Sarju Prasad vs State Of Bihar on 20 August, 1964

Equivalent citations: AIR1965SC843, 1965(0)BLJR316, 1965CRILJ766, AIR 1965 SUPREME COURT 843, 1965 MADLJ(CRI) 446, (1965) 1 SCWR 284, 1965 CURLJ 390, 1965 SCD 281, 1965 BLJR 316, 1965 2 SCJ 126

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Bench: A.K. Sarkar, Raghubar Dayal, J.R. Mudholkar

JUDGMENT

J.R. Mudholkar, J.

1. While granting special leave in this appeal from a judgment of the Patna High Court this Court restricted it only to one question and that is whether the act of the appellant amounts to an offence under Section 307, Indian Penal Code.

2. It has been found by the courts below that on February 23, 1961 Madan Mohan Sinha (P. W. 1) and Shankar Prasad Shrivastava (P. W. 3) were attacked while they were passing through the Dharman Chowk at 1-30 P.M. by Sushil Chand Jain with a chhura as a result of which Madan Mohan and Shankar Prasad sustained grievous hurts and that these injuries were inflicted upon them by Sushil Chand with such intention or knowledge and under such circumstances that if they had resulted in death the offence would fall under Section 307, Indian Penal Code. The courts below have also found that the appellant Sarju Prasad who also participated in the incident inflicted similar injuries on Shankar Prasad with similar intention. Both Sushil Chand and the appellant Sarju Prasad were convicted by the Second Assistant Sessions Judge, Arrah under Section 324 and Section 307, I. P. C. and in respect of the latter offence sentenced to rigorous imprisonment for 7, years and to a fine. Their appeals against the conviction and sentences were dismissed by the High Court of Patna. Surju Prasad has come up to this Court by special leave. We are informed that the special leave petition preferred by Sushil from the jail was summarily rejected by this Court.

3. It is common ground that the act for which the appellant has been convicted under! Section 307 consisted of causing an injury in the vital region of Shankar Prasad's person but that no vital organ of Shankar Prasad was actually cut as a result of this injury. Learned counsel for the appellant, therefore, contends that the injury was a simple one and that as it was not such as was in the ordinary course of nature likely to result in death the offence falls not under Section 307 but under Section 324, I. p. C. According to learned counsel, before a person can be found guilty of the offence of an attempt to commit murder the prosecution must establish that the actual act which the assailant is shown to have committed was such as would in the ordinary course of nature have resulted in death and that here as the injury was a simple one, no vital organ of Shankar Prasad

having been damaged, it does not fall within the purview of Section 307, I. P. C. It was no doubt held in Reg v. F. Cassidy, 4 Bom HC (Cr.) 17 which was followad in Martu v. Emperor, 15 Bom LR 991 that for a person, to be convicted under Section 307, I. P. C. the act done must be an act done under such circumstances that death might be caused if the act took effect, that is to say, the act must be capable of causing death in the natural and ordinary course of things. But these decisions were not followed by the same High Court in Wasudeo Balwant Gogte v. Emperor, ILR 56 Bom 434 : (AIR 1932 Bom 27.9). There is a large body of decisions of other High Courts to the same effect as the decision in Gogte's case, ILR 56 Bom 434 : (AIR 1932 Bom 279). There, Beaumont C. J. referring to Cassidy's case, 4 Bom HC (Cr.) 17 has observed:

> "If the reasoning of the learned Judges in that case be right as to the construction of Section 307 and if the act committed by the accused must be an act capable of causing death in the ordinary course, it seems to me that logically the section could never have any effect at all. If an act is done which in; fact does not cause death, it is impossible to say that that precise act might have caused death. There must be some change in the act to produce a different result, and the extent to which the act done must be supposed to be varied to produce the hypothetical death referred to in Section 307 is merely a question of degree. If a man points at his enemy a gun which he believes to be loaded but which in fact is not loaded intending to commit murder (which is Cassidy's case), it is no doubt certain that no death will result from the act. But equally certain is it that no death will result if the accused fires a revolver at his enemy in such circumstances that in fact, whether through defect of aim, or the activity of the target, the bullet and the intended victim will not meet. If, however, Section 307 does not cover the case of a man who fires a gun at his enemy with intent to kill him but misses his aim, it is difficult to see how the section can ever have any operation."

4. After pointing out that this decision was not followed by the Allahabad High Court in Queen Empress v. Niddha, ILR 14 All 38 the learned Chief Justice continued:

> "The words 'under such circumstances' refer to acts which would introduce a defence to a charge of murder, such as, for instance, that the accused was acting in self-defence or in the course of military duty. But if you have an act done with a sufficiently guilty intention and knowledge and in circumstances which do not from their nature afford a defence to a charge of murder, and if the act is of such a nature as would have caused death in the usual course of events but for something beyond the accused's control which prevented that result, then it seems to me that the case falls within Section 307."

