj Kumar, but same is overlooked by the trial Court.

- Ii) The trial Court failed to see that the injury sustained by Manoj Kumar was not sufficient to cause death in ordinary course of nature.
- iv) Independent witnesses namely Hetram and one driver present at the scene of offence have not been examined by the prosecution, therefore, version of prosecution is in suspicion.
- v) PW/2 Punam Suryawanshi has also not supported the version of prosecution and it is also not established that Manoj received gun-shot injury, therefore, finding of the trial Court is liable to be reversed.

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

5. I have heard learned counsel for the parties and perused the material available in the record.

6. Anandram (PW/1) who is father of the Punam deposed that one Vijay informed him regarding assault by the appellant to Punam, then he rushed to village Dhangaon alongwith his son Manoj Kumar and they asked the appellant that they wanted to provide proper treatment to Punam in their supervision. At the same time, the appellant first tried to assault Manoj Kumar by club

and when he fell down on the surface and saving from assaulting, the appellant fired at him by country made pistol. Version of this witness is supported by version of PW/2 Punam and Manoj Kumar (PW/3).

7. Dr. A.S. Khan (PW/9) examined the victim Manoj Kumar and noticed the following injuries on his body.

- i) One Gun-shot injury over in shape 1/2"x1/4" depth of mid-clavicular region of right shoulder and mid of collar region.
- ii) There was swelling around the wound in the size of 4'x 3". Clotted blood was present.
Dr. advised for x-ray and CT Scan of chest and neck.

8. Again, it is supported by version of Dr. Santosh (PW/4). From the direct evidence and medical evidence, it is established that Manoj Kumar sustained gun shot injury while Poonam sustained simple injury. Head Constable Srinivas Rao (PW/6) deposed that country made pistol and cartools seized in the present case were forwarded to him for examination and after examination he found that the said pistol was fit to fire and two cartools were also fit to fire. PW/11 is Vijay Kumar Patel, Stenographer in the office of District Magistrate, Janjgir who deposed that sanction was granted to prosecute the appellant as per Section 39 of the Arms Act, 1959.

All the witnesses have been subjected to searching cross examination, but nothing could be elicited in favour of defence.

From the evidence, it is established that injury caused to Manoj Kumar by gun shot was fatal in nature.

9. Now the point for determination is whether the act committed by both the appellants constitute offence under Section 307 of IPC.

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, appellant assaulted the victim by gun shot injury on his shoulder which was sufficient to cause death. If proper treatment would not have been given to him in time he would have succumbed to injury. It means, the appellant has done everything within his power to cause fatal injury, but final result alludes because of proper treatment in time. Considering the facts and circumstances of the case, it can be inferred that the appellant had intention or knowledge to kill Manoj Kumar, therefore, the act of the appellant falls within mischief of Section 307 of the IPC, Section 323 of IPC for causing simple injury to Punam., for possessing illegal fire arm is an offence under Section 25 (1)(B) of the Arms Act, 1959 and using the same for illegal purpose is an offence under Section 27 of the Act, 1959 for which the trial court convicted the appellant. Looking to the reliable evidence on record, the argument advanced on behalf of the appellant is not sustainable and this court has no reason to substitute a contrary finding. Conviction of the appellant is hereby affirmed.

13. Heard on the point of sentence.

The trial Court awarded rigorous imprisonment for five years for attempt to murder which cannot be termed out as harsh, unreasonable or disproportionate. Sentence part is also not liable to be interfered.

14. Accordingly, the appeal being devoid of merits is liable to be and is hereby dismissed. The appellant is reported to be in jail, therefore, no further arrest for his arrest etc., is required.

Sd/-
(Ram Prasanna Sharma)
JUDGE

Raju