Om Parkash vs The State Of Punjab on 24 April, 1961

Equivalent citations: 1961 AIR 1782, 1962 SCR (2) 254

Author: Raghubar Dayal

Bench: Raghubar Dayal

PETITIONER:
OM PARKASH

Vs.

RESPONDENT:
THE STATE OF PUNJAB

DATE OF JUDGMENT:
24/04/1961

BENCH:
DAYAL, RAGHUBAR
BENCH:
DAYAL, RAGHUBAR
SUBBARAO, K.

CITATION:
1961 AIR 1782 1962 SCR (2) 254
CITATOR INFO :
R 1965 SC 843 (6)

ACT:
Criminal Law-Attempt to murder-Accused attempting to starve a person gradually to accelerate his death-Ingredients of the offence-Indian Penal Code (Act 45 of 1860), ss. 307, 308, 511.

HEADNOTE:
B was married to the appellant in October, 1951, but their relations got strained by 1953. She was ill-treated and her health deteriorated due to maltreatment and under-nourishment. In 1956 she was deliberately starved and not allowed to leave the house in which they were living and only sometimes a morsel or so used to be thrown to her as alms are given to beggars. On June 5,1956, she managed to escape from the house and went to the Civil Hospital at Ludhiana. Her brother came down to Ludhiana on learning of the facts and made a complaint to the police. The doctor who attended on B sent a note to the police saying that she was seriously

ill and might collapse any moment. The appellant was prosecuted for the offence of attempting to murder B under s. 307 Of the Indian Penal Code. The trial Court acquitted him but, on appeal, the High Court came to a finding, on the evidence, that the object of the appellant was to confine B and deprive her of regular food in pursuance of a scheme of regular starvation in order to accelerate her end, and convicted him under S. 307 Of the Indian Penal Code. On behalf of the appellant it was contended, inter alia, that whereas under S. 511 Of the Code for an Act to amount to the offence of attempting to commit an offence it need not be the last act and can be the first act towards the commission of the offence, under S. 307 it is the last act which, if effective to cause death, would constitute the offence of an attempt to commit murder, and that even if B had been deprived of food for a certain period, the act of so depriving her did not come under s. 307 as that act could not, by itself have caused her death, it being necessary for the period of starvation to continue for a longer period to cause death.

Held, that a person commits an offence under s. 307 Of the Indian Penal Code when he has an intention to commit murder and in pursuance of that intention does an act towards its commission irrespective of the fact whether that act is the penultimate act or not.

Abhayanand Mishra v. The State of Bihar, [1962] 2 S.C.R. 241, followed.

Rex v. White, [1910] 2 K.B. 124, relied on.

Queen v. Nidha, [1892] I.L.R. 14 All. 38 and Emperor v. Vasudeo Balwant Gogte, (1932) I.L.R. 56 BOM. 434, considered,

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Jeetmal v. State, A.I.R. 1950 Madhya Bharat 21, disapproved.

The word 'act' in S. 307 did not mean only a particular act of a person, but denoted, according to S. 33 Of the Code, as well, a series of acts.

In the present case the course of conduct adopted by the appellant in regularly starving his wife B, comprised a series of acts which though they fell short of completing the series sufficient to kill her, came within the purview Of S. 307 Of the Indian Penal Code. The High Court was, therefore, right in convicting the appellant under that section.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 177 of 1959.

Appeal by special leave from the judgment and order dated May 23, 1958, of the Punjab High Court in Criminal Appeal No. 515 of 1957.

Jai Gopal Sethi and R. L. Kohli, for the appellant. B. K. Khanaa, R. H. Debhar and D. Gupta, for the respondent. -

1961. April 24. The Judgment of the Court was delivered by RAGHUBAR DAYAL, J.-This appeal, by special leave, is against the order of the Punjab High Court dismissing the appellant's appeal against his conviction under s. 307, Indian Penal Code.

Bimla Devi, P. W. 7, was married to the appellant in October, 1951. Their relations got strained by 1953 and she went to her brother's place and stayed there for about a year, when she returned to her husband's place at the assurance of the appellant's maternal uncle that she would not be maltreated in future. She was, however, ill-treated and her health deteriorated due to alleged maltreatment and deliberate undernourishment. In 1956, she was deliberately starved and was not allowed to leave the house and only sometimes a morsel or so used to be thrown to her as alms are given to beggars. She was denied food for days together and used to be given gram husk mixed in water after five or six days. She managed to go out of the house in April 1956, but Romesh Chander and Suresh Chander, brothers of the appellant, caught hold of her and forcibly dragged her inside the house where she was severely beaten. Thereafter, she was kept locked inside a room.

