

A THE STATE OF MADHYA PRADESH

v.

KANHA @ OMPRAKASH

(Criminal Appeal No. 1589 of 2018)

B FEBRUARY 04, 2019

**[DR. DHANANJAYA Y CHANDRACHUD
AND M. R. SHAH, JJ.]**

- Penal Code, 1860 – ss.307 and 324 – Conversion of conviction u/s.307 to s.324 – When perverse – As per prosecution,*
- C *altercation took place between two parties – Respondent with intention to kill one ‘DS’, shot him with a fire-arm and caused bleeding injuries on his right thigh – Respondent convicted u/s.307, IPC – High Court converted the conviction of the respondent from that u/s.307 to s.324, IPC – Propriety of – Held: Evidence establishes that the injuries were caused by a fire-arm – Multiplicity of wounds indicate that the respondent fired at the injured more than once, the fact that hurt has been caused by the respondent is sufficiently proven – Proof of grievous or life-threatening hurt is not a sine qua non for the offence u/s. 307, IPC – Lack of forensic evidence to prove grievous or life-threatening injury cannot be a basis to hold that s.307, IPC is inapplicable – In the present case, the nature of the injuries shows that there were eleven punctured wounds – Weapon of offence was a firearm – Presence of 11 punctured and bleeding wounds as well as the use of a fire arm leave no doubt that there was an intention to murder – Thus, the second part of s.307, IPC is attracted in the present case – Judgment of the High Court overlooks material parts of the evidence and suffers from perversity – Judgement of the High Court set aside and the order of conviction by the Trial court u/s.307, IPC is restored.*
- D *that the injuries were caused by a fire-arm – Multiplicity of wounds indicate that the respondent fired at the injured more than once, the fact that hurt has been caused by the respondent is sufficiently proven – Proof of grievous or life-threatening hurt is not a sine qua non for the offence u/s. 307, IPC – Lack of forensic evidence to prove grievous or life-threatening injury cannot be a basis to hold that s.307, IPC is inapplicable – In the present case, the nature of the injuries shows that there were eleven punctured wounds – Weapon of offence was a firearm – Presence of 11 punctured and bleeding wounds as well as the use of a fire arm leave no doubt that there was an intention to murder – Thus, the second part of s.307, IPC is attracted in the present case – Judgment of the High Court overlooks material parts of the evidence and suffers from perversity – Judgement of the High Court set aside and the order of conviction by the Trial court u/s.307, IPC is restored.*
- E *that the injuries were caused by a fire-arm – Multiplicity of wounds indicate that the respondent fired at the injured more than once, the fact that hurt has been caused by the respondent is sufficiently proven – Proof of grievous or life-threatening hurt is not a sine qua non for the offence u/s. 307, IPC – Lack of forensic evidence to prove grievous or life-threatening injury cannot be a basis to hold that s.307, IPC is inapplicable – In the present case, the nature of the injuries shows that there were eleven punctured wounds – Weapon of offence was a firearm – Presence of 11 punctured and bleeding wounds as well as the use of a fire arm leave no doubt that there was an intention to murder – Thus, the second part of s.307, IPC is attracted in the present case – Judgment of the High Court overlooks material parts of the evidence and suffers from perversity – Judgement of the High Court set aside and the order of conviction by the Trial court u/s.307, IPC is restored.*
- F *that the injuries were caused by a fire-arm – Multiplicity of wounds indicate that the respondent fired at the injured more than once, the fact that hurt has been caused by the respondent is sufficiently proven – Proof of grievous or life-threatening hurt is not a sine qua non for the offence u/s. 307, IPC – Lack of forensic evidence to prove grievous or life-threatening injury cannot be a basis to hold that s.307, IPC is inapplicable – In the present case, the nature of the injuries shows that there were eleven punctured wounds – Weapon of offence was a firearm – Presence of 11 punctured and bleeding wounds as well as the use of a fire arm leave no doubt that there was an intention to murder – Thus, the second part of s.307, IPC is attracted in the present case – Judgment of the High Court overlooks material parts of the evidence and suffers from perversity – Judgement of the High Court set aside and the order of conviction by the Trial court u/s.307, IPC is restored.*

