

Amit Rana @ Koka & Anr.

v.

The State of Haryana

(Criminal Appeal No. 700 of 2024)

22 July 2024

[C.T. Ravikumar* and Rajesh Bindal, JJ.]

Issue for Consideration

The issue before the Hon'ble Supreme Court was whether while imposing a sentence for an offence punishable under Section 307 part 2, IPC (attempt to commit murder – causing hurt to any person), a term of imprisonment beyond a period of ten years is permissible when imprisonment for life is chosen not to be given by the Courts below.

Headnotes[†]

Penal Code, 1860 – S.307 – Part II – When the Court decided not to impose a sentence of imprisonment for life – Can a sentence of rigorous imprisonment for 14 years be imposed:

Held: In case the victim suffered hurt in terms of the second part of Section 307, IPC, the convict can be sentenced to undergo imprisonment for life – But in the event the court did not consider to impose a sentence of imprisonment for life, the other option, going by the provision, is only to impose such punishment as is mentioned in the first part of Section 307, IPC – In unambiguous terms the legislature prescribed the maximum corporeal sentence imposable for the conviction under Section 307, IPC, under the first part as “imprisonment of either description for a term which may not extent to 10 years and also fine” – No appeal by the State for enhancement of punishment to imprisonment for life – Imposition of rigorous imprisonment for a term of 14 years for a conviction under Section 307, IPC, is impermissible in law and it is liable to be interfered with. [Para 7]

Penal Code, 1860 – S.307 and its rationale – Explained:

Held: Section 307, IPC imbibes the true spirit of the maxim ‘culpae poena per esto’ meaning ‘let the punishment be

* Author

Amit Rana @ Koka & Anr. v. The State of Haryana

proportionate to the offence; let the punishment fit the crime' – Three parts to the section: (1) an attempt to murder simpliciter, the offence is punishable maximum with a term of imprisonment of either description upto ten years and fine – (2) an attempt to murder causing hurt to anyone, the offence is punishable with imprisonment for life or punishment as stated hereinabove in (1); and – (3) an attempt to murder committed by life convict causing hurt of any person, the offence may be punishable with death. [Paras 3-4]

Punishment under Penal Code, 1860 – S.307 – When attracted:

Held: The offence to commit murder punishable under Section 307, IPC is constituted by the concurrence of mens rea followed by actus reus, to commit an attempt to murder though its accomplishment or sufferance of any kind of bodily injury to the victim is not a 'sine qua non' – To attract the offence, the victim need not suffer any kind of bodily injury – Causing hurt to anyone in the course of an attempt to murder is a sub-set of the offence. [Para 6]

List of Acts

The Indian Penal Code, 1860.

List of Keywords

Attempt to murder; Permissible term of imprisonment; Section 307 IPC; Hurt to victim; Maxim 'culpae poena per esto'; Murder Simpliciter.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 700 of 2024

From the Judgment and Order dated 05.07.2023 of the High Court of Punjab & Haryana at Chandigarh in CRAD No. 224 of 2020

Appearances for Parties

M.C. Dhingra, Gaurav Dhingra, Advs. for the Appellants.

Neeraj, A.A.G., Piyush Beriwal, Vedansh Anand, Rudra Paliwal, Ms. Damini Garg, Nikhil Kumar Chaubey, Dr. Monika Gusain, Advs. for the Respondent.

Digital Supreme Court Reports**Judgment / Order of the Supreme Court****Judgment****C.T. Ravikumar, J.**

Leave granted

1. The captioned appeal is filed to challenge the concurrent conviction of the appellants under Section 307 read with Section 34 of the Indian Penal Code, 1860 (for short the 'IPC') and the consequently, imposed sentence on them to undergo rigorous imprisonment for 14 years each and to pay a fine of Rs.1,50,000/- (Rupees one lakh fifty thousand only) each and in default to undergo simple imprisonment for six months.
2. On 21.11.2023, after hearing the learned counsel for the appellants and looking into the overwhelming conclusive evidence supporting the conviction of the appellants under Section 307, IPC, with the aid of Section 34, IPC, this Court declined to entertain the Special Leave Petition to the extent it seeks to challenge the conviction, and issued limited notice confining to the challenge against the award of 14 years of rigorous imprisonment for the conviction thereof. The challenge is to the effect that in terms of the provisions under Section 307, IPC a term imprisonment beyond the period of ten years is impermissible though in case of hurt during attempt to murder would make the convict liable for imprisonment for life. Hence, the scope of this appeal is confined only to the question on sentence.
3. Heard learned counsel for the appellants and learned counsel appearing for the respondent-State. The rival contention raises a question of seminal importance as mentioned, viz., 'whether a convict under Section 307, IPC, can be sentenced to undergo imprisonment, of either description, beyond the period of ten years. It is worthwhile to extract Section 307, IPC for a proper consideration of the aforesaid question. It 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,

Amit Rana @ Koka & Anr. v. The State of Haryana

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.]”

