

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

Decided on: 16th July, 2012

Versus

THE STATE ... Respondent
Through :Mr. Mukesh Gupta, APP

A.K. PATHAK, J. (Oral)

1. Aggrieved by his conviction under Section 307 of the Indian Penal Code, 1860 (for short “IPC”) and Sections 25 and 27 of the Arms Act, 1959 (for short “the Act”), appellant has preferred this appeal. Appellant is also dissatisfied with the quantum of sentences, as awarded by the trial court. Trial court has awarded rigorous imprisonment of five years with fine of ₹1,000/- and in default of payment of fine rigorous imprisonment for six months for the offence punishable under Section 307 IPC; Rigorous imprisonment of three years with fine of ₹1,000/- and in default of payment of fine rigorous imprisonment for three months for the offence punishable under Sections 25 and 27 of the Act. Benefit of Section 428 Cr.P.C. has been accorded to appellant.

2. Prosecution story, as unfolded, is that on 10th November,

2004 at about 8:55 PM victim Ronald Cray, General Manager of Estocorp India Private Ltd. came out of the factory for leaving to his house. His car was parked near the factory gate and when he opened the door of car he heard a gunshot and felt severe pain in his right hip. He turned back and saw the appellant with a desi katta in his hand. He called guard Ram Baran at which appellant started running. Before running appellant shouted “*saala bach gaya agli dafa jaan se maar dunga*”. Guard chased the appellant. In the meanwhile, Electrician Pramod Sharma came there and also followed the guard on his motor cycle. After about 2 minutes Ronald Cray heard sound of another gun fire. After some time, electrician Pramod Sharma and Guard Ram Baran returned after catching hold the appellant. Guard Ram Baran had sustained injury on his forehead. He informed that appellant had fired at him but the bullet did not hit him. Thereafter, appellant had hit him on his forehead with the butt of desi katta. He further informed that the electrician Pramod Sharma had overpowered appellant along with desi katta. On enquiry, appellant disclosed his name as Santosh Kumar Yadav.

3. Police was informed. Investigating Officer SI Sanga Mitra arrived at the spot; Injured persons were removed from the scene of crime to the hospital. Ronald Cray was medically examined in

Apollo Hospital and superficial abrasions on the right buttock were found. Injury was opined as simple in nature. Guard Ram Baran was also medically examined in Apollo Hospital. Laceration measuring .5cm X 2 cm was found on the forehead besides abrasion on scapular region of Ram Baran. These injuries were opined simple in nature. Four live cartridges were found in the desi katta along with two empty shells. Fired cartridge was also recovered from the footpath near Bank of Patiala. Sketch of desi katta and cartridges was prepared and thereafter, same were sealed in separate pullandas with the seal of SM. Case property was deposited in the Malkhana and later was sent to FSL and its report was obtained. Ronald Cray produced bloodstained vest and underwear on the next day of incident which were also sealed with the seal of SM and deposited in Malkhana. Later on, clothes were also sent to FSL and its report was obtained. Sanction under Section 39 of the Act was taken from the Deputy Commissioner of Police, South District, New Delhi. After completion of investigation charge-sheet was filed.

4. Ronald Cray has been examined as PW2. Ram Baran has been examined as PW3 and Pramod Sharma has been examined as PW7. These are the witnesses regarding incident. Apart from these witnesses other witnesses are PW8 Inspector Sang Mitra,

Investigating Officer and PW 4 Dr. Deepak Vats of Apollo Hospital. They have proved MLC of Ronald Cray as Ex. PW4/A and MLC of Ram Baran as Ex. PW4/B. These are material witnesses, whose testimonies, except that of PW3 Ram Baran, have been found trustworthy and reliable by the trial court to conclude that it is the appellant who had fired at Ronald Cray, thus, had committed an offence punishable under Section 307 IPC and under Sections 25 and 27 of the Act.

