

A STATE OF MADHYA PRADESH

v.

HARJEET SINGH & ANR.

(Criminal Appeal No. 1190 of 2009)

B FEBRUARY 19, 2019

[L. NAGESHWARA RAO AND INDU MALHOTRA, JJ.]

Penal Code, 1860 – ss.307 & 324 – Complainant case was that he and his brothers were attacked by accused/respondent No.1, accused/respondent no.2 and an unidentified person – Complainant alleged that accused/respondent No.1 stabbed him several times with a knife – Trial court convicted the accused/respondent no.1 u/s.307 IPC and accused/respondent No.2 was convicted u/s. 307 r/w. 34 IPC – High Court converted the conviction of the accused/respondent no.1 from s.307 IPC to s.324 IPC and accused/respondent No.2 was acquitted – On appeal, held: In instant case, a perusal of facts and the record clearly indicate that the prosecution has proved beyond reasonable doubt that accused/respondent No.1 had inflicted four injuries on the complainant by using a knife – The multiple blows inflicted would prove the intention of causing bodily injury likely to cause death of the victim – Stabbing a person with a knife, near his vital organs would in most circumstances lead to the death of the victim, thereby falling squarely within the meaning of s.307 IPC – The findings of the High Court that injuries inflicted were on ‘unimportant parts’ of the complainant’s body was erroneous – Thus, judgment of the High Court qua accused/respondent No.1 set aside – Insofar, accused/respondent No.2 is concerned, the High Court was right that there was lack of consistency in the deposition of the prosecution witnesses with respect to the role of the accused/respondent No.2 – Thus, Judgment of High Court qua respondent No.2 confirmed.

G **Disposing of the appeal, the Court**

HELD: 1. In the present case, a perusal of the facts and the record clearly indicate that the prosecution has proved beyond reasonable doubt that Accused /Respondent No. 1 had inflicted four injuries, on the Complainant by using a knife. The oral

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testimonies of P.W. 4 and P.W. 5 – the brothers of the Complainant who were eye witnesses, stood corroborated by the medical evidence. [Para 5.1] [572-B-C] A

2. The act of stabbing a person with a sharp knife, which is a dangerous weapon, near his vital organs, would ordinarily lead to the death of the victim. The weapon of offence was a 4-inch long knife which is a dangerous weapon. The Accused / Respondent No. 1 had assaulted the Complainant with the said knife, and inflicted multiple injuries on his chest, scapula, back, and buttocks. The multiple blows inflicted by the Accused / Respondent No. 1 would prove the intention of causing bodily injury likely to cause the death of the victim. Stabbing a person with a knife, near his vital organs would in most circumstances lead to the death of the victim, thereby falling squarely within the meaning of Section 307. Section 307 uses the term “hurt” which has been explained in Section 319, I.P.C.; and not “grievous hurt” within the meaning of Section 320 I.P.C. If a person causes hurt with the intention or knowledge that he may cause death, it would attract Section 307. [Para 5.6] [573-C-F] B C D

3. If the assailant acts with the intention or knowledge that such action might cause death, and hurt is caused, then the provisions of Section 307 I.P.C. would be applicable. There is no requirement for the injury to be on a “vital part” of the body, merely causing ‘hurt’ is sufficient to attract S. 307 I.P.C. [Para 5.6] [574-C-D] E

4. In the Impugned Judgment, the High Court incorrectly held that the Prosecution has been unable to prove that the Accused /Respondent No. 1 had the intention to commit murder of the Complainant. The motive of assault by the Accused/ Respondent No. 1 on the Complainant-P.W. 2 was clearly established by the Prosecution, since there was an existing dispute which was the subject matter of a court case. It is evident from the evidence adduced before the Court, and the circumstances surrounding the case, that the prosecution has been able to prove the case against Accused /Respondent No. 1 beyond reasonable doubt. The prosecution has successfully proved that the Accused /Respondent No. 1 had attempted to F G

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- A murder the Complainant and the requirements of Section 307 are made out from the ocular evidence which are corroborated by the medical evidence. [Paras 5.8 and 5.9] [575-D-G]

5. In so far as the case against Accused /Respondent No. 2 is concerned; the prosecution has not been able to prove beyond reasonable doubt the charge under Section 307 r. w. Section 34 I.P.C. The High Court has rightly held that there is lack of consistency in the deposition of the Prosecution witnesses with respect to the role of the Accused /Respondent No. 2. [Para 7] [576-C]

- C *R. Prakash v. State of Karnataka* (2004) 9 SCC 27; [2004] 2 SCR 281; *Jage Ram v. State of Haryana* (2015) 11 SCC 366 : [2015] 11 SCR 1004; *State of M.P. v. Kanha @ Omprakash* 2019 (2) SCALE 454 – relied on.

