

Court No. - 13

Case :- CRIMINAL APPEAL No. - 559 of 1997

Appellant :- Jagdish

Respondent :- State of U.P.

Counsel for Appellant :- Kr.M.Rakesh,Neelam

Verma,S.V.S.Chauhan,Shailendra Misra

Counsel for Respondent :- G.A.,Rajendra Prasad

Hon'ble Karunesh Singh Pawar,J.

1. Heard learned counsel for the appellant and learned AGA for the State.
2. The present appeal has been preferred against the judgment and order dated 03.09.1997 passed by the IX Additional Sessions Judge, Lucknow in case S.T. No. 63/1994 "State Vs. Avdhesh and other, P.S. Krishna Nagar, District Lucknow whereby the appellant has been convicted under Section 307 IPC for four years of rigorous imprisonment.
3. Prosecution case as per the written report is on 13.07.1990, while Ramakant was working at the site of Ashok Kumar Thekedar, around 6:00 pm, one Jagdish along with his brother-in-law came on the site and asked for two bag cement, upon which Ramakant refused to give the cement stating that it belongs to the contractor and he will not commit theft. Thereafter, accused Jagdish and another abused him and went away stating that he will shoot him. After some time, he came along with two other persons on the site and started beating the complainant, his brother and his father with lathi and danda and then the complainant and others fought and the accused fired at Chandra

Bhushan by a country made pistol. When he was re-filling his pistol again, due to the fact that the other labourers who were present there as well as the complainant ran to rescue the injured, the accused persons fled on the scooter. The incident was of 13.07.1990 and on the same day FIR was registered at 9:50 PM on the same day.

4. Injured Chandra Bhushan received three injuries in the incident. Injury no. 1 was lacerated small wound of 1½ cm x 1½ cm at right temple (the upper part of the side of face) which was kept under observation. Injury no. 2 and 3 are simple in nature. As per the report of radiologist, radio-opaque shadow of metallic seen at the right side of face in the soft tissue.
5. Charge sheet was filed under Section 323/504/307 IPC. Charges were framed under Section 323/504/307/34 IPC. The accused denied the charges and claimed to be tried.
6. The prosecution to prove its case has produced following witnesses :-
 - (i) Ramakant Pandey (PW-1)
 - (ii) Chandra Bhushan (PW-2)
 - (iii) Constable Ramji Pal (PW-3)
 - (iv) Ram Gopal (PW-4)
 - (v) Dr. P.K. Kanchan (PW-5)
 - (vi) Head Constable Suresh Kumar (PW-6)
 - (vii) Dr. T. N. Shukla (PW-7)

7. PW-1 Ramakant Pandey was the eye witness and was present at the site. He has stated that on that day, he was present on the site and was working along with his father and three others. He further stated that at around 6:00 pm, the accused Jagdish came with his brother-in-law and since he refused to give cement, they went away abusing him and after some time came along with two other persons and started beating him and his father by lathi and danda. When another brother of PW-1 who was working in the pit of main hole, tried to save him and his father, the accused Jagdish fired by his country made pistol and when he started reloading his gun, the brother of the complainant as well as other persons ran towards the accused to rescue the complainant and then the accused persons fled away on his scooter. The complainant has proved chik FIR as Ex. Ka-1.
8. PW-2 Chandra Bhushan is the injured witnesses of the prosecution who has supported the prosecution story and has stated that the accused persons came on the scooter and started beating his brother and father by lathi and danda. He further stated that when he tried to save his father and brother, Jagdish fired at him by country made pistol, due to which he received a pellet injury below the temple. The accused ran away once other labourers ran towards them.

9. PW-4 Ram Gopal is also eye witness and has supported the prosecution story. He has also stated that Jagdish fired at Chandra Bhushan by country made pistol and got him injured.
10. PW-3 Ramji Lal is a formal witness and has proved chik FIR as Ex. Ka-2. He has also proved copy of GD as Ex. Ka-3.
11. PW-5 Dr. P.K. Kanchan has examined the injury of Chandra Bhushan and Ram Gopal and has proved injury reports as Ex. Ka-6 and Ka-7. While referring to the injury report of Chandra Bhushan for x-ray, he has further stated that x-ray of injured was done by Dr. T.N. Shukla. He has further opined that injury no. 2 and 3 of Chandra Bhushan could have come by falling on a hard and blunt object.
12. PW-7 Dr. T. N. Shukla has conducted x-ray of the accused. He proved Ex. Ka-6 as x-ray report and he has seen the radio-opaque shadow towards right side of the face of Chandra Bhushan.
13. PW-6 Head Constable Suresh Kumar is also a formal witness. The investigating officer S.I. A.K. Awasthi died in an accident. Charge sheet was prepared by the another I.O. Shivdas Singh and submitted in the Court. Charge sheet is exhibited as Ex. Ka-10 and has been proved by I.O. Shivdas Singh.
14. In the statement of the accused-applicant under Section 313 Cr.P.C., the defence of the accused is of denial and false implication due to enmity.

