

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Reserved on 25-01-2019****Delivered on 08-02-2019****Criminal Appeal No. 798 of 2011**

- Mukru @ Narottam Kansari s/o. Moti Sao, aged about 51 years, Ghatodiya Para, Nawapara, PS Globra, Nawapara, District Raipur (CG).

---- Appellant**Versus**

- The State of Chhattisgarh Through SHO Police Station Arakshi Kendra Gobra, Nawapara, District Raipur (CG).

---- Respondent

For the appellant : Shri Avinash Chand Sahu, Advocate

For the respondent/State : Shri 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 20-9-2011 passed by the Additional Sessions Judge, Gariband, Raipur (CG) in Sessions Trial No. 21 of 2010 wherein the said Court convicted the appellant for the commission of offence under Section 307 of IPC and sentenced him to undergo rigorous imprisonment for seven years and to pay fine of Rs.100/- with default stipulations.

2. In the present case, names

of the victim is Lalita Bai who is daughter-in-law of the appellant. As per version of the prosecution on 8-4-2010 at about 8.00 a.m., appellant poured kerosene over the victim Lalita Bai and set her on fire in order to kill her due to which she sustained burn injuries on different parts of her body. The matter was reported to the Police and after completion of investigation charge sheet was filed, the appellants did not plead guilty and the trial was conducted. After completion of trial, the trial Court convicted and sentenced the appellants as aforementioned.

3. Learned counsel for the appellant submits as under:

- I) As the victim is alive, dying declaration recorded by Executive Magistrate should have been disbelieved by the trial Court.
- II) As per version of some prosecution witnesses, Lalita Bai informed them that she caught fire accidentally, therefore, version of prosecution is unreliable.
- Iii) Burn injuries sustained by Lalita Bai of 19% cannot cause death, therefore, charge under Section 307 of IPC is not established.
- iv) Incident occurred due to grave and sudden provocation by the victim Lalita Bai, therefore, conviction of the appellant is not good as per law.

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. In the present case, date of incident is 8-4-2010 at 8.00 a.m., at Ghatodiya Para, Nawapara. Report was lodged on the next day of the incident i.e., 9-4-2010 at Police Station Gobra, Nawapara as per Ex.P/19 in which name of the appellant is mentioned as culprit and his act of pouring kerosene and lit the match stick is also mentioned in the said report.

7. Victim Lalita Bai (PW/1) deposed before the trial Court that at the time of incident her mother -in-law and husband were out for some work and at the same time she was in the house of the appellant and when she was cooking food, appellant poured kerosene over her and lit the match stick, that is why she sustained burn injuries. Version of this witness is supported by version of PW/2 Sanju Sao, PW/3 Aalin Bai, PW/4 Uday Ram, who noticed the burn injuries on the body of the victim. Version of this witness is supported by version of Naib Tahsildar M.L. Shrivastava (PW/9) who recorded dying declaration of the victim in which she stated that it is the appellant who poured kerosene over her body and lit the match stick. Version of all the witnesses is supported by version of Dr.

S.K. Tiwari (PW/6) who examined the victim Lalita Bai on 8-4-2010 at Community Health Centre, Gobra, Nawapara and noticed the following injuries.

- i) Whole face swollen, blisters on neck present, both cheek swollen & neck also, middle 1/3 burnt also elbow fleur part blisters also present there.
- ii) Nauseating sensation during examination and fainted during examination for sitting posture, face whole swollen, eyes swollen (eye lids) so that eyes closed, from hairs smell of kerosene is coming out, blackening of skin of neck is present involving front and sides, blisters present on sides of face (both) blackening & blisters peeling of skin is present. Hair of forehead is absent. Neck swollen.

Though Aalin Bai (PW/3) and Uday Ram (PW/4) deposed that on their asking victim stated that she sustained burn injuries at the time of cooking, but evidence of these two witnesses is hearsay in nature. It is settled law that hearsay evidence being second hand evidence is inadmissible as per Section 60 of the Indian Evidence Act, 1872.

8. Looking to the direct evidence of the victim and other witnesses, evidence of these two witnesses cannot be acted upon as inadmissible. All the witnesses have been subjected to

searching cross examination, but nothing could be elicited in favour of defence. Looking to the direct and medical evidence which is supported by FIR lodged on the next day naming the appellant, there is nothing to disbelieve the case of the prosecution and witnesses adduced on behalf of the prosecution. All the witnesses have deposed in one voice which inspires confidence of the court and their statement is quite natural and acceptable in merit.

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 poured kerosene over victim and lit the match stick as a result of which she sustained burn injury which was fatal in nature. If proper treatment would not have been given to victim in time, she would have succumbed to burn injuries. It means, it can be inferred that the appellant has done everything within his power to eliminate the victim, but final result alludes because of proper treatment in time. In view of this Court the act of the appellant falls within mischief of Section 307 of the IPC for which the trial Court convicted him. Conviction of the appellant is hereby affirmed.

13. Heard on the point of sentence.

Offence under Section 307 IPC is punishable with imprisonment for life. The trial Court awarded rigorous imprisonment for seven years which cannot be termed 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