Allowing the appeal, the Court

- G **HELD:** 1.1 The evidence establishes that the injuries were caused by a fire-arm. The multiplicity of wounds indicates that the respondent fired at the injured more than once. The fact that hurt has been caused by the respondent is sufficiently proven. Proof of grievous or life-threatening hurt is not a sine qua non for the offence under Section 307 of the Penal Code. The lack of
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forensic evidence to prove grievous or a life-threatening injury cannot be a basis to hold that Section 307 is inapplicable. The intention of the accused can be ascertained from the actual injury, if any, as well as from surrounding circumstances. Among other things, the nature of the weapon used and the severity of the blows inflicted can be considered to infer intent. [Paras 11, 16][1080-D; 1081-D-E]

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1.2 In the present case, the nature of the injuries shows that there were eleven punctured wounds. The weapon of offence was a firearm. The presence of 11 punctured and bleeding wounds as well as the use of a fire arm leave no doubt that there was an intention to murder. Thus, the second part of Section 307 of the Penal Code is attracted in the present case. The judgement of the High Court overlooks material parts of the evidence and suffers from perversity. The judgement of the High Court is set aside and the order of conviction by the Trial court under Section 307 of the Penal Code is restored. [Paras 17, 18][1082-C-D]

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State of Maharashtra v. Balram Bama Patil (1983) 2 SCC 28; State of M P v. Saleem (2005) 5 SCC 554 : [2005] 1 Suppl. SCR 562; Jage Ram v. State of Haryana (2015) 11 SCC 366 : [2015] 11 SCR 1004; Pasupuleti Siva Ramakrishna Rao v. State of Andhra Pradesh (2014) 5 SCC 369 : [2014] 1 SCR 1139 – relied on.

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Case Law Reference

(1983) 2 SCC 28	relied on	Para 11
[2005] 1 Suppl. SCR 562	relied on	Para 11
[2015] 11 SCR 1004	relied on	Para 11
[2014] 1 SCR 1139	relied on	Para 16

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CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1589 of 2018.

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From the Judgment and Order dated 02.12.2011 of the High Court of Madhya Pradesh, Bench at Gwalior in Criminal Appeal No. 830 of 2004

Ms. Bansuri Swaraj, Raghunatha Sethupathy, Gagan Narang, Ms. Arshiya Ghose, B.N. Dubey, Mukesh Kumar, Santanu Singh,

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- A Mrs. Swarupama Chaturvedi, Advs. for the Appellant.
Prashant Shukla, Ms. Anushree Mishra, Digant Kallol Deo,
Akshay Kumar, Pashupathi Nath Razdan, Advs. for the Respondent.
- The Judgment of the Court was delivered by
- B **DR. DHANANJAYA Y CHANDRACHUD, J.** 1. Delay condoned.
- C 2. This appeal is by the State against the judgment and order dated 2 December 2011 of the High Court of Madhya Pradesh at its Gwalior Bench. The High Court converted the conviction of the respondent under Section 307 of the Indian Penal Code ('Penal Code') to Section 324 of the Indian Penal Code and sentenced him to imprisonment for forty days, undergone by him, with a fine of Rs 3,000.
- D 3. According to the prosecution, on 8 October 2003, an altercation took place between two parties. The respondent, with an intention to kill one Dashrath Singh, shot him with a fire-arm and caused bleeding injuries on his right thigh. The brother of Dashrath Singh filed a complaint on the same day at the Gwalior Police Station. It was stated in the complaint that there was enmity between the parties over a love marriage which was opposed by the families as well as a dispute over a disc cable connection business. The allegation against the accused was
- E that armed with deadly weapons, they formed an illegal assembly with a common motive of causing harm to the injured. The charge-sheet was filed under Sections 147 and 307 read with 149 and 323 of the Penal Code. The respondent was found guilty of the offence under Section 307 of the Penal Code and was sentenced to undergo rigorous imprisonment for three years along with a fine of Rs 1,000 by the Trial Court. Seven other co-accused were acquitted of all the charges levelled against them.
- F 4. The respondent preferred an appeal before the High Court. The High Court converted the conviction of the respondent from that under Section 307 to Section 324 of the Penal Code and sentenced him to imprisonment for forty days, which had already been undergone by him, with a fine of Rs 3,000.
- G 5. The State has preferred this appeal, by Special Leave.
- H 6. We have heard learned counsel for the State and learned counsel appearing for the respondent.