On June 5, 1956, she happened to find her room unlocked, her mother-in-law and husband away and, availing of the opportunity, went out of the house and managed to reach the Civil Hospital, Ludhiana, where she met lady Doctor Mrs. Kumar, P. W. 2, and told her of her sufferings. The appellant and his mother went to the hospital and tried their best to take her back to the house, but were not allowed to do so by the lady Doctor. Social workers got interested in the matter and informed the brother of Bimla Devi, one Madan Mohan, who came down to Ludhiana and, after learning all facts, sent information to the Police Station by letter on June 16, 1956. In his letter he said:

> "My sister Bimla Devi Sharma is lying in death bed. Her condition is very serious. I am told by her that deliberate attempt has been made by her husband, mother-in-law and brother-in-law and sister-in-law. I was also told that she was kept locked in a room for a long time and was beaten by all the above and was starved.
>
> I therefore request that a case may be registered and her statement be recorded, immediately."

The same day, at 9-15 p.m., Dr. Miss Dalbir Dhillon sent a note to the police saying 'My patient Bimla Devi is actually ill. She may collapse any moment'.

Shri Sehgal, Magistrate, P.W. 9, recorded her statement that night and stated in his note:

> "Blood transfusion is taking place through the right forearm and consequently the right hand of the patient is not free. It is not possible to get the thumb impression of the right hand thumb of the patient. That is why I have got her left hand thumb-impression."

The impression formed by the learned Judge of the High Court on seeing the photographs taken of Bimla Devi a few days later, is stated thus in the judgment:

> "The impression I formed on looking at the two photographs of Bimla was that at that time she appeared to be suffering from extreme emaciation. Her cheeks appeared to be hollow. The projecting bones of her body with little flesh on them made her appearance skeletal. The countenance seemed' to be cadaverous."

After considering the evidence of Bimla Devi and the Doctors, the learned Judge came to the conclusion:

> "So far as the basic allegations are concerned, which formed the gravamen of the offence, the veracity of her statement cannot be doubted. After a careful scrutiny of her statement, I find her allegations as to starvation, maltreatment, etc., true. The exaggerations and omissions to which my attention was drawn in her statement are inconsequential."

After considering the entire evidence on record, the learned Judge said:

> "After having given anxious thought and careful consideration to the facts and circumstances as emerge from the lengthy evidence on the record, I cannot accept the argument of the learned counsel for the accused, that the condition of acute emaciation in which Bimla Devi was found on 5th of June, 1956, was not due to any calculated starvation but it was on account of prolonged illness, the nature of which was not known to the accused till Dr. Gulati had expressed his opinion that she was suffering from tuberculosis."

He further stated:

> "The story of Bimla Devi as to how she was illtreated, and how, her end was attempted to be brought about or precipitated, is convincing, despite the novelty of the method in which the object was sought to be achieved. The conduct of the accused and of his mother on 5th of June, 1956, when soon after Bimla Devi's admission in the hospital they insisted on taking her back home, is significant and almost tell-tale. It was not for better treatment or for any treatment that they wanted to take her back home. Their real object in doing so could be no other than to accelerate her end."

The appellant was acquitted of the offence under s.342, Indian Penal Code, by the Additional Sessions Judge, who gave him the benefit of doubt, though he had come to the conclusion that Bimla Devi's movements were restricted to a certain extent. The learned Judge of the High Court considered this question and came to a different conclusion. Having come to these findings, the learned Judge considered the question whether on these facts an offence under s. 307, Indian Penal Code, had been established or not. He held it proved.

Mr. Sethi, learned counsel for the appellant, has challenged the correctness of this view in law. He concedes that it is only when a person is helpless and is unable to look after himself that the person having control over him is legally bound to look after his requirements and to see that he is adequately fed. Such persons, according to him, are infants, old people and lunatics. He contends that it is no part of a husband's duty to spoon-feed his wife,, his duty being simply to provide funds and food. In view of the finding of the Court below about Bimla Devi's being confined and being deprived of regular food in pursuance of a scheme of regularly starving her in order to accelerate her end, the responsibility of the appellant for the condition to which she was brought up to the 5th of June, 1956, is clear. The findings really go against any suggestion that the appellant had actually provided food and funds for his wife Bimla Devi.

The next contention for the appellant is that the ingredients of an offence under s. 307 are materially different from the ingredients of an offence under s. 511, Indian Penal Code. The difference is that for an act to amount to the commission of the offence of attempting to commit an offence, it need not be the last act and can be the first act towards the commission of the offence, while for an offence under s. 307, it is the last act which, if effective to cause death, would constitute the offence of an attempt to commit murder. The contention really is that even if Bimla Devi had been deprived of food for a certain period, the act of so depriving her does not come under s. 307, as that act could not, by itself, have caused her death, it being necessary for the period of starvation to continue for a longer period to cause death. We do not agree with this contention.

