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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.337 of 2022

{Arising out of judgment dated 29-12-2021 in Special Case No.117/2018 of the Special Judge (NIA Act / Scheduled Offences), Bastar at Jagdalpur}

Sannu Kudami, S/o Hunga @ Hidma Kudami, Caste Madiya, aged about 30 years, R/o Village Parcheli, Patelpara, P.S. Katekalyan, District Dantewada (C.G.)

(In Jail)
----- Appellant

Versus

State of Chhattisgarh, through the Police Station Darbha, District Bastar (C.G.)

----- Respondent

For Appellant: Mr. Suresh Kumar Verma, Advocate.
For Respondent/State: Mr. Ashish Tiwari, Govt. Advocate; Mr. Sudeep Verma, Deputy Govt. Advocate and Mr. Arjit Tiwari, Panel Lawyer.

Hon'ble Shri Sanjay K. Agrawal and
Hon'ble Shri Rakesh Mohan Pandey, JJ.

Judgment on Board
(19/12/2022)

Sanjay K. Agrawal, J.

1. The appellant has preferred this appeal calling in question legality, validity and correctness of the impugned judgment of conviction and order of sentence dated 29-12-2021 by which he has been convicted and sentenced as under: -

Conviction	Sentences
Section 147 of the IPC	Rigorous imprisonment for six months and fine of ₹ 300/-, in default, additional rigorous imprisonment for fifteen days
Section 148 of the IPC	Rigorous imprisonment for one year

	and fine of ₹ 500/-, in default, additional rigorous imprisonment for one month
Section 307 read with Section 149 of the IPC	Rigorous imprisonment for five years and fine of ₹ 2,000/-, in default, additional rigorous imprisonment for three months

2. The appellant herein and eight other accused persons were tried for the offences punishable under the aforesaid offences on the allegation that on 27-6-2018 between Village Kalepal & Chikpal in dense forest, the appellant along with eight other accused (acquitted) and other absconded accused persons being members of banned Naxalite organization, armed with deadly weapons constituted unlawful assembly and used force and assaulted Ganiram (injured) – Constable DRG and thereby committed the aforesaid offences. All the accused persons were tried for the aforesaid offences and ultimately, the trial Court has convicted the present appellant in the aforesaid manner and acquitted eight accused persons against which this appeal has been preferred.

3. Mr. Suresh Kumar Verma, learned counsel appearing for the appellant, would submit that injured Ganiram himself has not been examined and it has not been proved beyond reasonable doubt as to whether he suffered injuries and furthermore, no memorandum statement has been recorded and seizure vide Exs.P-3, P-4 & P-5 has been made from the spot, as such, in absence of disclosure statement, the appellant cannot be connected with the aforesaid seizure. Axe has been seized vide Ex.P-20, but it has neither been sent to FSL for forensic examination nor blood has been found on the same and even according to the doctor Dr. P. Venugopal (PW-

13), injuries were fresh and serious in nature, no X-ray report has been found except report Ex.P-7 and the doctor himself has stated the injuries to be simple in nature. The appellant has already been in jail since 4 years 4 months and maximum jail sentence of five years has been awarded to the appellant. In that view of the matter, the appeal deserves to be allowed.

4. Learned State counsel would support the impugned judgment.

5. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

6. In order to prove the injury to Ganiram and to prove injury report Ex.P-7, Dr. P. Venugopal (PW-13) has been examined, though in paragraph 3, he has stated that the injuries were fresh and serious in nature, but in the cross-examination, he has also admitted that the injuries were simple in nature and thereafter, he said that the injuries were not simple in nature.

7. A careful perusal of the report Ex.P-7 would show that though the injuries have been proved vide Ex.P-7 by Dr. P. Venugopal (PW-13), but for the reasons well known to the prosecution, injured Ganiram has not been examined by the prosecution to prove his injuries. The prosecution was obliged to examine Ganiram to prove whether he was assaulted by the appellant and whether he has suffered injuries which were sufficient to cause death in terms of Section 307 of the IPC. In that case, the appellant could have an opportunity to cross-examine injured Ganiram qua his presence and his injuries which were sufficient to cause death.

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

9. 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.
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> **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."

10. 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 excused for incurring the risk of causing such death or injury.

11. 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.

12. 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 observed by their Lordships in paragraph 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

1 (1988) 4 SCC 551
2 (2003) 10 SCC 434

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. ..."

