

CASE DETAILS

SIVAMANI AND ANR.

v.

STATE REPRESENTED BY INSPECTOR OF POLICE, VELLORE
TALUK POLICE STATION, VELLORE DISTRICT

(Criminal Appeal No. 3619 of 2023)

NOVEMBER 28, 2023

[VIKRAM NATH AND AHSANUDDIN AMANULLAH, JJ.]

HEADNOTES

Issue for consideration: Victims sustained simple injuries. Whether Courts below were justified in convicting appellants u/s. 307 IPC.

Penal Code, 1860 – ss. 323, 324 and 307 – Trial Court convicted appellants (accused Nos.3 and 4) u/s. 307, IPC and sentenced to 10 years’ rigorous imprisonment – High Court reduced the imprisonment from 10 years to 5 years – Propriety:

Held: PW1 and accused no.1 had a dispute concerning a lane between their houses – A civil case regarding the same was also pending between them – Accused nos. 1, 2 and 5 along with appellants (accused Nos.3 and 4) reached the shop of PW1 – Accused No.2 is stated to have abused PW1 and beaten him – The appellants (accused Nos.3 and 4) tried to attack PW1 with a knife, but PW1 escaped from their attack and caught hold of the appellants’ hands, as a result of which, sustained abrasion injuries on his right shoulder and left thumb – PW2 (PW1’s mother) was also injured – PW13 (doctor) found injuries to be simple in nature – Having considered the facts and circumstances of the case the impugned judgment of the High Court requires to be interfered with – Admittedly, there is no allegation of repeated or severe blows having been inflicted – Even the injuries on PW1 and PW2 have been found to be simple in nature, which is an additional point in the appellants’ favour – From the materials available on record, only offences u/ss. 323 and 324 of the IPC can be made out – As such, the conviction u/s. 307, IPC is unsustainable. [Paras 5, 6, 9, 10, 11]

LISTS OF CITATIONS AND OTHER REFERENCES

State of Madhya Pradesh 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; *State of Madhya Pradesh v Kanha*, (2019) 3 SCC 605: [2019] 1 SCR 1074 – referred to.

OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.3619 of 2023.

From the Judgment and Order dated 06.08.2021 of the High Court of Judicature at Madras in CRLA No.228 of 2015.

Appearances:

S. Nagamuthu, Sr. Adv., M. P. Parthiban, Ms. Priyaranjani Nagamuthu, R. Sudhakaran, G. R. Vikash, Bilal Mansoor, Advs. for the Appellants.

Dr. Joseph Aristotle S., Ms. Shubhi Bhardwaj, Ms. Vaidehi Rastogi, Advs. for the Respondent.

JUDGMENT / ORDER OF THE SUPREME COURT**JUDGMENT****AHSANUDDIN AMANULLAH, J.**

1. Heard learned counsel for the parties.

2. Leave granted.

3. The present appeal is directed against the Final Order and Judgment dated 06.08.2021 (hereinafter referred to as the “Impugned Judgment”) passed by the High Court of Judicature at Madras (hereinafter referred to as the “High Court”) in Criminal Appeal No.228 of 2015, whereby the appeal filed by the appellants against their conviction by the Trial Court under Section 307 of the Indian Penal Code, 1860 (hereinafter referred to as the “IPC”) and imposition of fine of Rs.1000/- each has been confirmed, but the sentence of 10 years Rigorous Imprisonment has been reduced to 5 years Rigorous Imprisonment.

THE FACTUAL PRISM:

4. The appellants along with three others were named by the Complainant in First Information Report No.409/12 dated 15.09.2012 under Sections 294(b), 323, 324, 452 and 307 read with 109 of the IPC accusing them of a conspiracy to cause the death of the Complainant. Upon trial, the Accused Nos.1, 2 and 5 were acquitted and the appellants, who were Accused Nos.3 and 4 were convicted under Section 307, IPC and sentenced to 10 years' Rigorous Imprisonment and fined Rs.1000/- each. The appeal preferred by the appellants before the High Court did not succeed in full, and only resulted in the sentence of Rigorous Imprisonment being reduced from 10 years to 5 years. This gives rise to the present appeal.

SUBMISSIONS BY THE APPELLANTS:

5. Learned counsel for the appellants submitted that the case of the prosecution is that there was previous enmity between the Complainant-Prakash alias Chinnaraj/PW1 and Accused No.1. He detailed the prosecution story as follows. It was submitted that PW1 and Accused No.1 had a dispute concerning a lane between their houses. A civil case in such respect was also pending between them. During the pendency of the suit, an Advocate Commissioner was appointed through the Court, who measured the land in dispute and allotted portions to Accused No.1 and PW1. PW1 had put up fencing within the portion allotted to him, and on account of this, Accused No.1 used to quarrel with him. Fifteen days prior to the incident, Accused No.1 had removed the fencing and again picked up a quarrel with PW1 and threatened to kill him. Pursuant thereto, Accused No.1 conspired with the Accused Nos.2, 3, 4 and 5 to put an end to the life of PW1. Consequently, on 15.09.2012, while PW1 was in his grocery shop, on the instigation of Accused No.1, Accused Nos.2 and 5 along with the appellants (Accused Nos.3 and 4) reached the shop. Accused No.2 is stated to have abused PW1 in filthy and obscene language and beaten him with force on his cheek by hand. The appellants tried to attack PW1 with a knife, but PW1 escaped from their attack and caught hold of the appellants' hands, as a result of which, sustained abrasion injuries on his right shoulder and left thumb. On hearing this alarm, PW2-Indirani (PW1's mother) came to his rescue and at that time, the Accused No.5 attacked her with a cold drink bottle on her back, causing a simple injury. Meanwhile, the neighbours came to the

