

Court No. - 12**Case :-** CRIMINAL APPEAL No. - 1180 of 2002**Appellant :-** Hardwari And 8 Ors.**Respondent :-** State of U.P.**Counsel for Appellant :-** Sunil Kumar Singh, Anil Kumar Tiwari, Raghvendra Singh**Counsel for Respondent :-** Govt. Advocate**Hon'ble Saurabh Lavania, J.**

1. Heard learned counsel for the appellants and learned A.G.A. for the State of U.P. and perused the record.
2. The instant Criminal Appeal under Section 374 (2), Cr.P.C. has been moved by the accused-appellants challenging the judgment and order 04.09.2002 passed by the Additional Sessions Judge, Court No. 6, Sitapur in S.T. No. 19/2000, Case Crime No. 102/1998, under Sections 147, 148, 149, 307, 336, 504, 506 I.P.C., Police Station- Manpur, District- Sitapur convicting and sentencing the appellant Nos.1- Hardwari and appellant No. 2- Chaitu under Section 148 I.P.C. to undergo six months' rigorous imprisonment and under Section 307 I.P.C. to undergo ten years' rigorous imprisonment and fine of Rs.2,000/- and under Section 336 I.P.C. for three months' rigorous imprisonment each and appellants Nos. 3 to 9 namely Bharosey, Jeevan, Kattey, Durga, Gani, Kallu and Naresh under Section 147 I.P.C. to undergo six months' rigorous imprisonment and under Section 307 I.P.C. to undergo ten years' rigorous imprisonment alongwith fine of Rs. 2,000/- and under Section 336 I.P.C. to undergo three months' rigorous imprisonment each.
3. The case of the prosecution, as appears from the record, is to the effect that in the filed of informant/Munnu Lal (PW-1), in which, 'Dhan' (paddy) and 'Udad' was sowed, the residents of Village Laxmanpur were grazing their animals and on being opposed, those persons left the said field of informant and after half an hour, the accused-appellants with premeditation of mind armed with country made pistol(s) and lathi(s) came to the place of crime i.e. the said field of informant and abused the informant and assaulted him with bricks and stones and upon listening the

hue and cry of the informant, his brothers namely Ashok (PW-2) and Raj Kumar (PW-3) rushed to the spot and accused-appellant/Chaitu opened fire with intention to kill and on account of the same, the informant sustained injury in his right leg and at back.

4. Thereafter, the FIR of the incident was lodged at Police Station-Manpur, District- Sitapur on 14.08.1998 registered as FIR/Case Crime No.102/1998, under Sections 147, 148, 149, 307, 336, 504, 506 I.P.C. against accused-appellants. As per the FIR, the incident is of 14.08.1998 at about 2.00 P.M.

5. The Investigating Officer thereafter submitted the charge sheet against the accused-appellants under the aforesaid sections.

6. After submission of charge sheet, the Magistrate concerned took cognizance and thereafter the said case was committed to the Court of Sessions wherein it was registered as S.T. No. 19/2000 and charges were framed against the accused-appellants namely Hardwari, Chaitu, Bharosey, Jeevan, Kattey, Durga, Gani, Kallu and Naresh under Sections 147, 148, 307/149, 336, 504, 506 I.P.C. The caused-appellants denied the charges and claimed trial.

7. In order to substantiate/prove/establish its case, the prosecution examined as many as seven witnesses namely Munnu Lal, injured/informant (PW-1) and Ashok Kumar, injured (PW-2) & Raj Kumar, injured (PW-3) as well as formal witnesses namely Iqbal (PW-4), Samim Ahmad (PW-5), Constable Surya Prakash (PW-6) and Dr. K.K. Katiyar (PW-7).

8. That after closing of the evidence, statements of accused- appellants under section 313 Cr.P.C. were recorded by the trial court, after explaining the entire evidence and other circumstances, in which the appellants denied the prosecution story and the entire prosecution story was said to be wrong and concocted.

9. Thereafter, the learned trial court after hearing learned counsel for both the parties and appreciating the entire evidence, oral as well as

documentary, found the accused-appellants guilty and convicted them as above.

10. In the aforesaid background of the case, the present appeal has been filed before this Court challenging the judgment of conviction.

11. Impeaching the judgment, under appeal, learned counsel for the appellant submitted that the judgment of conviction passed by the trial court is liable to be interfered with by this Court being unsustainable in the eye of law.

12. He also stated that the sentence awarded to the appellanta is not just and proper, as the prosecution failed to prove essential ingredients to attract offence under Section 307 Cr.P.C.

13. He further stated that if the story of prosecution is taken as true even then the sentence of 10 years awarded under Section 307 IPC is not in consonance with the principles settled by the Hon'ble Apex Court in regard to awarding punishment.

