

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.996 of 2012**

- Pappu @ Kamal Narayan Sahu S/o Shyam Sahu Aged About 26 Years R/o Gopal Nagar Gudiyari, P.S. Gudiyari Distt. Raipur Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh Through - P.S. Gudiyari, Distt. Raipur Chhattisgarh

---- Respondent

For the appellant : Shri CR Sahu, AdvocateFor the State/respondent : Shri Ravish Verma, Govt. Advocate
-----**Hon'ble Shri Justice Ram Prasanna Sharma****Judgment On Board****20.02.2019.**

1. The appeal is directed against judgment dated 29.9.2012 passed by Seventh Additional Sessions Judge, Raipur (CG) in Session Trial No.115/2011 wherein the said Court convicted the appellant for commission of offence under Section 307 read with Section 34 of the Indian Penal Code, 1860 and sentenced him to undergo rigorous imprisonment for seven years and to pay fine of 1000/- with default stipulation.

2. In the present case, name of the victim is Ravikant Sonkar (PW-7). As per the version of prosecution, on 28.02.2011 about 7.30 pm present appellant along with co-accused namely Billu Udiya assaulted the victim with a bottle of glass for non payment of money which was demanded by the them for liquor. The victim received grievous injuries on his right side of stomach and left thigh. The

matter was reported and the appellant was charge sheeted and convicted as mentioned above.

3. Learned counsel for appellant submits as under:

(i) Charge under Section 307 IPC is not made out because as per the statement of Dr. Sunil Gupta (PW-10), the injuries caused to the victim were not sufficient to cause his death.

(ii) The trial Court has ignored the material contradictions and omissions in the statement of the witnesses and again prosecution story is not established by the seized articles.

(iii) The trial Court has not evaluated the evidence in its right perspective and therefore, it is liable to be reversed.

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

6. Ravikant Sonkar (PW-7) deposed before the trial Court that he is a rickshaw puller and on the date of incident at about 7.00 pm, he stood the rickshaw near the temple at Samta Colony and going towards his house at Ramnagar. Near Ramnagar, the appellant along with co-accused stopped him and demanded money for liquor. When he denied to pay money to them, they assaulted him by a glass bottle which resulted into injuries on his rib and left thigh. As per the version of this witness, he fell unconscious and regained conscious only at Mekahara Hospital, Raipur. Version of this witness is unshaken during cross-examination and nothing could be

elicited in favour of the defence. Version of this witness is supported by the version of Dr. Sunil Gupta (PW-10) who examined the victim and noticed following injuries:-

- (i) stab wound of 3cm x 1cm on the right side of abdomen
- (ii) stab wound of 3cm x 1cm on the middle of 3rd of anterior surface of left thigh

7. Dr. Sandeep Chandrakar (PW-15) conducted the operation of small intestine of the victim and injuries sustained on his chest. As per the version of this witness, injuries sustained by the victim is serious in nature.

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

9. 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.

10. 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.

11. In the present case the appellant assaulted the victim on his vital part of the body i.e. intestine (abdominal part). It means the appellant has done everything within his power to cause fatal injury but the final result alludes because of the proper treatment in time. Looking to the facts and circumstances of the case, it appears that the act is done with knowledge that it may be fatal. Case of the appellant falls under Section 307 IPC for which the trial Court convicted him. Therefore, arguments advanced on behalf of the appellant is not sustainable and his conviction is affirmed.

12. From the record it appears that the appellant was arrested on 01.3.2011 and released on bail on 19.01.2015. He has already suffered jail sentence of three years ten months and nineteen days. No useful purpose would be served in sending him back to jail again. Looking to the facts and circumstance of the case, this Court is of the view that ends of justice would be served if his sentence is reduced to the period already undergone by him. Now his sentence is reduced to the period already undergone by him. Fine amount imposed by the trial Court shall remain intact.

13. With the aforesaid modification, the appeal is partly allowed.

Sd/-

(Ram Prasanna Sharma)
JUDGE