- D *State of Madhya Pradesh v. Mohan & Ors*, (2013) 14 SCC 116 : [2013] 7 SCR 802 – referred to.

Case Law Reference

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|---|--------------------|-------------|----------|
| | [2004] 2 SCR 281 | relied on | Para 5.6 |
| E | [2013] 7 SCR 802 | referred to | Para 5.6 |
| | [2015] 11SCR 1004 | relied on | Para 5.6 |
| | 2019 (2) SCALE 454 | relied on | Para 5.6 |

- F CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1190 of 2009.

From the Judgment and Order dated 03.01.2006 of the High Court of Madhya Pradesh, Jabalpur, Bench at Gwalior in Criminal Appeal No. 657 of 1998.

- G Varun K. Chopra, Mrs. Swarupama Chaturvedi, Gurtej Pal Singh, B. N. Dubey, Mukesh Kumar, Ms. Indira Bhakar, Ms. Aparna Trivedi, Shantanu Singh, Advs. for the Appellant.

Sanjiv Das, Ekansh Bansal, Parmanand Gaur, Advs. for the Respondents.

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The Judgment of the Court was delivered by

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INDU MALHOTRA, J. 1. The present Criminal Appeal has been filed by the State of Madhya Pradesh against the judgment and order dated 03.01.2006 passed by the Gwalior Bench of the Madhya Pradesh High Court, in Criminal Appeal No. 657/1998. The Criminal Appeal was filed by the Respondents against their conviction under Section 307 of the Indian Penal Code (hereinafter referred to as “Section 307”). The High Court reduced the conviction of the Respondents from Section 307 to Section 324 of the Indian Penal Code (hereinafter referred to as “Section 324”).

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2. The facts of the case, briefly stated, are as under:

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2.1 The case of the Complainant – Sukhdev, as recorded in the F.I.R., is that on 12.11.1997 the Complainant-Sukhdev along with his brothers – Balveer Yadav and Deshraj Yadav, had gone to the District Court, Ashok Nagar to attend the hearing of their case against Accused /Respondent No. 1 – Harjeet Singh. After the hearing, at around noon, the Complainant –Sukhdev and his brothers crossed the road, and were standing in front of the Jail, when Ramji Lal – Accused /Respondent No. 2 alongwith an unidentified assailant called Sardar caught hold of Balveer Yadav and Deshraj Yadav. The Accused /Respondent No. 1– Harjeet Singh grabbed the Complainant – Sukhdev, and stabbed him several times with a knife, inflicting blows on the chest, scapula, back, and hips.

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Accused /Respondent Nos. 1 and 2, alongwith Sardar ran away from the spot. The Complainant – Sukhdev further stated that he would be able to identify Harjeet Singh, and the two assailants once he sees them.

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2.2 Immediately after the assault on 12.11.1997, the Complainant – Sukhdev was admitted to the Civil Hospital, Ashok Nagar for treatment.

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2.3 The medical examination of the Complainant – Sukhdev was conducted by Dr. M. Bhagat–P.W.6 at the Civil Hospital, Ashok Nagar, which recorded the following injuries :

(i) Stab Wound – 3.5 x 1 cm –deep in the chest cavity, over the left side of the chest.

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- A (ii) Spindle shaped incised wound – 3 x 2 cm –muscle deep, present on the upper region of the right buttocks.
- (iii) Stab Wound – 2 x 1 cm – over sub-scapula region, left side. Bleeding was present.

- B (iv) Stab Wound – 1 x 1 cm – over illeal region of hip, left side. Bleeding was present.

The medical report further stated that the injuries were caused by a sharp-edged, pointed object.

- C 2.4 The Complainant – Sukhdev was referred to the District Hospital, Guna wherein X-Ray of his chest region was conducted by P.W. 8 – Dr. Raghuvanshi. The Report states that there was "*haziness in lungs, left side of chest, present due to trauma of chest*".

- D Dr. Raghuvanshi – P.W. 8 stated in his deposition that the lungs of the Complainant – Sukhdev suffered injury, which resulted in blood seeping in the lungs, leading to haziness in the X-Ray image.

- E 2.5 On 24.11.1997, the Accused /Respondent Nos. 1 and 2 were arrested by the Police. The weapon of offence *i.e.* the knife allegedly used by Accused /Respondent No. 1 was recovered from the bushes next to the bridge, on the statement given by Accused /Respondent No. 1.