14. Learned AGA submitted that in the facts and circumstances of the case particularly taking note of the statements of injured witness, who specifically indicated the name of accused-appellants and also stated that the accused-appellants caused firearm injury, which was also proved by doctor concerned, who before the trial court stated that the injury so sustained can be caused by firearm including country made pistol, no interference is required in the present appeal by this Court.

15. Considered the aforesaid and perused the record.

16. The injured witness/Munnu Lal (PW-1) specifically stated that the appellants/Chaitu and Hardwari opened fire and on account of the same, he sustained injuries and other accused thrown bricks and stones and also assaulted with lathi and for this reason, Raj Kumar and Ashok Kumar also sustained injuries.

17. Ashok Kumar (PW-2) and Raj Kumar (PW-3) also supported the story of the prosecution.

18. With regard to the injuries sustained by Munnu Lal, the doctor concerned after examining the injured/Munnu Lal opined that *"both the above injures are simple in nature fresh in duration and can be caused by some firearm weapon"*.

19. With regard to injured/Ashok Kumar, the doctor concerned opined that *"the injury No. 1 is simple in nature. Caused by blunt object. Duration about one day old"*.

20. With regard to injured/Raj Kumar, the doctor concerned opined that *"the injury No. 1 is simple in nature about one day old and caused by blunt object"*.

21. Dr. K.K. Katiyar (PW-4) proved the injury report(s) (Exts.Ka.6-8). Other formal witnesses of the prosecution, named above, proved the documentary evidence viz. written complaint (Ext.Ka.1), site plan (Ext.Ka.-2), charge sheet (Ext.Ka.3), FIR (Ext.Ka.4), G.D. (Ext.Ka.5), charge sheet (Ext.Ka.6) etc.

23. Considering the evidence on record and also the principles related to considering the statement of injured witnesses, it would be apt to indicate here that it is well established that the evidence of an injured witness must be given due weightage as being an injured witness, his presence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he/she has spared the actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present during the occurrence. Thus, the testimony of an injured witness is accorded a special status in law. The witness would not like or want to let his actual assailant go unpunished merely to implicate a third person falsely for the commission of the offence. Thus, the evidence of the injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein. *[Vide: Jarnail Singh v. State of Punjab, (2009) 9 SCC 719; Balraje @ Trimbak v. State*

of Maharashtra, (2010) 6 SCC 673; and Abdul Sayed v. State of Madhya Pradesh, (2010) 10 SCC 259].

24. However, so far as the argument, that accepting the prosecution evidence as such, no case under Section 307 IPC is made out, is concerned, it may be seen that the injured Munnu Lal has sustained firearm injury at his right arm. The injury sustained was not on vital part and the facts and circumstances of the case do not indicate that the appellant had intention to kill the deceased. Injuries sustained by Ashok Kumar (PW-2) and Raj Kumar (PW-3) are simple in nature and caused by hard and blunt object, as opined by Dr. K.K. Katiyar (PW-7). The question arises for consideration is whether the act of the accused-appellants would fall within the ambit of Section 307 of IPC.

25. The provisions of Section 307 of IPC reads as under:

"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, 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."

26. The first part of Section 307 refers to "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". The second part of Section 307, which carries a heavier punishment, refers to 'hurt' caused in pursuance of such an 'act'. It may be stated that proof of grievous or life-threatening hurt is not a sine qua non for the offence under Section 307 of IPC. The intention of the accused can be ascertained from the actual injury, if any, as well as from surrounding circumstances. Among other things, the nature of the weapon used and the severity of the blows inflicted can be considered to infer intent.

27. For the conviction under this section more importance has been given to mens rea or the intention than the actus reus or the actual act itself. The

attempt should arise out of a specific intention or desire to murder the victim. The nature of the weapon used, the manner in which it is used, motive for the crime, severity of the blow, the part of the body where the injury is inflicted is all taken into consideration to determine the intention.

28. In *AIR 1982 SC 2013, Kundan Singh Vs. State of Punjab*, the Hon'ble Apex Court has observed as under:-

"We are of the view that having regard to the facts and circumstances of the present case and particularly in view of the fact that P.W. 6 and P.W. 7 were in the courtyard of their house when the appellant fired gun shots and he could not, therefore, have intended to injure them, the conviction of the appellant under Section 307, I.P.C. was not justified. We think that the conviction of the appellant could be maintained only under Section 324 of the I.P.C. since P.W. 6 and P.W. 7 received simple injuries. We accordingly allow the appeal and alter the conviction of the appellant to one under Section 324 of the I.P.C. for causing simple injuries to P.W. 6 and P.W. 7 and since the appellant has already suffered imprisonment for about 16 months, we direct that the sentence imposed on the appellant be reduced to that already undergone by him and that he may be set at liberty forthwith."

