

Neutral Citation No. - 2024:AHC-LKO:75766

Court No. - 12

Case :- APPLICATION U/S 482 No. - 9767 of 2024

Applicant :- Mohd. Waseem

Opposite Party :- State Of U.P. Thru. Prin. Secy. Lko
And 4 Others

Counsel for Applicant :- Anand Dubey

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Lavania,J.

1. Heard Shri Anand Dubey, learned counsel for the applicant assisted by Ms. Saumya Tiwari, Advocate and Shri Alok Kumar Tiwari, learned A.G.A. for the State-opposite party.

2. By means of the present application under Section 528 B.N.S.S., the applicant has assailed the order dated 30.08.2024 passed by Additional Sessions Judge/F.T.C.-I, Pratapgarh (in short "trial Court") in Session Trial No. 1031 of 2023 (State Vs. Mahfooj & others) arising out of Case Crime No. 141 of 2020, under Sections 323, 506 Indian Penal Code, 1860 (in short "IPC"), Police Station - Raniganj, District - Pratapgarh.

3. Vide order under challenge dated 30.08.2024, trial Court has rejected the application (6Kha) preferred under Section 228 Code of Criminal Procedure, 1973 (in short "Cr.P.C.") by the informant/applicant/prosecution. This application was preferred for framing of charge under Section 307 Cr.P.C..

4. The trial Court, based upon relevant material available on record and the pronouncements on the issue rejected the application of the applicant vide the order dated 30.08.2024.

Relevant portion of the impugned order dated 30.08.2024 reads as under:

"पत्रावली पर मौजूद सी०डी० नम्बर 10 कागज संख्या 8 अ/15 बयान डॉक्टर मेडिकोलीगल डॉक्टर ओम प्रकाश पटेल चिकित्साधिकारी के अनुसार मजरुब सोहराब पुत्र शमशाद का मेडिकल परीक्षण उनके द्वारा दिनांक 12.04.2020 को समय 08:54AM पर किया गया। मजरुब को एक चोट *Lacerated wound from oxipital area in mid* अंकित किया है तथा सिर के एक्सरे के लिये भी लिखा है तथा दिनांक 15.04.2020 को हुए एक्सरे रिपोर्ट के आधार पर अपना ओपिनियन दिनांक 26.04.2020 को *caused by hard and blunt object, simple in nature* अंकित है। कोई भी फायर आर्म्स इंजरी नहीं पायी गयी है। किसी फायर आर्म्स इंजरी का अंकन नहीं किया है, अंकित है। सी०डी० नम्बर 11 कागज संख्या 8 अ/16 के अनुसार "शाहरुख खां के एक्सरे के बावत व मेडिकोलीगल के बारे में वार्ता की गयी मौखिक रूप से एसपीओ महोदय द्वारा बताया गया कि मेडिकोलीगल तथा एक्सरे रिपोर्ट में विरोधाभास है मजरुब के सिर में मेटलिक सैंडो पाया गया है परन्तु वह किस प्रकार का सैंडो है क्या वह 12 बोर के छरे है अथवा और किसी प्रकार के मेटल हैं, इसके बाबत समीक्षा करना नितान्त आवश्यक है तथा मेडिकोलीगल डॉक्टर द्वारा कोई भी फायर आर्म्स इंजरी न लिखना तथा मेडिकोलीगल में डॉक्टर द्वारा मेडिकोलीगल में नीचे अपने हस्तलेख में एक्सरे रिपोर्ट को दर्शते हुए यह लिखना कि उक्त चोट सिम्पल इन नेचर काज्ड बाई हार्ड एण्ड ब्लन्ट ऑब्जेक्ट अपने आप में काफी विरोधाभास पैदा करता है ऐसे में आप को एक्सरे रिपोर्ट पुनः दिखाते हुए पूछताछ करे तथा हो सके तो एफएसएल की राय ले जो अति आवश्यक है तथा पूर्व विवेक का भी बयान ले, हो सके तो मेडिकल बोर्ड का गठन कराकर पुनः मेडिकोलीगल कराये अंकित किया है। सी०डी० नम्बर 14 कागज संख्या 8 अ/19 के अनुसार मुकदमा उपरोक्त में मजरुब शाहरुख सुत मो० शमसाद का प्रारम्भिक मेडिकोलीगल CHC रानीगंज जनपद प्रतापगढ़ के डॉक्टर ओमप्रकाश पटेल द्वारा दिनांक 12.04.2020 को किया गया था जिसमें मजरुब को सिर में लगी चोट के एक्सरे हेतु एडवाइस किया गया था परन्तु मेडिकोलीगल रिपोर्ट में उक्त मजरुब को लगी उक्त चोट फायर आर्म्स इंजरी से आना नहीं अंकित किया गया था। जबकि दिनांक 15.04.2020 को जिला अस्पताल जनपद प्रतापगढ़ के रेडियोलॉजिस्ट विभाग के डॉक्टर एम०डी० कलीम अकमल द्वारा मजरुब शाहरुख उपरोक्त के सिर का एक्सरे किया गया तथा एक्सरे रिपोर्ट में दो राउंडेड शेडो ऑफ मेटेलिक डेन्सिटी पाया जाना अंकित किया गया है तथा यह भी अंकित किया गया है कि मेडिकोलीगल में फायर आर्म्स इंजरी अंकित नहीं किया गया है। जबकि दिनांक 26.04.2020 को उक्त एक्सरे रिपोर्ट व प्लेट के आधार पर मेडिकोलीगल डॉक्टर ओमप्रकाश पटेल द्वारा पृष्ठ के नीचे मजरुब की चोट को साधारण प्रकृति की तथा हार्ड एंड ब्लन्ट ऑब्जेक्ट से आना अंकित किया है। इस प्रकार मेडिकोलीगल रिपोर्ट तथा एक्सरे रिपोर्ट में विरोधाभास है तथा उक्त डॉक्टरों के बयान से भी आपस में अपने को सही बताया गया है। ऐसे में विधि विज्ञान प्रयोगशाला महानगर लखनऊ से कि क्या उक्त मेटेलिक शेडो फायर आर्म्स द्वारा कारित किया गया है तथा यह मेटेलिक शेडो किस के फायर का है ज्ञात करना अति आवश्यक है। इस