- F 2.6 The Spot Map of the crime scene was prepared, samples of blood-stained soil, and ordinary soil, were recovered from the scene of the crime.

- F 2.7 The Accused /Respondent No. 1 was charged under Section 307, while Accused /Respondent No. 2 was charged under Section 307 read with Section 34 of the I.P.C.

- G 2.8 The case was registered as Case No. 10/98 before the First Addl. Sessions Judge, Ashok Nagar, Guna District, Madhya Pradesh (Sessions Court).

- H 2.9 The Sessions Court *vide* Judgment dated 30.11.1998, found Accused /Respondent Nos. 1 and 2 guilty of the offence of 'attempt to murder'. The findings of the Sessions Court were as follows:

- i. The Complainant –Sukhdev, and his brothers – Deshraj Yadav and Balveer Yadav who were eye-witnesses of the crime, and were present at the scene of occurrence, and were examined by the Court as P.W.s 2, 4, and 5 respectively. Their evidence was held to be reliable, and was corroborated by the examination of P.W. 3 – an independent witness who was an Advocate. P.W. 3 appeared before the Court, and deposed that on 12.11.1997 he heard a commotion outside the Court. On reaching the spot, he found the Complainant – Sukhdev (P.W. 2) lying in a pool of blood. On further inquiry, he was told that the Accused /Respondent No. 1 – Harjeet Singh had stabbed the Complainant – Sukhdev (P.W. 2) multiple times.
- ii. The medical evidence was held to be sufficient to prove that the injuries inflicted by Accused /Respondent No. 1 upon the Complainant – Sukhdev (P.W. 2) could be fatal.
- iii. With respect to Accused /Respondent No. 2 – Ramji Lal, the F.I.R. stated that the Accused /Respondent No. 2 along with an unidentified Sardar held the brothers of the Complainant (P.W.s 4 and 5), while the Accused /Respondent No. 1 stabbed the Complainant – Sukhdev (P.W. 2) multiple times.
- iv. During the trial, the Complainant – Sukhdev (P.W. 2) deposed that Accused /Respondent No. 2 – Ramji Lal grabbed him when Accused /Respondent No. 1 – Harjeet Singh stabbed him multiple times.
- v. The Sessions Court held the prosecution had proved the case beyond reasonable doubt.

It was held that the Accused /Respondent No. 2 would be equally guilty. The common intention of Accused /Respondent No.2 was proved by the assistance provided by him to Accused / Respondent No. 1, in committing the offence.
- vi. The Sessions Court convicted the Accused /Respondent No. 1 under Section 307, sentencing him to 5 years R.I. along with a Fine of Rs. 1000/-.

Accused /Respondent No. 2 was convicted under Section 307 read with Section 34 I.P.C. and sentenced to 5 years R.I. along with a fine of Rs. 1000/-.

- A 2.10 Both the Accused /Respondents filed a common appeal to challenge their conviction by the judgment dated 30.11.1998 before the Madhya Pradesh High Court being Criminal Appeal No. 657/1998.
- B 2.11 The Madhya Pradesh High Court *vide* Impugned Judgment dated 03.01.2006 partly allowed the Appeal filed by the Accused / Respondents. It was held that the Complainant – Sukhdev (P.W. 2) had nowhere stated in his deposition/evidence that the intention of the Accused /Respondents was to commit murder.
- C The High Court held that the Complainant – Sukhdev (P.W. 2) suffered four injuries. One of the injuries was on the left side of the chest. The depth of this injury was upto the cavity over the left side of the chest, but the lung was not affected. The other three injuries sustained by the Complainant – Sukhdev, are on the back, and the hips. The Accused /Respondents having an intention to commit murder would never cause injuries over such “unimportant” parts of the body.
- D It was also noted that the knife by which the injuries were allegedly inflicted had a blade of five fingers which could not be more than four inches.
- E With regard to the liability of the Accused /Respondent No. 2 – Ramji Lal, the High Court held that there appears to be lack of consistency in the statements of the Complainant – Sukhdev and his two brothers who were eye-witnesses :
- F a. The first version of the Complainant – Sukhdev (P.W. 2) which has been written in the *Dehati Nalsi*, is that the Accused /Respondent No. 2 –Ramji Lal, and one unknown Sardar both caught hold of his two brothers. It is not mentioned in this document that Accused /Respondent No. 2 – Ramji Lal or the other unknown Sardar, caught hold of him
- G at the time of the incident. Conversely, in paragraph 2 of his statement, the Complainant – Sukhdev has stated that he was held by Accused /Respondent No. 2 – Ramji Lal at the time of the incident, and in paragraph 5 he has stated that after sustaining the injuries of the knife, Accused /Respondent
- H No. 2 caught hold of his brother Deshraj (P.W. 4).