7. Learned counsel appearing for the State submitted that the High Court based its judgment on a manifestly incorrect appreciation of the evidence. Eleven punctured wounds of sizes varying from 0.4 x 0.5 cm to 0.4 x 0.6 cm were found on the body of the injured by Dr P K Mishra (PW 1). These injuries were stated to have been caused by a firearm six hours prior to the medical examination. It is urged by the learned counsel for the State that the High Court has failed to consider the evidence before it. The nature of injuries as well as the weapon of offence clearly prove an intention to commit murder and the hurt caused satisfies the ingredients of Section 307 of the Penal Code. Hence the appeal deserves to be allowed.

8. On the other hand, learned counsel appearing for the respondent submits that the nature of the injuries was not explained in the evidence of the prosecution. Neither Dr PK Mishra (PW1) nor Dr Amar Mukund Tiwari (PW2) gave their opinion about the nature of the injuries and there was no evidence to prove that the injuries caused to Dashrath Singh were grievous in nature or life-threatening. Hence, it is urged by the learned counsel that they are simple injuries. It was further submitted that since the injuries were caused by an instrument of shooting, the offence will fall under Section 324 instead of 307 of the Penal Code.

9. The High Court accepted the contention of the respondent that the nature of injuries was not conclusively proved. The High Court held that in the absence of evidence that the injuries were grievous or dangerous to life, they were simple in nature. In the view of the High Court, the offence will fall under Section 324 instead of Section 307 of the Penal Code.

10. Section 307 of the Penal Code reads thus:

“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.

Attempts by life convicts.—When any person offending under this section is under sentence of imprisonment for life, he may, if

- A hurt is caused, be punished with death.

Illustrations

- (a) *A* shoots at *Z* with intention to kill him, under such circumstances that, if death ensued, *A* would be guilty of murder. *A* is liable to punishment under this section.
- B (b) *A*, with the intention of causing the death of a child of tender years, exposes it in a desert place. *A* has committed the offence defined by this section, though the death of the child does not ensue.
- C (c) *A*, intending to murder *Z*, buys a gun and loads it. *A* has not yet committed the offence. *A* fires the gun at *Z*. He has committed the offence defined in this section, and, if by such firing he wounds *Z*, he is liable to the punishment provided by the latter part of the first paragraph of this section.
- D (d) *A*, intending to murder *Z*, by poison, purchases poison and mixes the same with food which remains in *A*'s keeping; *A* has not yet committed the offence in this section. *A* places the food on *Z*'s table or delivers it to *Z*'s servants to place it on *Z*'s table. *A* has committed the offence defined in this section."
- E The first part of Section 307 refers to "an act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder". The second part of Section 307, which carries a heavier punishment, refers to 'hurt' caused in pursuance of such an 'act'.
- F 11. Several judgements of this Court have interpreted Section 307 of the Penal Code. In **State of Maharashtra v Balram Bama Patil**¹, this Court held that it is not necessary that a bodily injury sufficient under normal circumstances to cause death should have been inflicted:
- G "9...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

H ¹(1983) 2 SCC 28

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 this 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.”

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(Emphasis supplied) D
This position in law was followed by subsequent benches of this Court. In **State of M P v Saleem**², this Court held thus:

“13. 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.”**

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(Emphasis supplied)

In **Jage Ram v State of Haryana**³, this Court held that to establish the commission of an offence under Section 307, it is not essential that a fatal injury capable of causing death should have been inflicted:

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“12. For the purpose of conviction under Section 307 IPC, the prosecution has to establish (i) the intention to commit murder; and (ii) the act done by the accused. The burden is on the

²(2005) 5 SCC 554

³(2015) 11 SCC 366

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- A 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.”

The above judgements of this Court lead us to the conclusion that proof of grievous or life-threatening hurt is not a *sine qua non* for the offence under Section 307 of the Penal Code. The intention of the accused can be ascertained from the actual injury, if any, as well as from surrounding circumstances. Among other things, the nature of the weapon used and the severity of the blows inflicted can be considered to infer intent.

