

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1280 of 2017

- Dalpati Pando S/o Late Meeru Ram Pando, Aged About 50 Years R/o Village- Kolhua, Police Station Chandani, District Surajpur, Chhattisgarh

---- Appellant

Versus

- State of Chhattisgarh Through The Station House Officer, Police Station, Chandani, District- Surajpur, Chhattisgarh.

---- Respondent

For Appellant : Mr. Aditya Khare, Advocate
For respondent/State : Mrs. Smita Jha, Penal Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma

ORAL JUDGMENT

25-11-2019

1. This appeal is preferred against the judgment dated 27-2-2016 passed by 3rd Additional Sessions Judge, Surajpur (CG) in Session Trial No. 106 of 2014 wherein the said Court has convicted the appellant for commission of offence under Section 307 of IPC and sentenced him to undergo RI for four years and to pay fine of Rs.100/- with default stipulations.

2. In the present case, name of the victim is Shyam Babu Jaiswal. As per version of prosecution, on 21-8-2014 at about 6.30 pm after closing his shop the complainant named above was returning on his motor-cycle along with one Mohar Sai, at that time the appellant with intention to kill him hit him by arrow and bow but

unfortunately the arrow dashed the motorcycle of the complainant. The matter was reported and investigated and after completion of trial, the trial Court convicted and sentenced the appellants as aforementioned.

3 Learned counsel for the appellant would submit as under:

- i) No injury at all was inflicted on the body of the complainant by the appellant but the trial court convicted the appellant for offence under Section 307 of IPC.
- ii) The trial court has not proved motive or intention of the appellant for commission of murder, therefore, finding recorded by the trial court is not sustainable.
- iii) The statement of the prosecution witnesses is contradictory in nature and their version is not reliable.

4. On the other hand, learned counsel for the respondent 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 record of the court below in which impugned judgment is passed.

6. In the present case, date of incident is 21-8-2014 and report thereof was lodged at Police Station Chandani on the next day ie., on 22-8-2014. In the said report it is clearly mentioned that the appellant hit the victim by arrow with the help of bow. Shyam Babu Jaiswal (PW/3) deposed before the trial court that when he reached near the house of Beer Sai Pandey, appellant hit him by arrow and that arrow was subjected to poison. The arrow hit to his motor-cycle near right accelerator and after hitting the appellant fled away from the spot. Version of this witness is supported by version of Mohar Sai (PW/4) who was sitting on the back side of the said motor-cycle. All the witnesses have been subjected to cross examination but nothing could be elicited in favour of defence. Dr. A.M. Siddiqui (PW/7) deposed before the trial court that if arrow will hit in the body it may cause death of injured. Looking to the entire evidence, it is clear that the appellant assaulted the victim by arrow.

7. The question for consideration of this court is whether the act of the appellant falls within mischief of Section 307 of IPC. Hon'ble the Supreme Court in the matter of **Sachin Jana and another vs. State of West Bengal, reported in (2008) 3 SCC 390** has observed as under:

“To justify a conviction under this section, it is not essential that bodily injury capable of causing

death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof’.

8. Determinative question is the intention or knowledge that will be caused by the act of the accused irrespective of the result. Targeting of a person by arrow is an act of brutality and it can be easily inferred that the appellant had knowledge that death will be caused by his act. On analysing the evidence on record, Section 307 of IPC has clear application, therefore, argument advanced on behalf of the appellant is not sustainable. Accordingly, conviction of the appellant under Section 307 of IPC is hereby affirmed. The trial court awarded sentence of four years which cannot be termed as harsh, disproportionate or unreasonable and same is hereby upheld.

9. Accordingly, the appeal is liable to be and is hereby dismissed. As per report of jail authorities, the appellant had suffered full jail term and released after getting remission, therefore, no further for his arrest etc., is required.

Sd/-

(Ram Prasanna Sharma)

Judge

Raju