29. The Apex Court in *AIR 1996 SC 3236, Merambhai Punjabhai Khachar and others vs. State of Gujarat*, wherein in an attempt to commit murder by fire-arm, victim has suffered a pallet injury, the Apex Court held that Section 307 I.P.C. cannot be held to have been satisfied and the conviction was altered to Section 324 of IPC.

30. In *Ramesh vs. State of U.P., AIR 1992 SC 664 : (1992) 1 SCC 318*, wherein the injury was found on the back of the injured. Accused was tried along with two other was convicted under Section 307/34 I.P.C. and sentenced to undergo rigorous imprisonment for four years, while the two others were acquitted. The Apex Court altered from section 307 of IPC into Section 324 of I.P.C. and sentence was reduced to the period already undergone with fine of Rs. 3000/-, which was to be paid to the complainant as compensation. The relevant portion of the report on reproduction reads as under:-

"2. The incident took place at 10 p.m. on December 4, 1973. Enmity between appellant and complainant is found established. Prosecution relied on evidence of the injured, his father and a family friend Budh Singh examined as PW 4. The trial Judge did

not attach much weight to the evidence of Bharat Singh, PW 3, father of the injured. The conviction was, mainly, based on testimony of Budh Singh, PW 4. The High Court while appreciating the evidence of Budh Singh observed that in cross-examination he admitted that the complainant did not disclose any name, immediately. He even could not disclose whether they were known persons or outsiders. But later on he gave out the name of the accused.

3. The learned counsel for appellant has assailed the finding recorded by the High Court and the trial Judge and has urged that the appellant was implicated due to enmity. He urged that even though the High Court held that in the FIR the main part was specifically assigned to the appellant and one Jagat Singh but in the evidence it was confined to the appellant as the relations between the two were strained. The learned counsel further urged that the case of the prosecution was that the complainant was bitten by Jagat Singh and there being no injury of biting, the High Court committed an error in maintaining the conviction. We are not impressed by the argument. The learned counsel then urged that the High Court committed an error in convicting the appellant under Section 307, Penal Code, 1860. We do not propose to decide it as a matter of law. But we agree with the learned counsel for the appellant that in peculiar circumstances of the case it being a case of single injury in the back of neck the conviction can be altered to be under Section 324, Penal Code, 1860.

4. In the result the appeal succeeds and is allowed in part. The conviction under Section 307/34, IPC is converted to under Section 324, IPC and the sentence is reduced to the period already undergone. The appellant shall deposit a sum of Rs 3000 as fine within six months which shall be paid to the complainant. In default of payment he shall serve out the entire sentence. On deposit of fine the bail bond shall stand discharged."

31. In the case of *Shyam Sharma vs. State of Madhya Pradesh and another*, (2017) 9 SCC 362, the Apex Court altered the sentence from Section 307 IPC into Section 324 IPC after considering the firearm injury sustained on non-vital part of the body. The relevant portion on reproduction reads as under:-

"2. The appellant Shyam Sharma was convicted by the Sessions Judge under Section 307 IPC and was sentenced to undergo three years' rigorous imprisonment along with a fine of Rs 1000 and in the event of default in payment of fine, he was directed to further undergo additional imprisonment of five months.

3. The contention of Mr V. Giri, learned Senior Counsel, appearing for the appellant, is that the independent witnesses Anoop Bhargava (PW 1) and Ramprakash (PW 4) did not support the prosecution case. Manjeet Singh (PW 3) is an interested

witness. The appellant is a computer engineer and has no criminal background. At the most, the appellant can be convicted under Section 324 IPC. On the other hand, the learned counsel appearing for the respondents has supported the judgment of the High Court.

4. We have carefully considered the submissions of the learned counsel made at the Bar and perused the materials placed on record. As rightly submitted by the learned counsel for the appellant, both Anoop Bhargava (PW 1) and Ramprakash (PW 4) have turned hostile. It was established that Manjeet Singh has sustained gunshot injury. Dr Vikram Singh Tomar (PW 2), on examination, found two entry wounds over the lateral aspect of left shoulder and interior aspect of upper part of left scapula region of Manjeet Singh. However, firearm injury suffered by Manjeet Singh (PW 3) could not be impeached in their cross-examination. It is also evident that the accused fired at Manjeet Singh without any premeditation. The injury suffered by Manjeet Singh was not on the vital part of his body. In our view, the prosecution has failed to prove that the accused intended to cause the death of the deceased. Therefore, the appellant can only be convicted under Section 324 IPC and not under Section 307 IPC. Therefore, the appellant is convicted under Section 324 IPC instead of Section 307 IPC.

5. The appellant has already been imprisoned for about four months. Having regard to the facts and circumstances of the case, it is just and proper to reduce the sentence to the period already undergone by the appellant Shyam Sharma. Ordered accordingly."