13. 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. ..."

14. 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

3 (2004) 13 SCC 189
4 (2015) 11 SCC 366

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.
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> 14. Having regard to the weapon used for causing the head injuries to Sukhbir, nature of injures, 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."

15. The Supreme Court in the matter of **State of U.P. and another v. Jaggo alias Jagdish and others**[5], relying upon its earlier decision in the matter of **Habeeb Mohammad v. The State of Hyderabad**[6] has held that the witness whose evidence is essential to the "unfolding of the narrative" should be examined, and observed in paragraphs 14 and 15 as under: -

> "14. Ramesh is the person with whom Lalu was talking at the time of the alleged occurrence. Ramesh was

5 1971(2) SCC 42
6 AIR 1954 SC 51

mentioned in the first information report. It is true that all the witnesses of the prosecution need not be called but it is important to notice that the witness whose evidence is essential to the "unfolding of the narrative" should be called. This salutary principle in criminal trials has been stressed by this Court in the case of *Habeeb Mohammad v. The State of Hyderabad*[6] for eliciting the truth. The absence of Ramesh from the prosecution evidence seriously affects the truth of the prosecution case.

15. This Court in *Habeeb Mohammad's case* (supra) referred to the observations of Jenkins, C.J. in *Ram Ranjan Roy v. Emperor*[7] that the purpose of a criminal trial is not to support at all costs a theory but to investigate the offence and to determine the guilt or innocence of the accused and the duty of a public prosecutor is to represent the administration of justice so that the testimony of all the available eye-witnesses should be before the Court. Lord Roche in *Stephen Seneviratne v. The King*[8] referred to the observations of Jenkins, C.J. and said that the witnesses essential to the unfolding of the narrative on which the prosecution is based must be called by the prosecution whether the effect of their testimony is for or against the case for the prosecution. That is why this Court in *Habeeb Mohammad's case*, (supra) said that the absence of an eye-witness in the circumstances of the case might affect a fair trial. On behalf of the appellant it was said that Ramesh Chand was won over and therefore the prosecution could not call Ramesh. The High Court rightly said that the mere presentation of an application to the effect that a witness had been won over was not conclusive of the question that the witness had been won over. In such a case Ramesh could have been produced for cross-examination by the accused. That would have elicited the correct facts. If Ramesh were an eye-witness the accused were entitled to test his evidence particularly when Lalu was alleged to be talking with Ramesh at the time of the occurrence."

16. Reverting to the facts of the case in the light of the aforesaid principles of law laid down by their Lordships of the Supreme Court, it is quite vivid that the appellant has been convicted for causing

7 ILR 42 Cal 422
8 AIR 1936 PC 289

attempt to murder of Ganiram (injured), but the said injured has not been examined by the prosecution for the reasons well known to the prosecution, as such, the appellant was deprived to cross-examining said Ganiram that he was not present on the spot and the injuries which were allegedly caused to him were not sufficient to cause death, due to non-examination of Ganiram, the appellant has been deprived of the opportunity to cross-examine him which is fatal to the prosecution. Apart from the fact that the appellant was apprehended as he was getting himself hide immediately after the incident during search operation conducted by the police party, no incriminating article has been seized from the appellant as no disclosure statement of the appellant has been recorded. All articles have been seized from the spot vide Exs.P-3, P-4 & P-5. Admittedly, the appellant was not apprehended from the spot. So far as axe and katta are concerned which have been seized vide Ex.P-20, same have been seized from an unidentified location i.e. Kalepal, Patelpara. Therefore, the prosecution has failed to prove that the appellant had intention or knowledge relating to commission of murder or towards it. No weapon has been seized from the possession of the appellant. There is evidence of Ganiram that the appellant has caused injury. As such, in our considered opinion, the prosecution has failed to bring home the offence under Section 307 of the IPC against the appellant.

17. Accordingly, conviction and sentences imposed upon the appellant under Sections 147, 148 & 307 read with Section 149 of the IPC are set aside and the appellant is acquitted of the said charges. He

is in jail. He be released forthwith, if his custody is not required in any other offence.

18. The criminal appeal is allowed to the extent indicated herein-above.

Sd/-
(Sanjay K. Agrawal)
Judge

Sd/-
(Rakesh Mohan Pandey)
Judge

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