



NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR
CRA No. 401 of 2021

- Hithlesh @ Mithlesh @ Dadu Rajwade, S/o Shri Kapil Rajwade, Aged About 23 Years Occupation - Agriculturist, R/o. Village - Girwarganj (Baeirpara), Police Station - Surajpur, District - Surajpur Chhattisgarh.

---- Appellant

Versus

- State Of Chhattisgarh, Through Station House Officer Surajpur, District - Surajpur Chhattisgarh.

---Respondent

For Appellant	:	Shri Rishi Sahu, Advocate
For Respondent/State:		Shri Arjit Tiwari, PL

Hon'ble Shri Sanjay K. Agrawal and
Hon'ble Shri Sachin Singh Rajput, JJ

Judgment On Board
(14.09.2022)

Sanjay K. Agrawal, J.

1. With the consent of counsel for the parties, the matter is heard finally at motion stage.

2. By way of this appeal filed under Section 374(2) of the Code of Criminal Procedure the appellant has assailed the judgment impugned dated 08.03.2021 passed by Additional Sessions Judge (FTC) Surajpur District Surajpur, CG in Sessions Trial No. 61/2017 convicting him under Sections 307 IPC and 25(1) (1-B), (B) and 27 (1) of the Arms Act, and sentencing to undergo imprisonment for life with fine of Rs. 500/-, u/S 307 IPC; RI for one year with fine of Rs.200/-, u/S 25(1) (1-B), (B) and RI for three years with fine of Rs.300/- u/S 27 (1) of the Arms Act, plus default stipulations.

3. Briefly stated facts of the case leading to the disposal of this appeal are that on 29.06.2017 at about 6:30 AM when injured Amrita





Rajwade (PW-8) was sweeping outside her house, accused/appellant who happens to be her grandson came there and over some partition related dispute fired two gun shots at her with an intention to cause her death and ran away from the spot. As a result of the fire shot, the victim suffered injuries on left side of her neck. The matter was reported to the Police by Rameshwar Rajwade (PW-5) which led to registration of FIR (Ex.P-5A) for the offence punishable under Section 307 IPC and 25, 27 of the Arms Act. On the memorandum of accused/appellant (Ex.P-14), seizure of countrymade pistol and the motorcycle on which the accused/appellant had come to the spot was made under Ex.P-15 and Ex.P-16 respectively. The weapon so seized was sent for examination to the ballistic expert and the report received therefrom is Ex.P-33, according to which the same was in working condition. The report further says that the cartridges taken out from the neck of the injured were fired by the said countrymade pistol. After completing the investigation related procedural formalities, the charge-sheet was filed by the Police under Section 307 IPC and Section 25, 27 of the Arms Act. The trial Court however framed the charge under Section 307 IPC and 25(1) (1-B), (B) and 27 of the Arms Act.

4. So as to prove the complicity of the accused/appellant in the crime in question, prosecution has examined as many as 19 witnesses. Statement of the accused/appellant under Section 313 Cr.PC was also recorded in which he pleaded his innocence and false implication in the case. Defence however has not examined any witness in support of its case.

5. After hearing the parties and going through the material available on record including the evidence of the witnesses, learned Additional Sessions Judge has convicted and sentenced the accused/appellant as described in paragraph No. 1 of this judgment. Hence this appeal.



6. Learned counsel for the appellant submits that the prosecution has utterly failed to prove its case under Section 307 IPC beyond all reasonable doubts. He further submits that as there was no intention on the part of the accused/appellant to cause death of the victim, the offence under Section 307 IPC is not made out and at the most act of the accused/appellant may fall either under Section 325 or 326 IPC. Alternatively, counsel for the accused/appellant submits that if the conviction part of the judgment impugned is not going to be interfered with, keeping in mind the fact that the accused/appellant has already remained behind the bars for more than 5 years, the sentence imposed on him may be reduced to the period already undergone.