Section 307 of the Indian Penal Code reads:

> "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. When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death."

Section 308 reads:

> "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 culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."

Both the sections are expressed in similar language. If s. 307 is to be interpreted as urged for the appellant, s. 308 too should be interpreted that way. What-' ever may be said with respect to s. 307, being exhaustive or covering all the cases of attempts to commit murder and s. 511 not applying to

any case of attempt to commit murder on account of its being applicable only to offences punishable with imprisonment for life or imprisonment, the same cannot be said with respect to the offence of attempt to commit culpable homicide punishable under s. 308. An attempt to commit culpable homicide is punishable with imprisonment for a certain period and therefore but for its being expressly made an offence under s. 308, it would have fallen under s. 511 which applies to all attempts to commit offences punishable with imprisonment where no express provisions are made by the Code for the punishment of that attempt. It should follow that the ingredients of an offence of attempt to commit culpable homicide not amounting to murder should be the same as the ingredients of an offence of attempt to commit that offence under s. 511. We have held this day in Abhayanand Mishra v. The State of Bihar (1) that a person commits the offence of attempting to commit a particular offence, when he intends to commit that particular offence and, having made preparations and with the intention to commit that offence does an act towards its commission and that such an act need not be the penultimate act towards the commission of that offence, but must be an act during the course of committing such offence. It follows therefore that a person commits an offence under s. 308 when he has an intention to commit culpable homicide not amounting to murder and in pursuance of that intention does an act towards the commission of that offence whether that act be the penultimate act or not. On a parity of reasoning, a person commits an offence under s. 307 when he has an intention to commit murder and, in pursuance of that intention, does an act towards its commission irrespective of the fact whether that act is the penultimate act or not. It is to be clearly understood, however, that the intention to commit the offence of murder means that the person concerned has the intention to do certain act with the necessary intention or knowledge mentioned in s. 300. The intention to commit an offence is different from the intention or knowledge requisite for constituting the act as that offence. The expression 'whoever attempts to commit an offence' in s. 511, can only mean 'whoever intends to do a certain act with the intent or knowledge necessary for the commission of that offence'. The same is meant by the expression 'whoever does 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' in s. 307. This simply means that the act must be done with the (1) [1962] 2 S.C.R. 241.

intent or knowledge requisite for the commission of the offence of murder. The expression by that act' does not mean that the immediate effect of the act committed must be death. Such a result must be the result of that act whether immediately or after a lapse of time.

The word 'act' again, does not mean only any particular, specific, instantaneous act of a person, but denotes, according to s. 33 of the Code, as well, a series of acts. The course of conduct adopted by the appellant in regularly starving Bimla Devi comprised a series of acts and therefore acts falling short of completing the series, and would therefore come within the purview of s. 307 of the Code. Learned counsel for the appellant has referred us to certain cases in this connection. We now discuss them. The first is Queen Empress v. Nidha (1). Nidha, who had been absconding, noticing certain chowkidars arrive, brought up a sort of a blunderbuss he was carrying, to the hip and pulled the trigger. The cap exploded, but the charge did not go off. He was convicted by the Sessions Judge under ss. 299 and 300 read with s. 511, and not under s. 307, Indian Penal Code, as the learned Judge relied on a Bombay Case Regina v. Francis Cassidy (1)-in which it was held that in order to constitute the offence of attempt to murder, under s. 307, the act committed by the person must be

an act capable of causing, in the natural and ordinary course of events, death. Straight, J., both distinguished that case and did not agree with certain views expressed therein. He expressed his view thus, at p. 43:

> "It seems to me that if a person who has an evil intent does an act which. is the last possible act that he could do towards the accomplishment of a particular crime that he has in his mind, he is not entitled to pray in his aid an obstacle intervening not known to himself. If he did all that he could (1) (1892) I.L.R. 14 All. 38.
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> (2) (1867) Bom. H.C. Reps. Vol. IV, P. 17 (Crown Cases).

do and completed the only remaining proximate act in his power, I do not think he can escape criminal responsibility, and this because his own set volition and purpose having been given effect to their full extent, a fact unknown to him and at variance with his own belief, intervened to prevent the consequences of that act which he expected to ensue, ensuing." Straight, J., gave an example earlier which itself does not seem to fit in with the view expressed by him later. He said:

> "No one would suggest that if A intending to fire the stack of B, goes into a grocery shop and buys a box of matches, that he has committed the offence of attempting to fire the stack of B. But if he, having that intent, and having bought the box of matches, goes to the stack of B and lights the match, but it is put out by a puff of wind, and he is so prevented and interfered with, that would establish in my opinion an attempt."

