

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.321 of 2010**

1. Johan, S/o. Late Shri Kartik Ram, aged 62 years, R/o Kukurbeda, Amanaka, Distt.-Raipur, (C.G.)
2. Sanjay Yadav S/o Johan Lal Yadav, aged about 30 years, R/o Kukurbeda, Amanaka, Distt.-Raipur, (C.G.)
3. Rajiv @ Bunty S/o Johan Lal Yadav, aged 27 years, R/o Kukurbeda, Amanaka, Distt.-Raipur, (C.G.)

----Appellants**Versus**

- State Of Chhattisgarh, through Police Station Saraswati Nagar, District Raipur (CG)

---- Respondent

For the appellants : Shri Devershi Thakur and Shri JK
Gupta, Advocates

For the State/respondent : Shri Afroj Khan, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****15.3.2019.**

1. In compliance of order dated 13.02.2019 of this Court, Shri Afroj Khan, Panel Lawyer for the State confirmed death of appellant No.1 Johan and appellant No.3 Rajiev @ Bunty. Their death certificates are also submitted.

2. In view of the above, appellants 1 & 3 are declared dead and as no one has filed application to continue with the appeal on behalf of them, the appeal stands abated against them.

3. The appeal is directed against judgment dated 13.4.2010 passed by Tenth Additional Sessions Judge (FTC), Raipur (CG) in Session Trial No.26/2009 wherein the said Court convicted appellant Sanjay Yadav for commission of offence under Sections

307/34 and 323/34 of the Indian Penal Code, 1860 and sentenced him to undergo rigorous imprisonment for seven years and to pay fine of 1000/-; and to pay fine of Rs.1000/- with default stipulation.

4. In the present case, victims are Vishwanath Chakraborty, Vibharani Chakraborty and Bharti Chakraborty. As per the version of the prosecution, on 14.4.2008 at about 21.25 hours victims Vishwanath Chakraborty, Vibharani Chakraborty and Bharti Chakraborty were threatened to life by the appellant and other co-accused persons and assaulted them with deadly weapons with intention to commit their murder. The matter was reported and investigated. During the investigation, it is found that injuries sustained by Vishwanath Chakraborty and Vibharani Charkraborty were fatal in nature. After investigation, the appellant and other co-accused persons were charge sheeted and convicted as mentioned above.

5. Learned counsel for the appellant submits as under:

(i) As per the version of Vishwanath Chakraborty, one Rafeeqe assaulted him by axe on his head, therefore, participation of present appellant in assaulting Vishwanath Chakraborty is not established.

(ii) From the evidence of other witnesses, it is not established that the appellant had intention to kill the victims, therefore, case under Section 307 IPC is not made out.

(iii) In FIR offence under Section 307 IPC is not mentioned, therefore, benefit of doubt should be extended to the appellant.

(iv) Injuries found on the body of Bharti and Vibharani Chakraborty were simple in nature, therefore, finding of the trial Court on the basis of medial expert opinion is not sustainable.

(v) Seizure witnesses turned hostile, therefore, factum of seizure is not established in the present case.

(vi) The victims have the habit of filing false report, therefore, they are not reliable and no conviction can be based on their statement.

(vii) There is conflict between the parties regarding money transaction, therefore, story is concocted to rope the appellant in false charges.

(viii) The trial Court has not evaluated the entire evidence in its right perspective and the same is liable to be set aside.

6. On the other hand, learned counsel for the State supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshaling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

7. I have heard learned counsel for the parties and perused the record of the Court below.

8. Vibharani (PW-9) deposed before the trial Court on oath that accused persons Johan and Bunty and others have pelted stones near their house and then entered into their house by using force and assaulted Vishwanath. She further deposed that appellant Sanjay Yadav assaulted her by club on her head and chest (para 3). Vishwanath (PW-10) deposed before the trial Court that appellant Sanjay Yadav and other accused persons

entered into his house and assaulted him by club. This witness has specifically named present appellant Sanjay Yadav that he sustained head injury by the assault of appellant Sanjay Yadav and other co-accused Bunty and Johan (para-4). Bharti (PW-6) supported the version of Vibharani (PW-9) and Vishwanath (PW-10). As per the version of this witnesses, the appellant and other accused persons entered into the house with club and hockey stick and assaulted Vibharani and Vishwanath and her. She clearly deposed that appellant Sanjay Yadav assaulted her by stick i.e. she sustained injury on her shoulder. All these witnesses have been subjected to searching cross-examination but nothing could be elicited in favour of the defence regarding assault by the appellant to all the three victims by club.