4. A perusal of Section 307, IPC, would make it clear that it really imbibes the true spirit of the maxim '*culpae poena per esto*' – means '*let the punishment be proportionate to the offence; let the punishment fit the crime.*' It itself prescribes three types of sentences imposable on a convict thereunder. If it is an attempt to murder simpliciter, the offence is punishable maximum with by a term of imprisonment of either description upto ten years and fine. The last part of Section 307 prescribes death sentence as the only punishment when the offender during the commission of the crime is under the sentence of imprisonment for life and hurt is caused to the victim.
5. We are concerned with the second part of Section 307, where victim suffers hurt. There can be no doubt with respect to the position that the convict under this part can be sentenced to undergo imprisonment for life. The parties are at issue only on the expression in the second part 'or to such punishment as is hereinbefore mentioned'. The learned counsel for the appellants would contend that the said expression limits the maximum sentence imposable, when imprisonment for life is found not to be imposed, to what is mentioned in the first part viz., imprisonment of either description up to ten years and fine. A feeble attempt was made by the learned counsel for the state to justify the imposition of sentence of imprisonment for 14 years contending that the nature of the bodily injury sustained by the victim and its aftermath were taken into consideration by the trial Court and the High Court found that imprisonment for life would be disproportionate and the proportionate punishment to the gravity of the offence invites imposition of imprisonment short of imprisonment for life. It is further submitted that when imprisonment for life is imposable for attempt to murder where the victim suffered hurt imposition of sentence lesser than imprisonment for life cannot be said to be beyond the penal power of the Court.

Digital Supreme Court Reports

6. Section 307, IPC, makes it clear that to attract the said offence the victim need not suffer any kind of bodily injury. The offence to commit murder punishable under Section 307, IPC is constituted by the concurrence of *mens rea* followed by *actus reus*, to commit an attempt to murder though its accomplishment or sufferance of any kind of bodily injury to the victim is not a '*sine qua non*'. In other words, if a man commits an act with such intention or knowledge and under such circumstances that if death had been caused, the offence would have amounted to murder or the act itself is of such a nature as would have caused death in the usual course of an event, but something beyond his control prevented that result, his act would constitute the offence punishable as an attempt to murder under Section 307, IPC.
7. Now we will refer to the incident in question which led to the conviction of the appellants under Section 307, IPC. In view of the fact that we are not considering the question of conviction, it is unnecessary to deal with the occurrence in detail. PW-5 Dr. Sahil, the then medical officer attached to PGIMS, Rohtak, deposed that the complainant (victim) was admitted in the hospital from 09.06.2016 to 02.07.2016 with history of gunshot injury. He would further depose that he along with Dr. Shubham removed the foreign body from the spine of the victim-Mangtu Ram. The indisputable fact is that the victim became paralysed due to the said spinal injury. Thus, it can be seen that the attempt to murder the complainant caused the injury and resultantly he became paralysed. When that be the consequence of the attempt to murder, the case would definitely be fallen under the second part of Section 307, IPC. On scanning the provisions under Section 307, IPC, we have already found that in case the victim suffered hurt in terms of the second part of Section 307, IPC, the convict can be sentenced to undergo imprisonment for life. In the event the court did not consider that imprisonment for life is not to be imposed the other option, going by the provision, is only to impose such punishment as is mentioned in the first part of Section 307, IPC. The first part, as noticed hereinbefore, prescribes punishment with imprisonment of either description for a term which may extend to 10 years and also to pay fine. A bare perusal of the second part of Section 307, IPC, would undoubtedly show that it did not prescribe for imposition of punishment more than what is prescribed under the first part thereof. We have already noted that the maximum imprisonment permissible

Amit Rana @ Koka & Anr. v. The State of Haryana

under the first part of Section 307, IPC, is “*imprisonment of either description for a term which may not extent to 10 years and also fine*”. When in unambiguous terms the legislature prescribed the maximum corporeal sentence imposable for the conviction under Section 307, IPC, under the first part and when the court concerned upon convicting the accused concerned thought it fit not to impose imprisonment for life, the punishment to be handed down to the convict concerned in any circumstance cannot exceed the punishment prescribed under the first part of Section 307, IPC. When this be the mandate under Section 307, IPC, the trial Court in view of its decision not to award the punishment of imprisonment for life could not have granted punishment to a term exceeding 10 years. It is to be noted that the respondent-State has not filed any appeal contending that the punishment imposed on the appellants is liable to be enhanced to imprisonment for life thus, we do not deem it necessary to go into the question whether the punishment is to be enhanced. Thus, the question is whether the sentence of rigorous imprisonment for 14 years is permissible in law and if not, what should be the comeuppance. The discussion as above with reference to Section 307, IPC, would thus go to show that imposition of rigorous imprisonment for a term of 14 years for a conviction under Section 307, IPC, is impermissible in law and it is liable to be interfered with. Since the High Court had not gone into the question as to how imprisonment for a term of 14 years or the conviction under Section 307, IPC would be maintained and in view of our conclusion as above, the judgment of the High Court confirming the judgment of the trial Court awarding rigorous imprisonment for 14 years calls for interference.

8. Since the conviction of the appellants under Section 307, IPC, is declined to be interfered with by us, necessarily the punishment for the said offence taking note of the gravity of the crime has to be imposed. Since we are not proposing to enhance the sentence to imprisonment for life and the only option is to bring down the term of imprisonment from 14 years, there is absolutely no reason to hear the appellants in-person.
9. We have taken note of the fact that as a consequence of the attempt to do away with the life of the complainant, he had suffered spine injury and became paralysed in terms of the second part of the Section 307, IPC, the appellants are to be given the maximum corporeal sentence imposable under the first part of Section 307,

Digital Supreme Court Reports

IPC. Accordingly, the imposition of rigorous imprisonment for 14 years each to the appellants is converted to rigorous imprisonment for a period of 10 years. The order of sentence with respect to fine is kept intact. The appeal is thus allowed in part and the impugned judgment of the High Court and the judgment of the trial Court in S.T. No.281/2016 *qua* the appellants stands modified as above.

- 10.** Pending applications, if any, stands disposed of.

Result of the case: Criminal Appeal partly allowed.

[†]*Headnotes prepared by:* Swathi H. Prasad, Hon. Associate Editor
(Verified by: Liz Mathew, Sr. Adv.)