5. I have also perused the testimonies of all the witnesses. I find the testimonies of relevant prosecution witnesses to be trustworthy and reliable. PW2 Ronald Cray and PW7 Pramod Sharma have fully supported the prosecution version. Both of them have corroborated each other on material points. In my view, testimonies of these witnesses have been rightly accepted by the trial court to conclude that it is the appellant who had fired at Ronald Cray by a desi katta near the factory gate resulting injuries to him. PW4 Dr. Deepak Vats has proved MLC of Ronald Cray. As per MLC, Ronald Cray had received superficial abrasions on the right buttock, lateral side of some part of the greater trochantitro region. Injury found on the person of Ronald Cray strengthens the version of PW2. Recovery of desi katta from appellant has been proved from the statements of PW7 Pramod Sharma and PW8

Investigating Officer and other recovery witnesses, namely, Constable Narender Kumar (PW5) and Constable Rajesh (PW6), who were accompanying the Investigating Officer. These witnesses have supported each other regarding recovery of desi katta from the appellant. Not only desi katta but empty shells, inasmuch as, fired cartridges were recovered. Appellant was apprehended at the spot with desi katta. This circumstantial evidence also corroborates the statements of PW2 Ronald Cray and PW7 Pramod Sharma. As per the FSL report, recovered weapon was in working condition. As per FSL report, *baniyan* handed over by Ronald Cray was having bloodstains of 'B Group' which were of human origin. Presence of blood on the *baniyan* as well as the recovery of desi katta is also corroborative piece of evidence.

6. In any case, in my view, unimpeachable testimonies of PW2 and PW3 with regard to the incident, itself are sufficient to conclude that on 10th November, 2004 at about 9 PM appellant had fired at Ronald Cray with a country made pistol near the factory gate which had brushed through the hip of Ronald Cray resulting in abrasions on his person.

7. Learned counsel for the appellant has vehemently contended that PW3 Ram Baran, an eye witness to the incident, has not supported the prosecution story, inasmuch as has not identified the

appellant in court. In absence of his testimony, prosecution has failed to prove its case beyond the shadow of reasonable doubt only on the basis of statement of PW2 Ronald Cray who is an interested witness. I do not find any force in this contention of learned counsel. There is no law that conviction cannot base on the testimony of victim, who is, otherwise, trustworthy and reliable, without corroboration. That apart testimony of PW4 Pramod Sharma is there which supports the version of PW2. It appears that PW3 Ram Baran has been won over by the appellant and has turned hostile only with regard to the identity of appellant. As regards incident, he has fully supported the prosecution. According to him at about 9 PM he was standing near the car of Ronald Cray. When Ronald Cray opened the door of car, sound of firing was heard by him. Ronald Cray told me that he had received injuries on his waist. Thereafter, the person, who had fired at Ronald Cray ran towards the gali. PW7 Pramod Sharma has deposed that he along with Ram Baran had apprehended appellant and brought him to the factory. PW7 has further deposed that on receiving information that somebody had fired at Ronald Cray he reached at the spot and saw guard Ram Baran running behind that person. He followed them on his motor cycle. He saw appellant hitting Ram Baran on his forehead by a desi katta. Thereafter, he along with Ram Baran

apprehended the appellant. MLC Ex. PW4/B of PW3 corroborates this version as injuries were found on his forehead and scapular region. This makes it clear that PW3 Ram Baran has turned turtle with regard to apprehension and identity of the appellant, obviously, to save him. Mere fact that he has turned hostile will not be sufficient to discard the statements of PW2 Ronald Cray and PW7 Pramod Sharma, which are sufficient to prove the guilt of appellant.

8. Learned counsel has next contended that as per PW3 Ram Baran, Ronald Cray had told him that he had sustained injuries on his waist, however, no injury was found there. In fact injury was found on the right buttock of Ronald Cray. This makes prosecution case suspicious. I do not find much force in this contention. In the FIR, Ronald Cray has stated that he heard a gunshot and felt sharp pain in his right hip; while deposing in court also he has deposed on the same line. MLC of Ronald Cray also corroborates this fact. Accordingly, only on the testimony of a hostile witness it cannot be said that prosecution case is discrepant with regard to place of injury. Learned counsel has then contended that no hole was found on the baniyan or underwear of Ronald Cray, which shows that no bullet injury was sustained by him. Abrasions could have been received by him for variety of reasons, thus, the nature of injury does not support the version of PW2. I find this argument totally

fallacious. It is not the case of prosecution that bullet had pierced the body of victim. It appears that the bullet passed bruising Ronald Cray, resulting in abrasions. Even otherwise, in a case of gunshot injury is not material for constituting an offence punishable under Section 307 IPC.