संबंध में विधि विज्ञान प्रयोगशाला भेजा जा रहा है।" अंकित है। सी०डी० नम्बर 15 के अनुसार "मुकदमा उपरोक्त में मुख्य चिकित्साधिकारी प्रतापगढ़ द्वारा मेडिकल बोर्ड का गठन किया गया। जिसमें कुल 3 डॉक्टरों की टीम द्वारा मजरुब शाहरुख सुत शमशाद का पुनः मेडिकल परीक्षण किया गया है। डा० एम०डी० कलीम अकमल द्वारा मजरुब उपरोक्त का पुनः एक्सरे दिनांक 24.02.2021 को ईयरली नं० 357/2021 को किया गया है। जिसमें मजरुब को 02 round radio apaire shadow of metallic deurity seen in mid of oecipitre region. Reffered to FSL for final opinion अंकित है। मेडिकोलीगल रिपोर्ट डॉ० अभिषेक सिंह ने तैयार किया है। जिसमें मजरुब शाहरुख उपरोक्त को Headed liver seen on upper part of mid ociputed region no headerws seen K.U.O. अंकित है। सी.डी. नम्बर 28 कागज संख्या 8 अ/33 के अनुसार "विधि विज्ञान प्रयोगशाला राजगढ़ झांसी 281435 Part N 105647 प्रेषक उप निदेशक विधिविज्ञान प्रयोग शाला उ०प्र० राजगढ़ झांसी 244135, सेवा में क्षेत्राधिकारी रानीगंज प्रतापगढ़ पत्रांक संख्या 97Ba121 अपराध संख्या 141/20 धारा 323,507 भा०दं०सं० राज्य बनाम महफूज अली थाना रानीगंज दिनांक 02.07.2021 को विशेष वाहक हे० का० अमरेश तिवारी द्वारा उपरोक्त से सम्बन्धित पत्र तथा निम्न प्रदर्श प्राप्त हुए। 1. दो अदद नमूना मोहर प्राप्त हुई जिन्हें न 1 व न 2 से चिन्हित किया गया है। 2. एक सर्व मोहर लिफाफा जिस पर न 1 के समान मोहरे लगी है तथा लिफाफे पर मु०अ०सं० 141/20 बनाम महफूज आदि लिखा है को खोलने पर एक एक्सरे प्लेट प्राप्त हुआ जिसे x1 से चिन्हित किया गया है। निरीक्षण एक्सरे प्लेट चिन्हित x1 सिर का एक्सरे प्लेट है जिसकी लम्बाई 30.3 सेमी० व चौड़ाई 25.2 सेमी० है एक्सरे प्लेट का निरीक्षण करने पर पाया गया कि सम्बन्धित सिर के एक्सरे प्लेट (चित्र) में फायर आर्म से सम्बन्धित छरें की चोट दृष्टिगोचर नहीं हुई। परिणाम विवाद एक्सरे प्लेट चिन्हित X1 पर फायरिंग से सम्बन्धित कोई चोट दृष्टिगोचर नहीं हुई।" अंकित किया है। विधि विज्ञान प्रयोगशाला की आख्या कागज संख्या 9 अ/6 के अनुसार "एक्सरे प्लेट चिन्हित X-1 सिर का एक्सरे प्लेट है जिसकी लम्बाई 30.3 सेमी० व चौड़ाई 25.2 सेमी० है एक्सरे प्लेट का निरीक्षण करने पर पाया गया कि सम्बन्धित सिर के एक्सरे प्लेट (चित्र) में फायर आर्म से सम्बन्धित छरें की चोट दृष्टिगोचर नहीं हुई।"

