

STATE OF MADHYA PRADESH
v.
IMRAT AND ANR.
(Criminal Appeal No. 1059 of 2008)

JULY 11, 2008

[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

Penal Code, 1860 – s 307 r/w s. 34 – Attempt to murder – Conviction under – Essential requisite for – Stated – On facts, over a property dispute, accused caused six injuries to complainant with lathi and farsa, two of the injuries grievous in nature – Conviction u/s 307 r/w s. 34 with seven years RI – However, High Court convicting u/s 326 r/w s. 34 and sentence reduced to period already undergone – Held: Not justified – High Court ignored that injuries were grievous in nature and were caused by use of sufficient force by sharp edged weapons – Injuries were so serious that both investigating agency and doctor felt that dying declaration was to be recorded – Thus, order of High Court set aside and that of trial Court restored.

According to the prosecution case, over a property dispute accused persons armed with lathi and farsa, caused six injuries to the complainant. Respondent told the co-accused that the complainant was to be killed. On hearing this co-accused hit on the head of complainant with farsa twice. Respondent gave a lathi blow on the wrist of right hand, left hand and left foot. FIR was lodged. Investigation was carried out. Witnesses were examined. The doctor examined the injuries and stated that the injury No. 1 and 2 were caused by sharp edged weapons. The dying declaration was recorded. Trial court relying on the evidence of the witnesses, convicted the accused u/s 307 read with s. 34 IPC and imposed seven years rigorous imprisonment with fine of Rs. 1000/-. High Court

A held that there being no material to show that injury No. 1 and 2 were dangerous to life or were sufficient in ordinary course of nature to cause death, convicted the accused u/s 326 r/w 34 IPC and reduced the sentence to the period already undergone. Hence the present appeal.

B Allowing the appeal, the Court

C HELD: 1.1 To justify a conviction u/s 307 IPC 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. Therefore, an accused charged u/s 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt.

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G [Paras 10 and 11] [852 F- 853 A-D]

H *State of Maharashtra v. Balram Bama Patil and Ors.* 1983 (2) SCC 28; *Girija Shanker v. State of Uttar Pradesh* 2004 (3) SCC 793; *R. Parkash v. State of Karnataka* JT 2004 (2) SC 348; *State of M.P. v. Saleem @ Chamaru and Anr.* 2005 (5)

SCC 554; *Sarju Prasad v. State of Bihar* AIR 1965 SC 843 – A
relied on.

1.2 Whether there was intention to kill or knowledge that death will be caused is a question of fact and would depend on the facts of a given case. The circumstances that the injury inflicted by the accused was simple or minor will not by itself rule out application of s. 307 IPC. The determinative question is intention or knowledge, as the case may be, and not nature of the injury. The basic differences between Sections 333 and 325 IPC are that s. 325 gets attracted where grievous hurt is caused whereas s. 333 gets attracted if such hurt is caused to a public servant. [Para 14] [853 G-B] B C

1.3 Section 307 deals with two situations so far as the sentence is concerned. Firstly, 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 secondly 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 indicated in the first part i.e. 10 years. The maximum punishment provided for in Section 333 is imprisonment of either description for a term which may extend to 10 years with a liability to pay fine. [Para 15] [854-B-D] D E F

2. In the instant case, the High Court arrived at erroneous hypothetical conclusions ignoring the fact that the nature of injuries were grievous and were caused by use of sufficient force by sharp edged weapons. The injuries were so serious that both the investigating agency and the doctor felt that dying declaration was to be recorded. That being so, High Court's conclusion that the offence u/s. 307 was not made out is clearly indefensible. The order of the High Court is set aside and that of the trial Court G H

A is restored. [Para 16] [854-E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 1059 of 2008

B From the final Judgment and Order dated 28.1.2005 of
the High Court of Madhya Pradesh, Bench at Gwalior in Crl.
Appeal No. 61/1998

Vibha Datta Makhija for the Appellants.

The Judgment of the Court was delivered by

C **DR. ARIJIT PASAYAT, J.** 1. Leave granted.

D 2. Challenge in this appeal is to the judgment of a learned
Single Judge of the Madhya Pradesh High Court, Gwalior Bench
partially allowing the appeal filed by the respondents. The Addi-
tional Sessions Judge, Pichhore, District Shivpuri found the
respondents guilty of having committed offence punishable
under Section 307 read with Section 34 of the Indian Penal
Code, 1860 (in short the 'IPC') and sentenced each to undergo
seven years RI with fine of Rs.1,000/-.

E 3. The High Court by the impugned judgment held that the
proper conviction would be under Section 326 read with Sec-
tion 34 IPC and the sentences were to be reduced to the period
already undergone.

