

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**

Reserved on 28/01/2020

Delivered on 28/02/2020

**CRA No. 1600 of 2019**

Yogendra Dewangan S/o Jivara Khan, Aged About 24 Years R/o Village Titurdeeh, Purani Basti, Near Hanuman Temple Well, P.S. Mohan Nagar, Durg, Chhattisgarh. **---- Appellant**

**Versus**

State of Chhattisgarh Through S.H.O., P.S. Mohan Nagar, District Durg Chhattisgarh. **---- Respondent**

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Appellant : Mr. Manoj Mishra, Advocate  
For State : Mr. Afroj Khan, P.L.  
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**Hon'ble Shri Justice Ram Prasanna Sharma****CAV Judgment**

1. This appeal is preferred against judgment dated 29<sup>th</sup> of October, 2018 passed by the Fourth Additional Sessions Judge, Durg (C.G.) in Sessions Trial No.63/2017 wherein the said Court convicted the appellant- Yogendra Dewangan for commission of offence punishable under Section 452 & 307 of the Indian Penal Code, 1860 and sentenced him to undergo R.I. for 6 months and fine of Rs. 1000/-, R.I. for 4 years and fine of Rs. 1000/- with default stipulations.
2. In the present case, name of the victim is Jagannath Dewangan, as per version of the prosecution at Harinagar Katulbard on 5<sup>th</sup> of June, 2016 at about 5 pm, the appellant entered into the house of the victim- Jagannath Dewangan and assaulted him by knife on his neck and and appellant

also assaulted to his wife near her left ear. Both victim husband and wife received injuries and after this, the accused/appellant ran away. Thereafter, matter was reported, investigated, charge-sheeted and Court convicted the accused/appellant as mentioned above.

3. Learned counsel for the appellant submits as under :-

(I) The trial Court has over-looked material omission and contradiction in statement of the prosecution witnesses and recorded finding on the basis of reliable evidence.

(ii) The medical expert opined that injury sustained are simple in nature therefore, case of the appellant falling within the ambit of Section 324 of IPC for which appellant has been suffered jail term of more than three years. The trial court has not evaluated the evidence properly therefore, finding of the trial Court is liable to be set-aside.

4. On the other hand, learned State counsel submits that finding of the trial Court is based on proper marshaling of the evidence and same is not liable to be interfered with invoking jurisdiction of appeal.

5. The question for consideration of this Court is whether the appellant after preparation to commit crime entered into the house of the victim and assaulted the victim fatal injuries. In the present case, date of incident is 5<sup>th</sup> of June, 2016 and report was lodged against the appellant on same day at Police Station- Supela naming the appellant as culprit and

his act of attempt to murder is also mentioned in the said F.I.R. Jagannath (PW-1) deposed that on the date of incident the appellant had entered into the house with knife and assaulted him in his throat. When his wife intervened into the matter the appellant also assaulted her, left ear. Version of this witness is supported by version of Ahiliya Bai (PW-2), Dolly Dewangan (PW-3) who are the eye witnesses account to the incident. They further, supported by version of Santosh Dewangan (PW-4) who saw the victim in pool of blood and found injuries on her neck. All these witnesses have been subjected to searching cross examination but nothing could be elicited in favour of defence. Version of this witness has been further supported by Dr. Reenu Tiwari(PW-5) who examined the victim Jagannath Dewangan on 5<sup>th</sup> of June, 2016 at about 5.45 pm at district hospital Durg and noticed deep insized wound on right side & front of neck about 8x3x2 cm. strap muscles cut at front of neck of the level of thyroid gland with bleeding. The Doctor also examined victim Ahiliya Bai and noticed insized wound of 5x1x1 cm on left side mandible postaural region. As per version of this witness, if instant treatment would not have been provided to the victim, he would have been succumbed to the injuries. The doctor opined that after observation of the knife, that injuries can be caused by this instrument-knife. Version of this witness is further supported by version of Dr. Hansa Banjara (PW-8) who also noticed

injuries on neck of the victim. From the entire evidence, it is clear that appellant caused fatal injury on the neck of the victim.

6. The question for consideration of this Court is whether the act committed by the appellant falls within mischief of Section 307 of IPC, 1860.
7. Hon'ble the Supreme Court in the matter of **Sachin Jana and Another Versus State of West Bengal**, 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 intension or knowledge that will be caused by the act of the accused irrespective of the result.
9. In the present case, appellant caused injuries to the victim Jagannath is fatal in nature as per medical expert opinion. Therefore, the case of the appellant is squarely covers within ambit of Section 307 of IPC. Entering into the house of the victim with knife which shows preparation of commission of the offence.
10. Taking into consideration and totality of the fact argument advanced on behalf of the appellant is not sustainable. Act of the appellant falls within mischief of 307 for which conviction of the appellant is hereby affirmed.
11. Considering the facts and circumstances of the case and further considering the act of the appellant. Sentence awarded to the appellant by the trial Court cannot be termed as harsh, disproportionate or unreasonable. Accordingly, the appeal is liable to be and is hereby dismissed.
12. Appellant is reported to be in jail, therefore, no further order for his arrest etc., is required.

**Sd/-**  
**(Ram Prasanna Sharma)**  
**JUDGE**