5. Thus according to the learned Chief Justice the act to fall within Section 301 must be such that but for the intervention of some circumstance it would, if completed, have resulted in, death. There is no evidence in this case that a fatal injury or an injury to a vital organ was prevented by any intervening circumstance.

6. All these decisions were considered by this Court in Om Prakash v. State of Punjab, and though Cassidy's case, 4 Bom HC (Cr.) 17 was not expressly dissented from the actual view taken by this Court is more in consonance with the view taken by Beaumont C. J. in Gogte's case, ILR 56 Bom 434 : (AIR 1932 Bom 279) and the view taken by the Allahabad High Court in Niddha's Case, ILR 14 All 38 than that taken in Cassidy's case, 4 Bom HC (Cr.) 17. In Gogte's case, ILR 56 Bom 434: (AIR 1932 Bom 219) no injury was in fact occasioned to the victim Sir Earnest Hotson, the then acting Governor, due to a certain obstruction. Even so, the assailant Gogte was held by the court to be jointly (sic) under Section 307 because his act of firing a shot was committed with a guilty intention and knowledge and in such circumstances that but for the intervening fact it would have amounted to murder in the normal course of events. This view was approved by this Court. Therefore, the mere fact that the injury actually inflicted by the appellant did not cut any vital organ of Shankar Prasad is not by itself sufficient to take the act out of the purview of Section 307.

7. Having said all this we must point out that the burden is still upon the prosecution to establish that the intention of the appellant in causing the particular injury to Shankar Prasad was of any of the three kinds referred to in Section 300, Indian Penal Code. For, unless the prosecution discharges the burden the offence under Section 307, I. P. C. cannot possibly be brought home to the appellant The state of the appellant's mind has to be deduced from the surrounding circumstances and as Mr. Kohli rightly says the existence of a motive to cause the death of Shankar Prasad would have been a relevant circumstance. Here, the prosecution has led no evidence from which it could be inferred that the appellant had a motive to kill the victim of his attack. On the other hand he points out that as the appellant had no enmity with Shankar Prasad that neither of them even knew each other and that as the appellant inflicted the injury on Shankar Prasad only to make him release the wrist of Sushil while Sushil was in the act of stabbing Madan Mohan he cannot be said to have had the motive to kill Shankar Prasad and, therefore, no intention to cause murder or to cause any injury which may result in death could be inferred. Now, it is the prosecution case that about a week before the incident Sushil, for certain reasons, had given a threat to Madan Mohan to the effect that he would be taught a lesson and according to the prosecution Sushil and the appellant Sarju were lying in wait for Madan, Mohan in the chowk on the day in question with chhuras with the intention of murdering him. The prosecution wants us to infer that these two persons also had the intention of murdering any one who went to the rescue of Madan Mohan. It seems to us that from the facts established it cannot be said that the appellant had the intention of causing the death of Shankar Prasad or of any one who went to Madan Mohan's rescue. If such were his intention then another significant fact would have possibly, though not necessarily, deterred him and that is that Madan Mohan and Shankar Prasad were not the only persons there at that time but were accompanied by some other persons. Moreover the incident occurred in broad day light in a chowk which must be a well-frequented area. It is not easy to assume that in such circumstances the appellant could have intended to commit a crime for which the law has provided capital punishment.

8. The only other question then is whether the appellant intended to cause such in jury as he knew to be likely to cause death or intended to inflict an injury which was sufficient in the ordinary course of nature to cause death or that he knew that his act was so imminently dangerous that it must in all probability cause death or cause an injury as is likely to cause death.

9. It is true that the witnesses say that the appellant used a chhura. It is also true, that the injury was inflicted on a vital part of the body but the fact remains that no vital organ of the body was injured thereby. Again, we do not know how big the chhura was and, therefore, it cannot be said that it was sufficiently for to penetrate the abdomen deep enough to cause an injury to a vital organ which would in the ordinary course of nature be fatal. The chhura could not be recovered but the prosecution should at least have elicited from the witnesses particulars about its size. We are, therefore, unable to say with anything near certainty that the appellant had such intention or knowledge. Incidentally we may point out that Shankar Prasad does not say that after he released the wrist of Sushil the appellant inflicted or even tried to inflict any further injury on him.

10. In this state of the evidence we must hold that the prosecution has not established that the offence committed by the appellant falls squarely under Section 307, I. P. C. In our opinion, it amounts only to an offence under Section 324, I. P. C.

11. Mr. Kohli then brings to our notice the fact that the appellant is below 21 years of age and that, therefore, Section 6 of the Probation of Offenders Act, 1958 precludes the Court from sentencing him to a term of imprisonment in respect of an offence which is not punishable with death or imprisonment for life. This Act has been applied to the State of Bihar vide: Notification No. DPS/118-JL dated June 4, 1959. Therefore, as was done by this Court in Ramji Missar v. State of Bihar, we, while allowing the appeal partially, remand the matter to the High Court to consider the appropriate order to be passed by applying the provisions of Section 6 of the Probation of Offenders Act.