15. Learned counsel for the appellant submits that the co-accused has been acquitted as his presence was not found at the place of occurrence. The prosecution story is improbable and as per the opinion of the doctor, the alleged injuries could have come by colliding with a hard and blunt object.

16. Learned counsel for the appellant further submits that the alleged incident took place in the year 1990 and thirty four years have lapsed. During entire period since 1990, No complaint has been received against the appellant-accused. Apart from this, accused person has got no criminal antecedents. The appellant is 72 years old.

It has been lastly submitted that considering the peculiar facts and circumstances of this case, the conviction of the appellant under Section 307 IPC may be converted to Section 324 IPC.

17. Learned AGA has opposed the contention submitting that the testimony of the injured is firm and enough to convict the accused-appellant. It is corroborated by the evidence of two eye witnesses who were present on the spot i.e. PW-1 and PW-2.

18. Perused the record.

It appears from perusal of the injury report as well as statement of the doctors PW-5 and PW-7, so also the statement of prosecution witnesses PW-1, PW-2 and PW-3 that only one fire shot was made by the accused-appellant which too was not made from close range; there was no blackening on the face of the injured; there

was no repetitive assault and therefore, intention and knowledge to commit homicide is missing.

19. In the case of ***Ramesh Vs. State of U. P. : AIR 1992 SC Page 664***, where a single injury was found on the back of the injured, the appeal of accused-appellants who was tried along with two others was convicted u/s 307/34 IPC and sentenced to undergo rigorous imprisonment for four years, while the two others were acquitted, was partly allowed by the Apex Court. His conviction was altered into section 324 IPC and the sentence was reduced to the period already undergone with fine of Rs. 3000/-, which was to be paid to the complainant as compensation.

20. In the case of ***Merambhai Punjabhai Khachar and others Vs. State of Gujarat : AIR 1996 SC Page 3236***, there was an attempt to commit murder by fire arm and a pellet hit the victim, however, the Apex Court held that Section 307 IPC cannot be held to have been satisfied and the conviction was altered to Section 324 IPC. Para 14 of the judgment is extracted below:-

14. Despite these being the injuries, Shri Adhyaru urged that as these had been caused by a firearm, as deposed by Sanjuben who was examined as PW 7, and as the pellet had struck the head, intention or knowledge to cause death was present. We do not think if we would be justified to read the aforesaid mens rea because though the injury was by a pellet, it only seems to have grazed the head of Sanjuben. We, therefore hold that ingredients of Section 307 are not satisfied qua Sanjuben. Instead, the offence committed would attract Section 324. As the injuries in question had been caused, as per

the evidence of PW 7 herself, by Appellant 9 Shivrajbhai (Accused 11), we convict him under Section 324 and award RI for one year and a fine of Rs 1000, in default, SI for one month, as sentence. Appellants 3, 8, 10 and 14 stand acquitted under Sections 307/149 for the wrong done to Sanjuben.

In the case in hand, PW-5 has opined that injury no. 2 and 3 of Chandra Bhushan can come by falling at a hard and blunt object; no fracture has been found; injury is simple; it is not the case of the prosecution that there was any repetitive assault; fire was not made by a close range and the intention or knowledge to cause death is not present. It would not appropriate to infer the said act of the accused as an attempt to commit homicide and the ingredients of Section 307 IPC do not appear to be satisfied. Instead, the offence committed attracts Section 324 IPC.

21. Considering the peculiar facts of this case and judgment of the Supreme Court *Merambhai Punjabhai Khachar (supra)* as well as the fact that the accused had no knowledge that his act will cause death; the doctors in their statement have nowhere opined that the injury was grievous; there was no attempt to fire even twice; old age of the accused; the incident is of 1990 and 33 years have lapsed; at the most, it appears that only voluntarily hurt was caused by the appellant by means of dangerous weapon and therefore, I am of the opinion that the conviction can be altered into Section 324 IPC.
22. As a result, the appeal succeeds and is allowed in part. The conviction order under Section 307 IPC is converted to Section

324 IPC. The sentence awarded to the appellant is reduced to the period already undergone by the appellant. If the appellant is on bail, his bail bonds are discharged.

23. Considering the fact that the injured Chandra Bhushan had received pellet injury; the incident is of the year 1990 and more than three decades have passed, Rs. 30,000/- as compensation under Section 357 Cr.P.C. shall be deposited by the appellant before the trial court within a period of six months from the date of his release. The amount so deposited shall be released in favour of Chandra Bhushan and in case he is not alive, the same shall be paid to his heir as compensation for the trauma and mental agony suffered by him. In case the amount, as directed above, is not deposited by the appellant within time stipulated above, the appellant shall be taken into custody to serve a simple imprisonment of six months.
24. Let a copy of this judgment be sent to the Superintendent Jail concerned as also the District Judge along with lower courts record, for compliance.

(Karunesh Singh Pawar,J.)

Order Date :- 30.11.2023/RC