The last act, for the person to set fire to the stack, would have been his applying a lighted match to the stack. Without, doing this act, he could not have set fire and, before he could do this act, the lighted match is supposed to have been put out by a puff of wind.

Illustration (d) to s. 307, itself shows the incorrectness of this view. The illustration is:

> "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."
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> A's last act, contemplated in this illustration, is not an act which must result in the murder of Z. The food is to be taken by Z. It is to be served to him. It may not have been possible for A to serve the food himself to Z, but the fact remains that A's act in merely delivering the food to the servant is fairly remote to the food being served and being taken by Z. This expression of opinion by Straight, J., was not really with reference to the offence under s. 307, but was with reference to attempts to commit any particular offence and was stated, not to emphasize the necessity of committing the last act for the commission of the offence, but in connection with the culprit taking advantage of an involuntary act thwarting the completion of his design by

making it impossible for the offence being committed. Straight, J., himself said earlier:

"For the purpose of constituting an attempt under s. 307, Indian Penal Code, there are two ingredients required, first, an evil intent or knowledge, and secondly, an act done."

In Emperor v. Vasudeo Balwant Gogte (1) a person fired several shots at another. No injury was in fact occasioned due to certain obstruction. The culprit was convicted of an offence under s. 307. Beaumont, C. J.,said at p. 438:

"I think that what section 307 really means is that the accused must do an act with such a guilty intention and knowledge and in such circumstances that but for some intervening fact the act would have amounted to murder in the normal course of events".

This is correct. In the present case, the intervening fact which thwarted the attempt of the appellant to commit the murder of Bimla Devi was her happening to escape from the house and succeeding in reaching the hospital and thereafter securing good medical treatment.

It may, however, be mentioned that in cases of attempt to commit murder by fire arm, the act amounting to an attempt to commit murder is bound to be the only and the last act to be done by the culprit. Till he fires, he does not do any act towards the commission of the offence and once he fires, and something happens to prevent the shot taking effect, the offence under s. 307 is made out. Expressions, in such cases, indicate that one commits an attempt to murder only when one has committed the last act (1) (1932) I.L.R. 56 Bom 434.

necessary to commit murder. Such expressions, however, are not to be taken as precise exposition of the law, though the statements in the context of the cases are correct. In Mi Pu v. Emperor (1) a person who had put poison in the food was convicted of an offence under s. 328 read with s. 511, Indian Penal Code, because there was no evidence about the quantity of poison found and the probable effects of the quantity mixed in the food. It was therefore held that the accused cannot be said to have intended to cause more than hurt. The case is therefore of no bearing on the question under determination.

In Jeetmal v. State (2) it was held that an act under s. 307, must be one which, by itself, must be ordinarily capable of causing death in the natural ordinary course of events. This is what was actually held in Cassidy's Case (3) and was not approved in Niddha's Case (4) or in Gogte's Case (4).

We may now refer to Rex v. White (6). In that case, the accused, who was indicted for the murder of his mother, was convicted of attempt to murder her. It was held that the accused had put two grains of cyanide of potassium in the wine glass with the intent to murder her. It was, however, argued that there was no attempt at murder because 'the act of which he was guilty, namely, the putting the poison in the wine glass, war, a completed act and could not be and was not intended by the

appellant to have the effect of killing her at once; it could not kill unless it were followed by other acts which he might never have done'. This contention was repelled and it was said:

> "There seems no doubt that the learned judge in effect did tell the jury that if this was a case of slow poisoning the appellant would be guilty of the attempt to murder. We are of opinion that this direction was right, and that the completion or attempted completion of one of a series of acts intended by a man to result in killing is an attempt (1) (1909) 10 Crl. L.J. 363. (2) A.I.R. 1950 Madhya Bharat 21.
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> (3) (1867) Bom. H. C. Reps. Vol. IV, p. 17 (Crown Cases).
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> (4) (1892) I.L.R. 14 All. 48. (5) (1032) I.L. R. 56 Bom. 434.
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> (6) (1910) 2 K. B. 124.

to murder even although this completed act would not, unless followed by the other acts, result in killing. It might be the beginning of the attempt, but would nonetheless be an attempt".

This supports our view.

We therefore hold that the conviction of the appellant under s. 307, Indian Penal Code, is correct and accordingly dismiss this appeal.

Appeal dismissed.