9. Dr. Supriti Sharma (PW-1) who examined Bharti on 14.4.2008 at about 11.40 pm at Dr. BR Ambedkar Medical Hospital, Raipur found the following injuries:-

- (i) Diffuse swelling on left index finger
- (ii) Lacerated wound of 0.5 cm x 0.5 cm on left index finger

As per the version of this witness, both the injuries caused by hard and blunt object and was sustained within six hours of the examination. She further deposed that she examined Vishwanath on the same day and noticed following injuries on his body:

- (i) Lacerated wound of 2 cm x 1 cm on right side scalp parietal area
- (ii) Contusion of 4 cm x 2 cm on right shoulder
- (iii) Contusion of 4 cm x 2 cm on right arm deltoid area

(iv) Contusion of 2 cm x 1 cm on left shoulder

(v) Abrasion of 2 cm x 1 cm on left thigh

As per the version of this witness, injuries were caused by hard and blunt object within six hours of the examination. This witness further examined Vibharani and noticed following injuries.

(i) Lacerated wound of 4 cm x 1 cm on scalp of left parietal area

(ii) Pain and tenderness on back lumbar area

As per the version of this witness, she referred the patient to neurology department for further treatment and expert opinion

10. Dr. Shishir Agrawal (PW-2) who is the Radiologist deposed before the trial Court that after x-ray examination of Vibharani fracture of radius bone and fracture of metatarsal of left foot was found (Ex-P/4.)

11. Dr. Vaibhav Jain (PW-13) who is the expert of the Surgery Department deposed before the trial Court that he found swelling on the brain of Vishwanath. As per the version of this witness the injuries were grievous and he would have succumbed if not treated in proper time. He submitted his report as Ex-P/17. This expert further deposed that after examination of Vibharani he found two injuries on her head up to bone deep and as per opinion of the expert, injuries were grievous and injured would have died if proper treatment would not have been provided. All the medical experts have been subjected to cross-examination, but they remained firm. There is no other medical expert opinion contrary to the version of these experts, therefore, it is established

that the injuries caused to Vibharani and Vishwanath were fatal in nature.

12. Now the point for consideration before this Court is whether the act committed by the appellant falls within mischief under Section 307 IPC. 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.

13. From the evidence, it is clearly established that the appellant and other co-accused persons assaulted Vishwanath and Vibharani mercilessly and looking to their forceful entry into the house of the victims with weapons and again their act of repeated assault to three victims, it can be easily inferred that the appellant was having common intention with other co-accused persons. When the appellant was acting in furtherance of common intention he is equally liable for the act committed by any of the assailant. Therefore, arguments advanced on behalf of the defence that the injuries were caused by some other person is not sustainable. There is no material contradiction in the statement of victims regarding assault. Minor contradiction which do not come to the root of the case is insignificant for deciding the issues. Looking to the opinion of the medical expert, it can be easily inferred that the appellant acted in furtherance of common intention and he has done everything within his power but the final result alludes because of the proper treatment in time. Therefore, the act of the appellant falls within the mischief under Section 307/34 IPC for which the trial Court has convicted him. After assessment of the entire evidence, this Court has no reason to find a contrary finding. Therefore, conviction of the appellant under Section 307 IPC is hereby affirmed.

14. Heard on the point of sentence under Section 307 IPC.

The trial Court awarded sentence of RI for seven years which cannot be termed as harsh, disproportionate of unreasonable. Therefore, sentence for this offence is not liable to be interfered with.

15. Accordingly, appeal is dismissed. As per the report of Fourth Additional Sessions Judge, Raipur, appellant Sanjay Yadav has been arrested and sent to jail for serving out the remainder of the jail sentence, therefore, no further order for his arrest, etc. is required.

Sd/-

**(Ram Prasanna Sharma)
JUDGE**