b. On the other hand, Deshraj Yadav (P.W. 4) – the first brother of the Complainant – Sukhdev, has stated that he was being held by one unknown Sardar and not by Accused / Respondent No. 2. A

c. Balveer Yadav (P.W. 5) – the second brother of the Complainant – Sukhdev, has stated that he was being held by Accused / Respondent No. 2 – Ramji Lal and his brother was held by one unknown Sardar. B

The High Court found that there was no consistency in the deposition of P.Ws 2, 4, and 5 read with the F.I.R. Considering these circumstances, it was held that there could be no presumption that Accused / Respondent No. 2 – Ramji Lal had committed any act having a common intention with the Accused / Respondent No. 1 – Harjeet Singh, in causing the injuries to the Complainant – Sukhdev (P.W. 2). C

The mere fact that Accused / Respondent No. 2 had accompanied Accused / Respondent No. 1 cannot raise the presumption of having common intention. D

It was further held that it was not justifiable to conclude that the Accused / Respondents had any intention to commit murder, or cause such injury which could have been deemed as sufficient to cause death in the ordinary course of nature. At most, the act of causing the injuries could be held punishable under Section 324, I.P.C. as punishment for voluntarily causing simple hurt. E

The High Court converted the conviction of Accused / Respondent No. 1 from Section 307 to Section 324 I.P.C. and reduced the sentence to one year R.I. and a Fine of Rs. 1,000. The period already undergone would be adjusted in the sentence awarded to him. F

Accused / Respondent No. 2 was acquitted and his conviction from the charge of Section 307 was set-aside.

3. The State filed the present Special Leave Petition, against the Judgment and Order of the Madhya Pradesh High Court dated 03.01.2006. Special leave to appeal was granted *vide* Order dated 08.07.2009. G

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A 4. We have heard learned Counsel for both the parties, considered the submissions, and perused the evidence record.

5. FINDINGS AND ANALYSIS

B 5.1 In the present case, a perusal of the facts and the record clearly indicate that the prosecution has proved beyond reasonable doubt that Accused /Respondent No. 1 –Harjeet Singh had inflicted four injuries, on the Complainant by using a knife.

C The oral testimonies of Deshraj Yadav (P.W. 4) and Balveer Yadav (P.W. 5) – the brothers of the Complainant – Sukhdev who were eye witnesses, stood corroborated by the medical evidence.

D 5.2 The prosecution also examined an independent witness – Advocate(P.W. 3), who had come to the Court, and after hearing the commotion, reached the site of occurrence, where he found the Complainant – Sukhdev lying in a pool of blood along with his brothers – P.W.s 4 and 5. The independent witness – Advocate (P.W. 3) deposed that on enquiring further about the matter, he was informed by P.W.s 4 and 5 – the brothers of the complainant – Sukhdev, that Accused / Respondent No. 1 – Harjeet Singh had attacked and stabbed the Complainant.

E 5.3 Dr. Raghuvanshi – the Radiologist (P.W. 8) has stated in his deposition that the injury caused to the Complainant - Sukhdev in the chest had resulted in blood seeping into the lungs. The Medical Report records that the first stab wound was inflicted on the chest of the Complainant, which injured his lung, and caused bleeding. Hence, the finding of the High Court that the stab wound on the chest remained upto the depth of the cavity over left side of the chest and the lungs were not affected, is factually incorrect, and contrary to the medical record.

F 5.4 The Accused /Respondent No. 1 inflicted other stab wounds on the scapula, which were bleeding even at the time when the Complainant – Sukhdev (P.W. 2) was examined at the Hospital. There was also a stab wound present on the upper region of the right buttock, and another one over the illeal region of the left hip which was bleeding at the time of the medical examination.

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The injuries inflicted on the Complainant – Sukhdev (P.W. 2) have been corroborated by the medical evidence on the basis of the medical reports and the depositions of Dr. Bhagat (P.W. 6) and Dr. Raghuvanshi (P.W. 8). A

Dr. Raghuvanshi (P.W. 8) has stated that the blood seeping in the left lung of the Complainant – Sukhdev (P.W. 2), was due to the injury sustained on the chest. Such an injury could not be considered to be an injury on an “unimportant part” of the body. B

The findings of the High Court that the injuries inflicted were on “unimportant parts” of the Complainant’s body, is erroneous.

