

* **IN THE HIGH COURT OF DELHI AT NEW
DELHI**

+ CRL.A. 85/2000

Reserved on: October 28, 2009

Pronounced on: October 30, 2009

RAJPAL & ANR Appellants

! Through: Mr. K.B. Endley,
Advocate.

Versus

\$ STATE Respondent
^ Through: Mr. Amit Sharma, Addl.
PP for the State.

CORAM:

HON'BLE MR. JUSTICE V.K. JAIN

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

V.K.Jain, J.

This is an appeal against the judgment and Order on Sentence dated 14.1.2000 whereby the appellants Rajpal and Ramesh Kumar were convicted under Section

307 of IPC read with Section 34 thereof and were sentenced to undergo rigorous imprisonment for five years each and to pay fine of Rs. 2,000/- each or to undergo simple imprisonment for six months each, in default.

2. The case of the prosecution, as disclosed in the FIR is that one Kalawati, mother of the appellants who was also a co accused with them and was acquitted by the learned Additional Sessions Judge was a tenant under complainant Brahmdev Gupta in respect of house No. Q-10, Gali No. 10, Brahmpuri. Civil litigation was going on between the complainant and Kalawati and there was a quarrel on the day previous to the day of this incident, when the appellant Rajpal tried to take possession of some open portion of the house, on 23rd May, 1993, when the complainant entered the house, on being instigated by Kalawati, the appellant Rajpal gave danda blow on the fingers of his right hand and Kalawati herself gave danda blow on his head which he averted. Thereafter Kalawati asked Ramesh to stab him. Rajpal caught hold of him from behind and Ramesh stabbed him on the right

side of his abdomen and when he tilted in order to save himself, the knife injured right side of his abdomen.

3. During trial the injured came in the witness box as PW-2 and stated that on 23.5.93 at about 9.30 am when he came after purchasing milk, Kalawati said 'Maaro Saale Ko' and catch him. Rajpal caught hold of him while Ramesh stabbed him with knife on the right side of his abdomen. He raised alarm as a result of which his Son Ram Prakash saved him. The appellants then ran away and he was taken to hospital by his son.

4. PW-3 Ram Prakash is the son of injured. He has stated that on 23.5.93 he was reading newspaper while sitting on the roof. His father came to the house after purchasing milk. The appellant Rajpal caught hold of his father and appellant Ramesh stabbed his father with a knife on his abdomen. His father raised alarm and as soon as he came down stairs, both the appellants ran away.

5. PW-7 Dr. Balvinder Kumar has prepared MLC of PW-2. In cross examination he admitted that as per depth of the wound indicated against injury No. 1 and

correlated with x-ray, it would be treated as a Simple Incised Wound.

6. PW-9 Dr. S.C. Bhalla examined the x-ray plate of the injured and found fracture of base of third proximal phalpnx on the left palm. He also stated that there was no injury on the abdomen as per the x-ray.

7. In his statement under Section 313 Cr. P.C., the appellant Ramesh Kumar admitted that he was a tenant under the injured Brahmdev Gupta but denied having caused injury to him. The appellant Rajpal admitted that he was present in the house in question on 23.5.93 but denied the allegations against him. He stated that in the night of 2.5.93 SI Keshav Kumar, IO of this case along with Ct. Satish and Ct. Satender came to the tenanted premises. He further stated that the complainant Brahmdev Gupta and his son attacked his wife on that day. He made complaint against the investigating officer and he was then suspended and an inquiry was instituted against him.

8. DW-1 D.D. Nigam, ACP has stated that he conducted inquiry on the complaint of Rajpal and

submitted his report mark A. DW-2 Inspector Balbir Singh has proved the order of Additional Commissioner of Police Ex. DW2/A and Ex. DW2/B. These documents show that in P.E. it was found that the IO had helped the complainant in getting her house vacated from the appellant and then implicated the appellants in a false case under Section 307 of IPC.

9. A perusal of the MLC of the injured / complainant Ex. PW7/A would show that he had the following injuries (i) A CIW 7 x 1 cm right hypochondrium, (ii) tenderness right melacapoplant. When correlated with the statement of the complainant / injured Shri Brahmdev Gupta, it would show that the complainant / injured Brahmdev Gupta had two injuries (i) one on his right hand finger and the other on the right side of his stomach.

10. As regards the injury on his finger, the case of the complainant is in the FIR is that it was appellant Rajpal who caused this injury on his right hand with a danda. When the complainant came in the witness box, he did not say a word about the injury on his right hand. He did

not way that the appellant Rajpal had given a danda blow on his right hand finger. PW-3 who is the son of the complainant also did not say a word as to how his father sustained injury on his right hand finger. Thus, there is absolutely no evidence as to who caused injury on the right hand finger of the complainant. The testimony of PW-9 Dr. S.C. Bhalla coupled with his report Ex. PW9/A shows that there was a fracture on the left palm of the complainant / injured Brahmdev Gupta. In the FIR lodged by him, the complainant stated that Kalawati gave a danda blow on his head which he was able to avert. Possibly he got this fracture in order to save himself from the danda blow given by Kalawati. He does not attribute the injury on his left palm either to appellant Rajpal or to appellant Ramesh. The other possibility is that this injury was sustained by the complainant in the incident of quarrel which admittedly took place on 22nd May, 1993. Be that as it may, the fact remains that there is no evidence that the injury on the left palm of the complainant was caused by either of the appellant.