7. On the other hand, counsel appearing for the State supports the judgment impugned and submits that taking into consideration the statements of the victim (PW-8), the eye-witnesses Dev Sai (PW-4), Sundari (PW-7) and Dhansai Rajwade (PW-11) which gets corroboration from the testimony of other independent witnesses, the findings recorded by the Additional Sessions Judge holding the accused/appellant guilty under Section 307 IPC being based on proper appreciation of the evidence on record are fully justified and do not call for any interference in this appeal. Likewise, referring to the report of the ballistic expert, the State counsel also holds the conviction of the appellant under the Arms Act to be just and proper.

8. Heard counsel for the parties at length and went through the evidence on record with utmost care and caution.

9. From the evidence of victim (PW-8) it is apparent that on the date of incident when she was sweeping outside her house, the accused/appellant came there and said to her that by eliminating her he



would put the land dispute at rest forever. Saying so, the accused/appellant is stated to have shot firearm at her which hit on the left side of her neck and the injuries so caused started bleeding making her fall down on the ground. According to her, she was first taken for treatment to hospital at Surajpur but after being given first aid, she was referred to hospital at Ambikapur and from there she was referred to Bilaspur where the bullets pierced in her neck were taken out. She is further stated to have remained hospitalized for a week. Dev Sai (PW-4) while supporting the case of the prosecution has stated that on the date of incident when he was sleeping in his house, he heard the craker like sound and when he came out of the house, he saw that the victim's neck was bleeding. He has further stated that when he saw around, the accused/appellant was running away on his motorcycle. Sundari (PW-7) – an eyewitness to the incident has stated that she saw the appellant running away on motorcycle after assaulting the victim with the countrymade pistol. According to her, the accused/appellant had assaulted on the left side of the neck of the victim and the injury was bleeding. Another eyewitness Dhan Sai (PW-11) has also made almost similar statement like PW-7 that after assaulting the victim with countrymade pistol the accused/appellant was running away on his motorcycle. Dr. P. R. Shivhare (PW-1) who medically examined the victim at Ambikapur has stated that he noticed injury on the left side of her neck in the size of 1.5 cm x 1.5 cm x 3 cm deep. Likewise, Dr. Dilip Dhorki (PW-19) who medically examined the victim and gave his report (Ex.P-39) has stated that there was injury on the neck of the victim in the size of 4 cm x 2 cm x 2 cm and since she was already treated at Ambikapur, he shifted her to the concerned Surgical ward for further treatment. Thus from the evidence of the victim (PW-8), Dev Sai (PW-4), Sundari (PW-7) and Dhan Sai (PW-11) it is crystal clear that it is the accused/appellant who shot at the victim with a



countrymade pistol as a result of which she suffered injury on the left side of neck. Medical evidence also goes to show that there was a gunshot injury on the left side of the neck of the victim. The bullets stuck up in her neck, according to the victim, were taken out in the hospital at Bilaspur. Furthermore, report of the ballistic expert (Ex.P-33) clearly indicates that the countrymade pistol produced before him for examination was in running condition and that the cartridges taken out from the neck of the victim were fired with the same pistol.

10. Now, the question is, whether the trial Court is justified in convicting the appellant for offence under Section 307 of the IPC?

11. At this stage, it would be appropriate to notice Section 307 of the IPC which states as under: -

“307. Attempt to murder.—Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

Attempts by life-convicts.—When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death.”

12. The essential ingredients required to be proved in the case of an offence under Section 307 of the 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; and
- (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.

13. The Supreme Court in the matter of **Hari Singh v. Sukhbir Singh and others**¹ has held that under Section 307 of the IPC 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 provision. The intention or knowledge of the accused must be such as is necessary to constitute murder. Without this ingredient being established, there can be no offence of “attempt to murder”. Under Section 307 the intention precedes the act attributed to accused. Therefore, the intention is to be gathered from all circumstances, and not merely from the consequences that ensue. It has been further held that the nature of the weapon used, manner in which it is used, motive for the crime, severity of the blow, the part of the body where the injury is inflicted are some of the factors that may be taken into consideration to determine the intention.

