

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 504 of 2009****Reserved on : 26.02.2019****Delivered on : 29.03.2019**

Samar @ Golu Singh Thakur, S/o Ram Gulam Singh Thakur, aged about 25 years, R/o Kushalpur, Purani Basti, Raipur, District- Raipur (C.G.)

---- Appellant**Versus**

State of Chhattisgarh, through District Magistrate, Raipur, District- Raipur (C.G.)

---- Respondent

 For Appellant : Mrs. Indira Tripathi, Advocate.
 For State/respondent : Mr. Afroz Khan, Panel Lawyer.

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

1. This appeal is preferred under Section 374(2) of the Code of Criminal Procedure, 1973 against judgment dated 10.07.2009 passed by 10th Additional Sessions Judge (FTC), Raipur, District- Raipur (C.G.) in Session Trial No. 127/2008, wherein the said court convicted the appellant for commission of offence under Section 307 of IPC, 1860 and Section 25 of Arms Act, 1959 and sentenced to undergo R.I. for 5 years and fine of Rs. 200/- & R.I. for 1 year and fine of Rs. 100/- respectively with further default stipulations.
2. In the present case, name of victim is Sandeep Thakur (PW-1). It is alleged that on the date of incident i.e. on 06.04.2008 at about 10:15 p.m., the appellant and his friends met with the victim and surrounded him. The appellant was in possession

of sword who caused injuries on head of the victim. Victim was admitted to hospital and he anyhow managed to escape with death. The matter was reported, the appellant was charge-sheeted and after completion of trial, the trial court convicted as mentioned above.

3. On 19.03.2019, an application under Section 320 (5) read with Section 482 of Cr.P.C., 1973 was filed for permission to compound the offence by exercising inherent power.
4. The offence is non-compoundable and when there a specific provision for compounding of offence under Section 320 of the Cr.P.C., it would not be appropriate for this Court to invoke inherent jurisdiction, therefore, application filed by the appellant is hereby rejected.
5. Learned counsel for the appellant submits as under:-
 - (i) The appellant has been involved in the crime in question due to previous enmity and medical report available on record do not establish commission of offence under Section 307 of IPC.
 - (ii) The victim who was referred to neuro surgeon for treatment, was not agreed for further treatment and the doctor has not given answer regarding possibility of death, therefore, conviction of the appellant under Section 307 of IPC is not sustainable.
 - (iii) Finding arrived at by the trial court is contrary to the evidence available on record and looking to the probability of

the defence, the finding of the trial court is liable to be set aside.

6. On the other hand, learned State counsel submits that the finding arrived at by the trial court is based on proper marshaling of evidence and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.
7. In the present case, victim- Sandeep Thakur (PW-1) deposed before the trial court that the appellant and some other persons were roaming around house of his maternal uncle to which he objected and thereafter, the appellant assaulted him on his head by sword. As per version of this witness, the appellant assaulted him thrice on his head, but anyhow he escaped from the place of incident. Version of this witness is supported by version of Ajay Thakur (PW-7) & Dwarika Singh Thakur (PW-8). From version of these witnesses, it is established that the appellant assaulted the victim by sword. All these witnesses have been subjected to searching cross-examination, but they are firm on their statement what they have stated before the trial court in their examination-in-chief.
8. Dr. Netram Beg (PW-9) treated the victim and found bleeding from back side of his head and again, found incised wound in his temporo occipital region and his right ear half cut. Dr. S.N. Madhariya (PW-11), Neuro Surgeon deposed before the trial court that he found multiple incised wound on head of the victim and operated him. Version of these medical experts

was subjected to searching cross-examination, but they remained unshaken. There is no other medical expert opinion contrary to the opinion of these medical experts. Now the point for consideration before this Court is whether the act of the appellant falls within mischief under Section 307 of IPC.

9. 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.
 - (iv) To justify conviction under this section, it is not essential that bodily injury capable of causing death should have been inflicted.

10. From the evidence, it is clearly established that the appellant assaulted the victim thrice on his head by sword which is deadly weapon. Looking to the repeated assault (the appellant inflicted injuries on head 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. It can be easily inferred that the appellant had knowledge that the victim would succumb to the injuries, therefore, act of the appellant falls within mischief under Section 307 of IPC. Argument advanced on behalf of the appellant is not sustainable looking to the quantity and quality of evidence against the appellant.
11. The appellant was in possession of sharp edged sword. As per seizure memo (Ex.P/4), the blade part of the sword was 12" in length and about 2" in wide and it was pointed object which is prohibited under notification issued under Section 4 of the Arms Act, 1959 for keeping the same in public place and using the same, therefore, act of the appellant falls within mischief under Section 25 of the Arms Act, 1959.
12. The trial court has elaborately discussed the entire evidence and after reassessing the entire evidence, this Court has no reason to record contrary finding. The act of the appellant falls within mischief under Section 307 of IPC and Section 25 of the Arms Act, 1959 for which the trial court convicted the

appellant and the same is not liable to be interfered with and conviction of the appellant is hereby affirmed.

Also heard on point of sentence

13. The trial court awarded sentence of 5 years for commission of offence under Section 307 of IPC, which cannot be termed as harsh, disproportionate or unreasonable looking to the gravity of offence and the same is not liable to be interfered with. The sentence part is also not liable to be interfered with. Accordingly, the appeal is liable to be and is hereby dismissed.
14. The appellant is reported to be on bail and his bail bonds are cancelled. The trial court will prepare super-session warrant and issue warrant of arrest against the appellant and after his arrest, he be sent back to the concerned jail for serving out the remaining part of the jail sentence. The trial court shall submit compliance report on or before 28th June, 2019.

Sd/-
(Ram Prasanna Sharma)
Judge