11. The only evidence which has come against the appellants is that while appellant Rajpal caught hold of

injured from behind, appellant Ramesh gave him a knife blow on the right side of his abdomen. As noted earlier, depth of the wound found on the right side of the stomach of the complainant has not been given in the MLC. PW-7 Dr. Ravinder Kumar has admitted in his cross examination that since as per x-ray report of abdomen, evidence of gas under the right dome of the diaphragm was not seen, that means the injury was not upto the peritoneum which is an internal organ. In fact, according to him they had gone for x-ray of abdomen for this very reason. He opined that since depth of the wound has not mentioned against the injury no. 1, without co relation with x ray, it would be treated as a simple incised wound. Thus the evidence produced by the prosecution proves only this much that a simple incised wound of the size of 7 cm x 1 cm was given by appellant Ramesh on the right side of the abdomen of the complainant by knife and at that time he was held by appellant Rajpal.

12. No one has told the court as to what was the size of the knife used by appellant Ramesh. The knife has not

been seized. Ordinarily only kitchen knife are likely to be available in a household.

13. In order to succeed in a charge u/s 307 of IPC, the prosecution was required to prove (i) that the death of a human being was attempted, (ii) that such death was attempted to be caused by consequence of the act of the accused and (iii) that such act was done with the intention of causing death or that it was done with the intention of causing such bodily injuries as the accused knew to be likely to cause death or was sufficient in the ordinary course of nature to cause death.

14, To justify the conviction under Section 307 of IPC it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury may often given considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deducted from other circumstances. What the court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under the circumstances mentioned in the section.

15. It was held by the Hon'ble Supreme Court in *Sanjay Kumar & Anr. Vs. State of M.P., 1994 Sup. (I) Supreme Court Cases 502* that in order to bring the case within the ambit of Section 307 of IPC, it must be shown that the accused acted with such intention or knowledge and under such circumstances that if he by that act caused death, he would be guilty of murder. In that case, six incised wounds, which were not more than half inch in size and were skin deep, were found on the body of the injured. The High Court came to the conclusion that having regard to the fact that a sharp edged cutting instrument was used and certain injuries were caused on the chest portion of the complainant, the intention of the assailant was clearly to commit murder. It was held by the Hon'ble Supreme Court that the approach of the high Court was not correct and the cases would fall within the scope of section 324 of IPC.

16. In *Hari Singh Vs. Sukhbir Singh 1988(3) Crimes 541 the Hon'ble Supreme Court* held as under:

Under Section 307 of IPC what the court has to see is, whether the act irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in that section. The intention or knowledge of the accused must be such as is necessary constitute murder. Without this ingredient being established, there can be no offence of "attempt to murder" under Section 307 of IPC the intention precedes the act attributed to accused. Therefore, the intention is to be gathered from all circumstances and not merely from the consequences that ensue. The nature of the weapon used, manner in which it is used, motive for the crime, severity of the blow the part of the body where the injury is inflicted are some of the factors that may be taken into consideration to determine the intention. Where the fight is accident allowing to a sudden quarrel, the conviction under Section 307 of IPC is generally not called for. We, therefore, see no reason to disturb the acquittal of the accused under Section 307 of IPC.

17. Since the wound caused to the complainant was superficial as is evident from its depth having not been indicated in the MLC, it cannot be said that the knife blow to the complainant was given with a substantial

force. Had that been the case, the injury would have been deep and would have reached up to the level of peritonium. The appellant gave only one knife blow to the complainant. Had his intentions been to cause death of the complainant, not only would he have give blow with substantial force, he would not have stopped at giving one blow and would have caused multiple injuries to the complainant. The appellants were tenants in a house owned by the complainant. A civil case was admittedly pending in the court. It is also not in dispute that an incident of quarrel had taken place on the previous day i.e. on 22.5.93. There must have been some quarrel on 22.5.93 when according to the complainant, the appellant Rajpal tried to take possession of some vacant portion of the house. It appears that the injury to the complainant was caused in the course of the quarrel that ensued on 23rd May, 1993 consequent to the quarrel on the previous day and keenness of the complainant to get the house vacated. The preliminary Enquiry against the IO has revealed his connivance with the complainant. Therefore it cannot be said that the intention of the appellants was to cause death of the complainant nor can

it be said that injury to him was caused with the intention to cause his death. The facts and circumstances of the case do not indicate any intention on the part of the appellants to cause such bodily injury to the complainant as was likely to cause death or as, in ordinary course would be sufficient to cause his death. Therefore conviction of the appellants under Section 307 read with Section 34 of IPC cannot be justified in the facts and circumstances of the case.

18. Since knife was used in causing injury to the complainant and a knife is an instrument of stabbing and cutting, the appellant Ramesh ought to be convicted under Section 324 of IPC. The act of the appellant Rajpal in holding the complainant when knife blow was given to him by appellant Ramesh proves that he shared a common intention with Ramesh to cause injury to the complainant with a knife. Therefore, he also is liable to be convicted under Section 324 of IPC, read with Section 34 thereof.

19. For the reasons given in the preceding paragraphs, the order of the Trial Court is modified to the extent that

both the appellants are convicted under Section 324 of the IPC r/w Section 34 thereof. During the course of arguments it was admitted by Addl. PP that the appellants have been in custody for more than six months each. Hence both of them are granted benefit of probation and shall be released on furnishing bond of peace and good conduct in the sum of Rs. 10,000/- each for a period of one year each, to the satisfaction of the trial court within one week. In the event of failure to furnish bond of peace and good behaviour in terms of this order, they shall undergo rigorous imprisonment for one year each and will also pay a fine of Rs. 5,000/- each or undergo simple imprisonment for a period of one month each in default. One copy of this order be sent to the Trial Court within three days for information and compliance. One copy be given dasti to the appellants.

(V.K. JAIN)
JUDGE

October 30, 2009/acm