Sadakat Kotwar vs The State Of Jharkhand on 12 November, 2021

Author: M. R. Shah

Bench: A.S. Bopanna, M. R. Shah

[REPORTABLE]

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 1316 of 2021

Sadakat Kotwar and Anr. …Appellant(s)

Versus

The State of Jharkhand …Respondent(s)

JUDGMENT

M. R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 01.07.2019 passed by the High Court of Jharkhand at Ranchi in Criminal Appeal (SJ) No.393 of 2004 by which the High Court has upheld the conviction of the appellants herein for the offences under Section 307 read with Section 34 of the IPC, the original accused have preferred the present appeal.

2. We have gone through the impugned judgment and order passed by the High Court as well as the judgment and order passed by the learned Trial Court convicting the accused for the offences under Section 307 read with Section 34 of the IPC. The prosecution as such has examined in all 10 witnesses in support of the case of the prosecution, out of which, there are two injured eye-witnesses PW7 and PW8. Both of them have supported the case of the prosecution. Even the other witnesses examined by the prosecution i.e. PW1, PW2, PW4 and PW10 are consistent in their statements and have fully supported the case of the prosecution. The prosecution has been successful in proving the case against the accused that Appellant No.2 - Refaz Kotwar stabbed PW8 - Mohd. Jamil Kotwar with a dagger on the right side of his stomach and on left ribs and that PW7 was also stabbed by Appellant No.1

- Sadakat Kotwar with a dagger in her ribs. We see no reason to doubt the testimony of the witnesses examined on behalf of the prosecution more particularly, PW7 and PW8 who are the injured eye-witnesses. It is required to be noted that PW7 and PW8 are the injured eye-witnesses. As held by this Court in the case of State of M.P. vs. Mansingh, (2003) 10 SCC 414 para 9, the evidence of an injured eye-witness has great evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly. There are concurrent findings recorded by the courts below holding the appellants – original accused guilty which do not require any interference by this Court in exercise of powers under Article 136 of the Constitution of India.

3. Now so far as the submissions on behalf of the appellants that at the most the case may fall under Section 323 of the IPC and therefore, the courts below have erred in convicting the accused for the offence under Section 307 IPC is concerned, it is the case on behalf of the appellants that it was a case of single blow/injury. However, it is required to be noted that the injury of a single blow was on the vital part of the body i.e. stomach and near chest. Nature of the injury is a grievous injury caused by a sharp cutting weapon. The following injuries were found on Jamil Kotwar:

> "Incised wound 1"x1"x muscle deep with Haematoma formation 4"x3" area in 4th and 5th inter costal space in mid axillary region of left axial." The following injuries were found on Samsera Bibi:
>
> "Incised wound 1"x1/2"x pleura deep in 8th inter costal space mid clericular line of left half of chest." Thus, the nature of injuries was found to be grievous caused by sharp cutting instrument.

4. In the case of Mahesh Balmiki vs. State of M.P., (2000) 1 SCC 319 in paragraph 9 it is held as under:

> "9 . ... there is no principle that in all cases of a single blow Section 302 Indian Penal Code is not attracted. A single blow may, in some cases, entail conviction Under Section 302 Indian Penal Code, in some cases Under Section 304 Indian Penal Code and in some other cases Under Section 326 Indian Penal Code. The question with regard to the nature of offence has to be determined on the facts and in the circumstances of each case. The nature of the injury, whether it is on the vital or non-vital part of the body, the weapon used, the circumstances in which the injury is caused and the manner in which the injury is inflicted are all relevant factors which may go to determine the required intention or knowledge of the offender and the offence committed by him. In the instant case, the deceased was disabled from saving himself because he was held by the associates of the Appellant who inflicted though a single yet a fatal blow of the description noted above. These facts clearly establish that the Appellant had the intention to kill the deceased. In any event, he can safely be attributed the knowledge that the knife- blow given by him was so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death." 4.1 It is not the case of the accused that the offence occurred out of a sudden quarrel. It also does not appear that the blow was stuck in the heat of the

> moment. On the contrary, considering the depositions of PW7 and PW8 the accused persons pushed and took the husband of PW7 out of the house and thereafter the accused caused the injuries on PW7 and PW8 and stabbed dagger. Thus, deadly weapons have been used and the injuries are found to be grievous in nature. As the deadly weapon has been used causing the injury near the chest and stomach which can be said to be on vital part of the body, the appellants have been rightly convicted for the offence under Section 307 read with Section 34 of the IPC. As observed and held by this Court in catena of decisions nobody can enter into the mind of the accused and his intention has to be ascertained from the weapon used, part of the body chosen for assault and the nature of the injury caused. Considering the case on hand on the aforesaid principles, when the deadly weapon – dagger has been used, there was a stab injury on the stomach and near the chest which can be said to be on the vital part of the body and the nature of injuries caused, it is rightly held that the appellants have committed the offence under Section 307 IPC.

5. We are in complete agreement with the view taken by the learned Trial Court as well as the High Court. Now so far as the reliance placed upon the decision of this Court in Jai Narain Mishra and Ors. Vs. State of Bihar, (1971) 3 SCC 762 is concerned, on facts such decision shall not be applicable more particularly considering the subsequent decisions as well as the weapon used, nature of injuries caused on the vital part of the body.

In view of the above and for the reasons stated hereinabove, the present appeal fails and the same deserves to be dismissed and is accordingly dismissed.

.....J. [M. R. Shah] .....J. [A.S. BOPANNA] New Delhi, November 12, 2021