scene of occurrence and tried to save PW1 and on seeing them, the Accused Nos.2 and 5 escaped in an auto-rickshaw. The appellants were caught by the villagers and were tied to a streetlamp post. Thereafter, they were produced before the respondent-police by the villagers.

6. However, it was pointed out that the allegations against all the accused being more or less similar in nature, the appellants could not have been convicted under Section 307, IPC as the doctor (PW13) itself found the injuries to be simple in nature and not on any vital part of the body. Moreover, it was submitted that there was no intention to kill; neither there were repeated blows, nor was it pre-planned, when admittedly there was a civil suit pending between Accused No.1 and PW1. It was submitted that even the prosecution story would indicate that a quarrel had arisen between the Accused No.1 and PW1, due to which a complaint to the police was made by PW1, which further aggravated the enmity. The appellants are alleged to have come to the shop of the Complainant, when he was alone, armed with one knife each and attempted to attack the complainant on his neck but he managed to escape unhurt. It was submitted that had the appellants come with the motive to kill both PW1 and PW2 and were armed with knives, they could easily have ensured the death of the Complainant. Learned counsel submitted that in any view of the matter, there could have been some justification to proceed against the appellants under Sections 323 and 324 of the IPC but not under Section 307, IPC, as has been done. It was submitted that the two victims had sustained only simple injuries, whereas one victim-PW2 had complained that she had fallen upon being attacked on her back but she did not sustain any extraordinary injury and even that was found to be simple in nature. Likewise, the other victim PW1 sustained abrasion injuries on his right shoulder and left thumb which are simple in nature.

SUBMISSIONS OF THE RESPONDENT-STATE/POLICE:

7. Learned counsel for the State submitted that the appellants being armed with knives (one each) clearly indicates that they intended to kill and it was only due to providence that their lives were saved.

ANALYSIS, REASONING AND CONCLUSION:

8. Section 307, IPC reads as under:

'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 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) *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) *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) *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.'*

9. In *State of Madhya Pradesh v Saleem*, (2005) 5 SCC 554, the Court held that to sustain a conviction under Section 307, IPC, it was not necessary that a bodily injury capable of resulting in death should have been inflicted. As such, non-conviction under Section 307, IPC on the premise only that simple injury was inflicted does not follow as a matter of course. In the same judgment, it was pointed out that '...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.' The position that because a fatal injury was not sustained alone does not dislodge Section 307, IPC conviction has been reiterated in **Jage Ram v State of Haryana, (2015) 11 SCC 366** and **State of Madhya Pradesh v Kanha, (2019) 3 SCC 605**. Yet, in **Jage Ram** (*supra*) and **Kanha** (*supra*), it was observed that while grievous or life-threatening injury was not necessary to maintain a conviction under Section 307, IPC, '*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.'*

10. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, this Court is convinced that the Impugned Judgment of the High Court requires to be interfered with. Admittedly, there is no allegation of repeated or severe blows having been inflicted. Even the injuries on PW1 and PW2 have been found to be simple in nature, which is an additional point in the appellants' favour.

11. We are further inclined to accept the submissions of the learned counsel for the appellants that from the materials on record, only offences under Sections 323² and 324³ of the IPC can be made out. As such, the conviction under Section 307, IPC is unsustainable.

12. In the background of the discussions made hereinabove and on taking an overall view, the Impugned Judgment is varied only to the extent

1 Para 13 of **Kanha** (*supra*).

2 323. *Punishment for voluntarily causing hurt.*—Whoever, except in the case provided for by Section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.'

3 '324. *Voluntarily causing hurt by dangerous weapons or means.*—Whoever, except in the case provided for by Section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.'

SIVAMANI v. STATE REPRESENTED BY INSPECTOR OF POLICE, 855
VELLORE TALUK POLICE STATION, VELLORE DISTRICT
[AHSANUDDIN AMANULLAH, J.]

that the conviction of the appellants stands modified to that under Sections 323 and 324 of the IPC and the sentence imposed is also reduced to the period already undergone. The fine imposed is maintained. The appellants stand discharged of the liabilities of their bail bonds, if any.

13. The appeal is disposed of accordingly.

Headnotes prepared by:
Ankit Gyan

Appeal disposed.