ऐसे में पत्रावली के अवलोकन से स्पष्ट है कि अभियुक्तगण के विरुद्ध प्रथम दृष्ट्या आरोप अन्तर्गत धारा 307 भा०दं०सं० बनाये जाने के आधार पर्याप्त नहीं हैं तथा अभियुक्तगण के विरुद्ध अन्तर्गत धारा-323,506 भा०दं०सं० का आरोप विरचित करके उनका विचारण किये जाने का पर्याप्त आधार है।

आदेश

प्रार्थना पत्र-6 ख, अन्तर्गत धारा-228 द०प्र०सं० निरस्त किया जाता है। पत्रावली वास्ते आरोप विरचन दिनांक 11.09.2024 को पेश हो।"

5. Brief facts of the case, which are relevant, are as under:

(i) On 17.04.2020, One Imran, brother of the applicant/Mohd. Waseem, alleged injured, lodged an

FIR registered as Case Crime No. 0141 of 2020 dated 17.04.2020, under Sections 307, 323 IPC. According to the FIR on 12.04.2020, for some previous squabble the opposite party nos. 2 to 5 namely Mehfooz, Masouk, Halim and Inamul, respectively, opened fire upon Wasif @ Kallu with a country made pistol and also assaulted him with *lathi*, *danda* and *saria*..

(ii) Further, on hue and cry, the neighbours and others including Shahrukh, Wasim @ Nanhe (Hamid), and Shohrab reached the place of crime to rescue Wafis @ Kallu, brother of the informant, and the Wasim @ Nanhe was assaulted with *lathi* by the accused and the accused also fired upon Shahrukh. Further, as per FIR the accused Inamul caused fire arm injury to Hamid.

(iii) Thus, except Inamul, to all other accused general role has been assigned.

(iv) After the aforesaid, Investigating Officer recorded the statements of witnesses including the injured witness namely Shahrukh and also obtained medical opinion(s) and recorded the statement of the concerned doctor and thereafter filed the charge-sheet under Sections 323, 506 IPC.

(v) After the aforesaid, an application (6Kha) under Section 228 Cr.P.C. was preferred by the informant/applicant for framing of charge under

Section 307 IPC. This application was preferred on the basis of allegations levelled in FIR and statements of witnesses of fact, who supported the story narrated in the FIR, as also the alleged gun shot injury sustained by injured Shahrukh. It is for the reason that injuries indicated in the injury report(s) of Shohrab S/o Mohd. Samsad and Wasib S/o Shakir Ali, which are on record, are not fatal/grievous injuries. The paragraphs 2 to 6 of application (6Kha) filed under Section 228 Cr.P.C. being relevant, are reproduced herein-under :