- E 12. The Trial court based its conviction on the evidence adduced at the trial. PW1, Dr P K Mishra had examined the injured on 8 October 2003 and found 11 punctured wounds of sizes varying from 0.4 x 0.5 cm to 0.4 x 0.6 cm. The injuries were bleeding, but no blackness was present. He noted that the wounds were caused by a fire arm and were inflicted in six hours before the examination. The witness stated that the confirmation of the injuries depended on the X-Ray report and expert opinion of the ward doctor. The report of the Radiologist (PW2) stated that he had observed multiple small rounded radio opaque shadows of metallic density. This is indicative of the presence of firearm injuries.

- G 13. Based on the evidence of the witnesses, the Trial court came to the conclusion that the injuries were caused by the respondent. Dashrath Singh (PW11) deposed that the respondent shot at him in the right thigh with a country rifle. The complainant (PW12) stated that the respondent fired at PW11 with a deliberate intention to kill him. The ocular evidence is cogent and corroborated by the medical evidence.

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14. Based on the evidence on record, the Trial court held that it could not be proved that the other accused had a common intention of causing injuries or death upon Dashrath Singh. Thus, the co-accused were acquitted of charges.

15. The Trial court found that PW4, PW8 and PW13, who were present near the place of incident, had sustained injuries. The witnesses had admitted that they were hit by bullet shots. The court concluded that it was established that at the date, time and venue of the said incident, a fire arm had been used and the afore-mentioned witnesses had also suffered bullet injuries. The Court held that it was substantiated that the shots fired by the respondent first hit the injured Dashrath Singh. The injured Dashrath Singh had stated that the house of the respondent was 40-50 metres from the spot where the incident took place. It was held that in such circumstances if a fire arm is shot at such a distance, the shot gets dispersed and may hit persons in the vicinity. There existed a longstanding dispute between the parties with regard to the business of cable discs and an altercation took place with regard to it. In the quarrel that ensued, the respondent fired at Dashrath Singh, injuring him.

16. The evidence establishes that the injuries were caused by a fire-arm. The multiplicity of wounds indicates that the respondent fired at the injured more than once. The fact that hurt has been caused by the respondent is sufficiently proven. The lack of forensic evidence to prove grievous or a life-threatening injury cannot be a basis to hold that Section 307 is inapplicable. This proposition of law has been elucidated by a two-judge bench of this Court in **Pasupuleti Siva Ramakrishna Rao v State of Andhra Pradesh⁴:**

“18. There is no merit in the contention that the statement of medical officer that there is no danger to life unless there is dislocation or rupture of the thyroid bone due to strangulation means that the accused did not intend, or have the knowledge, that their act would cause death. The circumstances of this case clearly attract the second part of this section since the act resulted in Injury 5 which is a ligature mark of 34 cm × 0.5 cm. **It must be noted that Section 307 IPC provides for imprisonment for life if the act causes “hurt”. It does not require that the hurt should be grievous or of any particular degree.** The intention to cause death is clearly attributable to the accused since

⁴(2014) 5 SCC 369

- A the victim was strangulated after throwing a telephone wire around his neck and telling him that he should die. We also do not find any merit in the contention on behalf of the accused that there was no intention to cause death because the victim admitted that the accused were not armed with weapons. Very few persons would normally describe the Thums up bottle and a telephone wire used, as weapons. That the victim honestly admitted that the accused did not have any weapons cannot be held against him and in favour of the accused.” (Emphasis supplied)

17. In the present case, the nature of the injuries shows that there were eleven punctured wounds. The weapon of offence was a firearm.
- C The circumstances of the case clearly indicate that there was an intention to murder. The presence of 11 punctured and bleeding wounds as well as the use of a fire arm leave no doubt that there was an intention to murder. Thus, the second part of Section 307 of the Penal Code is attracted in the present case. The judgement of the High Court overlooks
- D material parts of the evidence and suffers from perversity.

18. Hence, we set aside the judgement of the High Court and restore the order of conviction by the Trial court under Section 307 of the Penal Code as well as the sentence awarded of rigorous imprisonment of 3 years and a fine of Rs 1000. The appeal is, accordingly allowed.
- E The respondent shall forthwith surrender to serve out the sentence. A copy of the judgment shall be forwarded by the Registry to the Chief Judicial Magistrate concerned to secure compliance.

Divya Pandey

Appeal allowed.