

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.468 of 2009**

Safi @ Safik Alam S/o. Juber Alam, aged about 22 years, R/o. Azad Basti Gourishankar Road, PS Azad Basti Distt. Patna (Bihar) at present Bajrangpara Kohka Bazar House of Husain PS Supela Distt. Durg (CG)

---- Appellant**Versus**

State Of Chhattisgarh, Through Police Station Supela Distt. Durg (CG)

---- Respondent

For the appellant : Shri Amit Kumar, Advocate

For the respondent/State: Shri Raghavendra Verma, Govt.
Advocate

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****14.01.2019.**

1. This appeal is directed against the judgment dated 30.4.2009 passed by Ninth Additional Sessions Judge (FTC), Durg (CG) in Session Trial No.184/2008 wherein the said Court convicted the appellant for commission of offence under Sections 307, 506 Part -II and 294 of the Indian Penal Code, 1860 and sentenced him to undergo rigorous imprisonment for seven years and to pay fine of 1000/-; RI for two years and to pay fine of R.500/-, RI for one month and to pay fine of Rs.200/- with default stipulations with a direction to run the sentences concurrently.

2. In the present case, name of the victim is Netram Janghel @ Tilli (PW-1). As per the version of the prosecution, on 13.6.2008 at about 8.00 pm the victim had gone to Limha Talab situated at village Kohka where the appellant came and after

abusing and threatened him to kill, caused stab injury on his left side of abdomen by knife. The victim was admitted in the hospital where the injuries were found to be threatening to life. The matter was reported and investigated, the appellant was charge sheeted and convicted as mentioned above.

3. Learned counsel for the appellant submits as under:

(i) Witnesses of the incident did not lodge any report on the date of incident and dehati nalishi (Ex-P/1) was recorded on the next day of the incident i.e. 14.6.2008 and the delay in lodging the report is not explained by the prosecution.

(ii) Statement of the victim is contrary to dehati nalishi (Ex-P/1) and he has stated about the use of weapon as *kukhari* whereas in Ex-P/1 use of weapon is mentioned as *bhujali*. But these facts were ignored by the trial Court.

(iii) Witnesses of the memorandum statements have not supported the discovery statement of the appellant and the trial Court did not scrutinies the version of other witnesses. Therefore, finding of the trial Court is not sustainable.

4. 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.

5. Victim Netram (PW-1) deposed before the trial Court that at the time of the incident, he was sitting on his motor cycle near the tank and at that time the appellant reached there, used abusive language against him and assaulted on his abdomen by *kukhari*

(one iron made weapon of sharp edge). Version of this witness is supported by the version of Karthik Ram (PW-2) Rajesh Hindariya (PW-3), Mohan Verma (PW-4) and Deen Dayal (PW-5) to whom the incident was informed and thereafter the victim was shifted to the hospital. Dr. SK Thakur (PW-9) conducted examination of the victim on 14.6.2008 in the hospital at Sector 9 Bhilai who noticed following injuries on the body of the victim.

- (1) stab wound on the left lower abdomen of 5cm x 2cm
- (2) stab injury on the right side 6 cm above the hip bone of 1 cm.

Dr. KH Ramesh (PW-12), the expert of Surgical Section, who after examination of the stab injury caused on the abdomen which resulted into injury on the intestine opined that the injuries were threatening to life. Knife was seized from the appellant during investigation and the same was brought before the medical expert who examined the said knife and opined that the injuries caused to the victim may be caused by the said weapon.

6. Now the point for determination is whether the act committed by the appellant constitute offence under Section 307 IPC.

7. 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 frustrated 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.

8. 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.

9. In the present case, the appellant assaulted the victim on his vital part i.e. abdomen. It is established from the evidence of the medical expert that the appellant caused fatal injury on the body of the victim, it means the appellant has done everything within his power but the final result alludes because of the proper treatment in time. The appellant attempted to take the life of the victim, therefore, the case of the appellant falls within the mischief of Section 307 IPC for which the trial Court convicted him. This Court has no reason to find a contrary finding.

10. So far as the offence under Sections 506 and 294 IPC are concerned, there is nothing in the statement of the victim regarding actually what is uttered by the appellant and there is no evidence that the appellant threatened him. Looking to the evidence of the victim charges under Sections 294 and 506 are not established and the appellant is acquitted of the said charges. His appeal against the judgment for these sections is allowed.

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

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

12. Accordingly, the appeal so far as it relates to Section 307 IPC is devoid of merit and is hereby dismissed. As per the report, the appellant has been released from jail after serving the full jail sentence awarded to him and after remission granted to him by the jail authorities. In view of this no further order is required for his arrest.

**Sd/-
(Ram Prasanna Sharma)
JUDGE**