14. Similarly, in the matter of **State of Maharashtra v. Kashirao and others**², their Lordships of the Supreme Court have held that for the application of Section 307 of the IPC, it is not necessary that the injury capable of causing death should have been actually inflicted. The injuries sustained, the manner of assaults and the weapons used clearly make out a case of Section 307 of the IPC. It has been

1 (1988) 4 SCC 551

2 (2003) 10 SCC 434



observed by their Lordships in para 21 of the report as under: -

“21. In offence under Section 307 all the ingredients of the offence of murder are present except the death of the victim. For the application of Section 307, it is not necessary that the injury capable of causing death should have been actually inflicted. The injuries sustained, the manner of assaults and the weapons used clearly make out a case of Section 307 IPC. But since sentence and fine have been maintained, alteration of conviction notwithstanding no modification of sentence need be made.

15. The Supreme Court in the matter of **Parsuram Pandey and others v. State of Bihar**³ has also held that to constitute an offence under Section 307 of the 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. It has been held in paragraph 15 of the report as under: -

“15. To constitute an offence under Section 307 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.

For the purpose of Section 307 what is material is the intention or the knowledge and not the consequence of the actual act done for the purpose of carrying out the intention. The section clearly contemplates an act which is done with intention of causing death but which fails to bring about the intended consequence on account of intervening circumstances. The intention or knowledge of the accused must be such as is necessary to constitute murder. In the absence of intention or knowledge which is the necessary ingredient of Section 307, there can be no offence “of attempt to murder”. Intent which is a state of mind cannot be proved by precise direct evidence, as a fact it can only be detected or inferred from other factors. ...”

3 (2004) 13 SCC 189



16. Similarly, the Supreme Court in the matter of **Jage Ram and others v. State of Haryana**⁴ has laid down the ingredients of the offence under Section 307 of the IPC and held as under:-

“12. For the purpose of conviction under Section 307 IPC, prosecution has to establish (i) the intention to commit murder; and (ii) the act done by the accused. The burden is on the prosecution that the accused had attempted to commit the murder of the prosecution witness. Whether the accused person intended to commit murder of another person would depend upon the facts and circumstances of each case. To justify a conviction under Section 307 IPC, it is not essential that fatal injury capable of causing death should have been caused. Although the nature of injury actually caused may be of assistance in coming to a finding as to the intention of the accused, such intention may also be adduced from other circumstances. The intention of the accused is to be gathered from the circumstances like the nature of the weapon used, words used by the accused at the time of the incident, motive of the accused, parts of the body where the injury was caused and the nature of injury and severity of the blows given, etc.

14. Having regard to the weapon used for causing the head injuries to Sukhbir, nature of injuries, situs of the injury and the severity of the blows, the courts below recorded concurrent findings convicting the second appellant under Section 307 IPC. In our considered view, the conviction of the second appellant Rajbir @ Raju under Section 307 IPC is unassailable.”

17. Thus taking a cumulative note of the ocular and medical evidence collected by the prosecution; looking to the nature of the weapon used, manner in which it is used, motive for the crime, severity of the blow, the part of the body where the injury has been inflicted, keeping in mind the report of the ballistic expert (Ex.P-33), and taking into consideration the aforesaid judicial pronouncements of the Apex Court, this Court has no hesitation to hold that the findings recorded by the trial Court convicting the accused/appellant under Section 307 IPC are based on due appreciation of the evidence on record and deserve to be and are hereby



maintained. Likewise, conviction of the accused/appellant u/S 25(1) (1-B), (B) and 27(1) of the Arms Act is also maintained.

18. As regards sentence, considering the facts and circumstances of the case, the sentence of life imprisonment imposed by the trial Court appears to be excessively on the higher side and therefore, this Court is of the opinion that it would be in the interest of justice if the sentence imposed on him is reduced to rigorous imprisonment for six years. However, fine imposed by trial Court is maintained.

19. With the aforesaid observations, the appeal is allowed in part.

Sd/-

(Sanjay K. Agrawal)
Judge

Sd/-

(Sachin Singh Rajput)
Judge