5.5 The act of stabbing a person with a sharp knife, which is a dangerous weapon, near his vital organs, would ordinarily lead to the death of the victim. C

The weapon of offence was a 4-inch long knife which is a dangerous weapon. The Accused /Respondent No. 1 had assaulted the Complainant with the said knife, and inflicted multiple injuries on his chest, scapula, back, and buttocks. The multiple blows inflicted by the Accused /Respondent No. 1 would prove the intention of causing bodily injury likely to cause the death of the victim. Stabbing a person with a knife, near his vital organs would in most circumstances lead to the death of the victim, thereby falling squarely within the meaning of Section 307. D E

5.6 Section 307 uses the term “hurt” which has been explained in Section 319, I.P.C.; and not “grievous hurt” within the meaning of Section 320 I.P.C. F

If a person causes hurt with the intention or knowledge that he may cause death, it would attract Section 307.

This Court in *R. Prakash v. State of Karnataka*,¹ held that :

“...*The first blow was on a vital part, that is on the temporal region. Even though other blows were on non-vital parts, that does not take away the rigor of Section 307 IPC..... It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overtact in execution* G

¹(2004) 9 SCC 27

A *thereof. 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*
 B *may even, in some cases, be ascertained without any reference at all to actual wounds. The Sections 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.”*

C (emphasis supplied)

If the assailant acts with the intention or knowledge that such action might cause death, and hurt is caused, then the provisions of Section 307 I.P.C. would be applicable. There is no requirement for the injury to be on a “vital part” of the body, merely causing ‘hurt’ is sufficient to attract S. 307 I.P.C.²

D This Court in *Jage Ram v. State of Haryana*³ held that:

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

F *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.”*

G (emphasis supplied)

² *State of Madhya Pradesh v. Mohan & Ors* (2013) 14 SCC 116

³ (2015) 11 SCC 366

This Court in the recent decision of *State of M.P. v. Kanha @ Omprakash*⁴ held that: A

“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.” B

(emphasis supplied) C

5.7 In view of the above-mentioned findings, it is evident that the ingredients of Section 307 have been made out, as the intention of the Accused /Respondent No. 1 can be ascertained clearly from his conduct, and the circumstances surrounding the offence. D

5.8 In the Impugned Judgment, the High Court incorrectly held that the Prosecution has been unable to prove that the Accused / Respondent No. 1 had the intention to commit murder of the Complainant. The motive of assault by the Accused / Respondent No. 1 on the Complainant –Sukhdev (P.W. 2) was clearly established by the Prosecution, since there was an existing dispute which was the subject matter of a court case. E

5.9 It is evident from the evidence adduced before the Court, and the circumstances surrounding the case, that the prosecution has been able to prove the case against Accused /Respondent No. 1 beyond reasonable doubt. We find that the prosecution has successfully proved that the Accused /Respondent No. 1 – Harjeet Singh had attempted to murder the Complainant – Sukhdeo and the requirements of Section 307 are made out from the ocular evidence which are corroborated by the medical evidence. F

5.10 In view of the above-mentioned discussion, the High Court was in error in reducing the sentence of Accused /Respondent No. 1 – Harjeet Singh from Section 307 I.P.C. to Section 324 I.P.C., and sentencing him to 1 year R.I. along with Fine of Rs. 1,000. G

⁴Criminal Appeal No. 1589/2018, decided on 04.02.2019. H

- A 6. The present Criminal Appeal is partially allowed. The judgment of the High Court *qua* Accused /Respondent No. 1, is set-aside, and the sentence awarded to him by the Sessions Judge *vide* Judgment dated 30.11.1998 is restored. The Accused /Respondent No. 1 is directed to undergo the remainder of the 5 year Sentence awarded by the Sessions Court, and surrender before the Sessions Court, Ashok Nagar, Guna, M.P. within 2 weeks from the date of this Judgment.
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- C 7. In so far as the case against Accused /Respondent No. 2 – Ramji Lal is concerned; the prosecution has not been able to prove beyond reasonable doubt the charge under Section 307 r. w. Section 34 I.P.C. The High Court has rightly held that there is lack of consistency in the deposition of the Prosecution witnesses with respect to the role of the Accused /Respondent No. 2 – Ramji Lal.

We affirm the judgment of the High Court *qua* Accused No. 2, and confirm the Order of acquittal passed in his favour on 03.01.2006.

- D The Criminal Appeal along with all pending Applications, if any, are disposed of in the above terms.

Ordered accordingly.