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**(2019) 02 CHH CK 0127**

**Chhattisgarh High Court**

**Case No:** Criminal Appeal No. 497 Of 2009

Sanjay Kumar And Ors

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

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**Date of Decision:** Feb. 11, 2019

**Acts Referred:**

- Indian Penal Code, 1860 - Section 34, 307, 320, 325
- Code Of Criminal Procedure, 1973 - Section 437A

**Hon'ble Judges:** Ram Prasanna Sharma, J

**Bench:** Single Bench

**Advocate:** Rajkumar Gupta, Raghavendra Verma

**Final Decision:** Partly Allowed

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**Judgement**

Ram Prasanna Sharma, J

1. This appeal is directed against the judgment of conviction and order of sentence dated 30-6-2009 passed by the Additional Sessions Judge, Janjigir,

Session Division Jajgir Champa (CG) in Sessions Trial No.3 of 2009 wherein the said Court convicted the appellants for the commission of offence

under Section 307 read with Section 34 of the IPC and sentenced them to undergo rigorous imprisonment for RI for seven years and to pay fine of

Rs.500/-, with default stipulations.

2. In the present case, name of the victim is Prahlad. As per version of the prosecution, victim is a resident of village Jilmili. On 3-8-2008 at about 7.00

pm., he went to his court-yard and was giving paddy-grass to his cattle and he was telling that nobody is hearing to give grass to his cattle and his son

and daughter-in-law have left the home. At the same time all the four appellants namely Sanjay Kmar, Rajenra Kumar, Sukhan Bai and Fuleshwari

assaulted him by axe, sword, knife and piece of brick. He sustained injuries on his head, hand and back. The matter was reported to the Police Station

and after completion of investigation charge sheet was filed, the appellants did not plead guilty and the trial was conducted. After completion of trial,

the trial Court convicted and sentenced the appellants as aforementioned.

3. Learned counsel for the appellants submits as under:

i) Medical report is not supporting the prosecution story and no grievous injury was found on the body of the victims.

ii) There is no intention and reason to kill the victims.

iii) Seizure of article is different and there is no seizure of sword.

iv) Looking to the statements of witnesses and looking to the expert's opinion, case does not fall within mischief of Section 307 of IPC, 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. PW/1 Prahlad, who is victim deposed before the trial Court that he was giving paddy grass to his cattle where all the four appellants were hidden

and they assaulted him by sword, club, axe and piece of brick. Smt. Rama Bai (PW/2) wife of the victim deposed on same line. Dr. K.K. Dahre

(PW/6) who examined the victim on 30-8-2008 at 10.00 pm at Primary Health Centre, Pamgarh, noticed the following injuries on the body of the

victim as per Ex.D/2

i) Lacerated wound over left side of parietal region in the size of 5x0.5x0.5 cm.

ii) Swelling over right wrist in the size of 5x5 cm He opined that the injury was caused by hard and blunt object. Duration of the incident is within six

hours.

He advised for x-ray of skull.

7. Dr. Amol Pratap Singh (PW/7) is Radiologist who performed x-ray of the victim and opined that there was fracture in ribs bone of left wrist.

Looking to the direct evidence, there is nothing to say that any of the appellants had intention to eliminate the victim. Injuries found on the body of the

victim were simple in nature except for one injury which is fracture of Alna bone.

8. 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.

9. In the present case, looking to the injuries, it cannot be said that any of the appellant had intention or knowledge relating to commission of murder.

Fracture of Alna bone is grievous as defined under Section 320 of IPC and causing grievous hurt voluntarily is an offence under Section 325 read with

Section 34 of the IPC. Looking to the facts and circumstances of the case and legal aspect of the matter, finding arrived at by the trial Court regarding

guilt of the appellants for commission of offence under Section 307 of IPC is not sustainable.

10. Accordingly, conviction of the appellants under Section 307 is set aside and they are acquitted of the said charge. Their conviction under Section

307 of IPC is converted into Section 325 read with Section 34 of the IPC. From the record, it appears that the appellants have suffered jail sentence

during trial from 30-6- 2009 to 14-9-2009 i.e., two months and fourteen days. Considering all the facts and circumstances of the case, ends of justice

would be served if the sentence is reduced to the period already undergone by them.

11. Accordingly, it is directed that the appellants are convicted under Section 325 read with Section 34 of the IPC and sentenced to the period already

undergone by them. The appellants are reported to be on bail. Their bail bonds shall continue for further period of six months in view of Section 437-A

of the Cr.P.C.

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