9. Section 307 IPC reads as under:-

“307 IPC. 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.]”

10. What can be deduced from the aforesaid provision is that an attempt to make a crime is an act done with the intent to commit that crime and forming part of a series of acts which would constitute its actual commission if it were not interrupted. The offender may do an act towards the commission of the offence of murder, but may involuntarily fail or be intercepted or prevented

from consummating the crime. The nature of the injury caused may give some assistance in coming to a finding as to the intention of the accused, but such intention may also be deduced from other circumstance and may be ascertained in some cases without reference to the actual injuries. If a person knows that a certain result would ensue from an act, he would be deemed to intend such result by his act. 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 Section 307 IPC. An attempt, in order to be criminal, need not be the penultimate act. It is sufficient in law if there is present an intent coupled with some overt act in execution thereof. The burden to prove always lies on the prosecution. The intention of the assailant may be gathered from the nature of the weapon used and the parts of the body where the injuries were inflicted. Causing hurt is merely an aggravating circumstance and it cannot reasonably be assumed that unless an injury is sufficient in the ordinary course of nature to cause death inflicted on the victim, the intention contemplated by this provision cannot be presumed. The intention precedes the act and is to be established independently of the act and not merely gathered from the consequences that ensued. A person is criminally responsible for an attempt to commit murder when with the intention and

knowledge requisite to its commission, he has done the last proximate act necessary to constitute the completed offence and when the completion of the offence is prevented by some cause independent of his volition.

11. In *Om Parkash vs. The State of Punjab*, AIR 1961 SC 1782, Supreme Court held 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 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 Section 307 is made out. In *State of Maharashtra vs. Kashirao*, AIR 2003 SC 3901, Supreme Court held that for the application of Section 307 IPC it is not necessary that the injury capable of causing death should have been actually inflicted. In *Vasudeo Balwant Gogte vs. Emperor*, AIR 1932 Bombay 279, it has been held thus, “What Section 307 IPC really means is that the accused must do an act with such a guilty intention and knowledge and in that circumstances but for some intervening fact the act would have amounted to murder in the normal course of events”. In *Shri Madan Gopal @ Madan Bhaiya vs. State Govt. of NCT of Delhi*, MANU/DE/0086/2008, a Single judge of this Court has held thus, “to justify conviction under Section 307 IPC since an

attempt in order to be criminal need not be penultimate act foreboding death. It is sufficient in law if there is present intent coupled with some overt act in execution thereof, such act being proximate to the crime intended and if the attempt has gone so far that it would have been complete but for the extraneous intervention which frustrated its consummation”.

12. In this case, appellant had fired at Ronald Cray, fortunate enough for him the bullet did not pierce through his body rather it bruised passed through his body, resulting in minor abrasions. PW3 has categorically stated that the appellant had uttered “*saala bach gaya agli dafa jaan se maar dunga*” before making an escape from the spot. From this intention and knowledge on the part of appellant can safely be deduced. Thus, in my view, ingredients of offence punishable under Section 307 IPC are attracted in this case and appellant has been rightly convicted under the said provision by the trial court. Since fire arm was used in the commission of crime, offence under Sections 25 and 27 of the Act 1959 is also made against the appellant.

13. For the foregoing reasons, I do not find any illegality in the impugned judgment of the Trial Court whereby appellant has been convicted under Sections 307 IPC and 25/27 of the Act, I also do not find the quantum of sentence awarded by the court below to be

excessive or disproportionate to the act done by the appellant. Accordingly, appeal is dismissed. However, it is clarified that both the sentences awarded by the trial court shall run concurrently. Needless to add that appellant shall also be entitled to the benefit under Section 428 Cr.P.C.

A.K. PATHAK, J.

JULY16, 2012

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