32. It would be apt to indicate that while dealing with the case related to offence under Section 307 IPC, the Apex Court in the case of *State of Madhya Pradesh vs. Saleem, (2005) 3 SCC 554*, observed that to sustain a conviction under Section 307 IPC, it was not necessary that a bodily injury capable of resulting in death should have been inflicted and also that the court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under the circumstances mentioned in the section.

33. The position that because a fatal injury was not sustained alone does not dislodge Section [307, IPC](#) conviction has been reiterated in *Jage Ram v. State of Haryana, (2015) 11 SCC 366* and *State of Madhya Pradesh v. Kanha, (2019) 3 SCC 605*. Yet, in *Jage Ram (supra) and Kanha (supra)*, it was observed that while grievous or life-threatening injury was not necessary to maintain a conviction under Section [307, IPC](#), 'The intention of the accused can be ascertained from the actual injury, if any, as

well as from surrounding circumstances. Among other things, the nature of the weapon used and the severity of the blows inflicted can be considered to infer intent.'

34. Para 37 of the judgment passed by the Hon'ble Apex Court in the case of ***Surinder Singh vs. State (Union Territory of Chandigarh) (2021) 20 SCC 24***, which to the view of this Court is relevant, is extracted hereinunder:-

"37. Adverting to the facts of the case, in hand, we are of the considered view that at this stage, the sentence awarded to the appellant is no longer in degree to the crime which he has committed. Remitting the appellant to the rigours of imprisonment at this juncture of his life would not serve the ends of justice due to following mitigating factors:

37.1. No motive or element of planning has been proved by the prosecution in the present case which indicates the possibility that the offence could have been committed on impulse by the appellant. Hence, the culpability of the offender in such situations is less than that which is ascribed in premeditated offences as the commission of planned illegal acts denotes an attack on societal values with greater commitment and continuity in comparison to spontaneous illegal acts.

37.2. Even though the factum of injury may not have a direct bearing on a conviction under Section 307IPC, the same may be considered by a court at the time of sentencing. No doubt, the offence committed by the appellant squarely falls within the four corners of Section 307IPC, but fortunately neither the complainant nor any other person was hurt by the untoward act of the appellant.

37.3. The appellant has already undergone a sentence of 3 months and 19 days. Additionally, despite the occurrence taking place in 1999, there is no indication that the appellant has been involved in any untoward activity before or after the incident. This highlights the appellant's good character and indicates that the incident can be interpreted as an isolated lapse of judgment. Further, the appellant's clean post-incident behaviour suggests that he is a rational individual who is capable of responding to the social censure associated with the offence. Hence, the passage of a long time period coupled with a clean record, both before and after the incident is definitely a factor that calls for mitigation of sentence.

37.4. Barring this particular incident wherein he was under the influence of alcohol, the appellant had an unblemished service record with sixteen good citations in his favour. This indicates that he was a valuable member of society than the present criminal incident might lead one to assume. This is not to say that the courts should draw up a social balance sheet when sentencing, but only to take these positive social contributions as a factor for mitigation of sentence.

37.5. Lastly, it is to be noted that the appellant was suspended in the year 1999 and has also been subsequently dismissed from service in the year 2007. Hence, this should also be considered as a reasonable factor for mitigation because the dismissal and the consequent loss of social security benefits such as pension, also construes as a form of social sanction."

35. After considering above mentioned pronouncements, in the facts and evidence of the present case, it appears that the ingredients of sections 307 of IPC are not satisfied. For the reason(s) that the injured Munnu Lal (PW-1) sustained firearm injury at his right leg and back. Medical report does not suggest that this injury was grievous in nature or was dangerous to life. The injury sustained was not on vital part and the facts and circumstances of the case do not indicate that the appellant had intention to kill the injured. Injuries sustained by Ashok Kumar (PW-2) and Raj Kumar (PW-3) are simple in nature and caused by hard and blunt object, as opined by Dr. K.K. Katiyar (PW-7). Thus, conviction of the appellants under Sections 307 of IPC cannot sustain and the accused-appellants are liable to be convicted for the offence punishable under Section 324 of IPC. Ordered accordingly.

36. Upon due consideration of aforesaid, this Court finds that ends of justice would be served if the accused-appellants are sentenced to the period already undergone.

37. In view of above, the instant appeal is **partly allowed**. The accused-appellants sentenced to imprisonment already undergone and fine awarded by the trial court.

38. The accused-appellants shall deposit the fine as imposed in the judgment under appeal, if not deposited till date.

39. The appellants are stated to be on bail, their personal bonds are cancelled and sureties are discharged.

40. Let a copy of this judgment and record be sent forthwith to the trial court concerned for compliance.

Order Date :- 23.11.2024/Arun/-