

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Reserved on 25-01-2019****Delivered on 08-02-2019****Criminal Appeal No. 1138 of 2012**

Sukdev s/o. Milap Patel, aged about 35 years, r/o. Village
Parsapali, Police Station Bilaigarh, District Raipur (CG).

---- Appellant**Versus**

- The State of Chhattisgarh Through Police Station Bilaigarh,
District Raipur (CG).

---- Respondent

For the appellant : Shri Govind Dewangan, Advocate
For the respondent/State : Shri Raghavendra Verma, G.A.

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

1. This appeal is directed against the judgment of conviction and order of sentence dated 26-10-2012 passed by 2nd Additional Sessions Judge, Baloda Bazar, District Raipur (CG) in Sessions Trial No.37 of 2012 wherein the said Court convicted the appellant for the commission of offence under Section 307 (two times) and 450 of IPC and sentenced him to undergo rigorous imprisonment for 5 years – 5 years and to pay fine of Rs.1000/- - Rs.1000/- and RI for 3 years and to pay fine of Rs.500/-, with default stipulations.

2. In the present case, names of the victims are Ram Kumar and Himanshu Patel. As per version of the prosecution on 2-3-2011 at about 7.00 pm victim Ram Kumar went to shop of his ward to purchase some material. Present appellant met him on the way and said him to drop him to his house. When the victim denied to drop him, the appellant assaulted him by knife on his chest and also entered the house of complainant and assaulted the son of complainant namely Himanshu Patel on his stomach by knife. 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) Version of complainant is not corroborated by independent witnesses and there is material contradiction in the statement of the victim, therefore, case of the prosecution is doubtful.
- II) The trial Court has not evaluated the evidence properly and the offence of charge is not established against the present appellant.
- Ii) Finding of the trial Court is bad-in-law. The trial court ought to have extended the benefit of

doubt to appellant, therefore, finding of the trial court is liable to be set aside.

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 2-3-2011 and report was lodged in Police Station Bilaigarh on the same day as per Ex.P/1 in which name of the appellant is mentioned as culprit and his act of assaulting to victim namely Ram Kumar is also mentioned in the said report.

7. Ram Kumar (PW/1) deposed before the trial Court that the incident took place at about 7.00 pm when he met the appellant who asked him to drop him to his house. When he replied that he will not move at night, the appellant assaulted him by knife on his abdomen. He further deposed that the appellant also inflicted injury on the body of Himanshu on his abdomen. Version of this witness is supported by version of Dharmendra (PW/2), Raghunath (PW/3) and Sulochana (PW/4). Again, it is supported by version of PW/5 Lalmohan and PW/6 Tulsi Ram. All the witnesses have deposed in one voice that the appellant is the author of the crime, who

assaulted both the victims. Version of direct evidence is supported by version of Dr. Gambheer Singh PW/11) who was Surgeon of Samarpan Hospital, Raipur who produced record of treatment of Himanshu Patel and noticed the following injuries on his body.

- i) Single penetrating wound present in the size of 3 x 2.5 cm peritoneal deep in the anterior abdominal
- ii) Loop of small gut protruded outside abdominal cavity.
- lii) Blood oozing all round present. Stab injury abdomen and prolapsed loop of intestine.

8. From the evidence of this witness, it is clear that injuries were fatal in nature and opined that this victim would have succumbed to the injuries if he would not have been operated in time. There is no other expert's opinion contrary to opinion of this expert. Version of medical evidence is unshaken during cross examination and again direct evidence is also unshaken during cross examination. Looking to the direct and medical evidence which is supported by FIR lodged on same 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 assaulted the victims by deadly weapon knife and that too on vital part of the body which was sufficient to cause death. Looking to the injuries it can be inferred that the appellant has done everything within his power to eliminate both the victims, 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. Since the offence is committed within four corners of his house, offence under Section 307 IPC is punishable with imprisonment for life, the charge under Section 450 of IPC which is an offence of house trespass in order to commit offence is also established. Conviction of the appellant for both offences 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 five years 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