F 4. Background facts in a nutshell are as follows:

G On 7.2.1997 daughter of the complainant was married to
Sitaram and the complainant wanted to give his property to his
daughter. Respondent-Imrat who is one of the close relatives of
the complainant, objected to this and, therefore, on 2.3.1997
accused persons caused injuries to the complainant. At the time
of the incident accused Imrat had a lathi in his hand and ac-
cused Komal had a farsa with him. They caused six injuries on
the complainant. On the basis of the information lodged in the
Police Station, investigation was undertaken and challan was
H filed against the accused persons for committing offence pun-

ishable under Sections 307, 324 and 506(2) IPC. However, as noted above, the trial Court convicted the accused for commission of offence punishable under Section 307 read with Section 34 IPC. The trial Court noted that as per the evidence of the complainant Bhajan while he was going towards his house near the well accused persons armed with lathi and farsa obstructed his way. Imrat told the co-accused that complainant has to be killed. On hearing this Komal hit the head of the complainant with farsa. Imrat gave lathi blow on the wrist of right hand and left hand and left foot. Komal hit him once more with farsa which struck him on the head. The trial Court found the evidence of the witnesses credible and cogent and on the evidence of the doctor found the accused persons guilty and convicted them as afore-noted.

Before the High Court the only plea taken was that all the six injuries except injury Nos.1 and 2 are simple in nature. Injury Nos.1 and 2 were caused by sharp edged weapons and were grievous in nature. It was urged that there was no material to show that these two injuries were dangerous to life or were sufficient in the ordinary course of nature to cause death. According to them at the most the offence under Section 326 IPC was made out. This plea found acceptance of the High Court.

5. In support of the appeal, learned counsel for the appellant-State submitted that the injuries were on the head and were caused by sharp cutting weapons and the force with which the blows were given can be seen from the nature of the injuries on the head.

6. No one appears for the respondents in spite of service of notice.

7. The injuries which were noticed by the doctor are as follows:

"No.1 One cut wound on the back of head on the left side admeasuring 3.5 x 1 x 1 c.m.

No. 2. One cut wound on the right side of the head admeasuring 1 x 1 x 1.5 c.m.

A No. 3. One abrasion mark on the left hand, rounded admeasuring 5 x 5 c.m.

No. 4. One crushed wound on the right elbow of 1 x 1 c.m.

B No. 5. One crushed wound with swelling on the back side of right hand admeasuring 3 x 2 c.m.

No. 6. One crushed wound on the let feet measuring 4 x 5 c.m.”

C 8. The doctor has categorically stated that injury Nos. 1 and 2 were caused by sharp edged weapons. The dying declaration of the injured was recorded on the request of the police.

D 9. It is to be noted that the alleged offences are of very serious nature. Section 307 relates to attempt to murder. It reads as follows:

E “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.”

F 10. 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, G 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 H 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.

11. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. The Section makes a distinction between the act of the accused and its result, if any. The Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the Section. Therefore, an accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt.

12. This position was highlighted in *State of Maharashtra v. Balram Bama Patil and Ors.* (1983 (2) SCC 28), *Girija Shanker v. State of Uttar Pradesh* (2004 (3) SCC 793), *R. Parkash v. State of Karnataka* (JT 2004 (2) SC 348) and *State of M.P. v. Saleem @ Chamaru and Anr.* (2005 (5) SCC 554).

13. In *Sarju Prasad v. State of Bihar* (AIR 1965 SC 843) it was observed in para 6 that mere fact that the injury actually inflicted by the accused did not cut any vital organ of the victim, is not by itself sufficient to take the act out of the purview of Section 307.

14. Whether there was intention to kill or knowledge that death will be caused is a question of fact and would depend on the facts of a given case. The circumstances that the injury inflicted by the accused was simple or minor will not by itself rule

- A out application of Section 307 IPC. The determinative question is intention or knowledge, as the case may be, and not nature of the injury. The basic differences between Sections 333 and 325 IPC are that Section 325 gets attracted where grievous hurt is caused whereas Section 333 gets attracted if such
- B hurt is caused to a public servant.

15. Section 307 deals with two situations so far as the sentence is concerned. Firstly, 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
- C be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and secondly if hurt is caused to any person by such act the offender shall be liable either to imprisonment for life or to such
- D punishment as indicated in the first part i.e. 10 years. The maximum punishment provided for Section 333 is imprisonment of either description for a term which may extend to 10 years with a liability to pay fine.

16. It is seen that the High Court had arrived at erroneous hypothetical conclusions ignoring the fact that the nature of injuries were grievous and were caused by use of sufficient force
- E by sharp edged weapons. The injuries were so serious that both the investigating agency and the doctor felt that dying declaration was to be recorded. That being so, the High Court's conclusion that the offence under Section 307 was not made out is clearly indefensible. The order of the High Court is set aside and that of the trial Court is restored.

17. The appeal is allowed.

N.J.

Appeal allowed.