"धारा 2- यह कि प्रार्थी मुकदमे का वादी व साक्षी है। घटना दिनांक 12.4.2020 को 8.30 बजे सुबह की है। प्रार्थी का भाई वासिफ उर्फ कल्लू लाकडाउन खुलने पर घरेलू सामान लेने पास की दुकान पर गया था कि तभी पास की दुकान के अगल बगल पूर्व की कहा सुनी से ग्रसित होकर एक राय होकर महफूज, मासूक सुतगण हामिद अली, हलीम सुत जलील, इनामुल सुत हबीब मेरे भाई पर जान से मारने की नियत से तमंचे से फायर करने लगे। भाई किसी तरह अपनी जान बचाकर भागा। उक्त लोगो ने लाठी, डन्डा, सरिया से भाई पर जान लेवा हमला किया भाई की हल्ला गोहार सुनकर पड़ोस के शाहरुख व वसीम उर्फ नन्हे बीच बचाव करने दौड़े तो उक्त लोग वसीम को लाठी से मारकर घायल कर दिया तथा शाहरुख पर भी फायर किया। घटना के समय हामिद बीच बचाव करने आये कि तभी इनामुल ने भाई पर जान से मारने के लिए फायर किया जो स्थल पर पहुंचा और तत्काल थानाध्यक्ष रानीगंज को फोन द्वारा सूचित किया तथा भाई व चोटहिल को प्राथमिक उपचार हेतु रानीगंज सीएचसी ले आया जहां से जिला अस्पताल रिफर कर दिया। प्रार्थी की तहरीर पर थाना रानीगंज में अ.सं. 141/20 पर धारा 307/323 भा.द.वि. में अभियुक्तगण महफूज, मासूक हलीम व इनामुल के विरुद्ध मुकदमा पंजीकृत हुआ।

धारा 3- यह कि दौरान विवेचना केस डायरी के पर्चा नंबर 2 में चश्मदीद साक्षी सैदा बेगम तथा पर्चा नंबर 3 में ऐजा बानो तथा पर्चा नंबर 9 में मजरुब शाहरुख खान का धारा 151 सीआरपीसी में बयान अंकित किया गया हैं उक्त साक्षीगण ने धारा 161 सीआरपीसी के बयान में अभियुक्त महफूज द्वारा गोली चलाने से सिर में चोट आना बताया है।

धारा 4- यह कि केस डायरी के पर्चा नंबर 12 में प्रार्थी वादी मुकदमा का धारा 161 सीआरपीसी में बयान अंकित किया गया है। प्रार्थी ने भी अपने बयान में प्रथम सूचना रिपोर्ट के कथानक का पूर्ण समर्थन किया है।

धारा 5- यह कि विवेचक द्वारा केस डायरी के पर्चा नंबर 28 तक 307/323 भा०दं०वि० में विवेचना किया। केस डायरी के पर्चा नंबर 29 में धारा 307 भा०दं०वि० का लोप कर दिया है।

धारा 6- यह कि केस डायरी के पर्चा नंबर 31 में चोटहिल साक्षी वासिफ उर्फ कल्लू का 161 दं०प्र०सं० में बयान अंकित किया है। उक्त साक्षी ने कथन किया है कि दिनांक 12.4.2000 को सुबह 8.30 बजे इमरान के परिवार से व मेरे परिवार से विवाद होने लगा। शाहरुख खान बीच बचाव के लिए गया तो शाहरुख खान के उपर महफूज ने गोली चला दिया जिससे उसके सिर में चोट आ गयी मुझे भी चोट लगी जिसकी डाक्टरी हुई थी। "

(vi) The statement of Shahrukh Khan recorded in terms of Section 161 Cr.P.C., annexed as Annexure No. 7 to the application, being also relevant, on re-production reads as under:

"बयान मजरुब/चश्मदीद गवाह – बदरियाफत शाहरुख खान पुत्र शमशाद निवासी मानापट्टी थाना रानीगंज जनपद प्रतापगढ़ उम्र करीब 22 वर्ष पूछने पर बता रहे हैं कि दिनांक 12.04.2020 को सुबह 08.30 बजे के आस पास इमरान के परिवार से हलीम के परिवार से विवाद होने लगा कि मैं बीच बचाव करने के लिये गया तो मेरे ऊपर महफूज ने गोली चला दिया जिससे मेरे सिर में चोट आ गयी। करीब 12 फिट से महफूज ने गोली चलाया था। इमरान व उनके भाई कल्लू का महफूज हलीम वगैरह से जमीनी विवाद है मेरी डाक्टरी हुयी थी तथा मेरा एक्सरे भी हुआ था। इसके सिवा मुझे और कुछ नहीं कहना है। जो मेरे साथ हुआ आपको बता दिया है और थाने पहुंचने पर कुछ भी बताने से इंकार किया।"

(vii) At this stage, on being asked, after considering the offence indicated under Sections 323, 506 IPC, learned counsel for the applicant before this Court has submitted that against the applicant and others, FIR was lodged, registered as Case Crime No. 140 of 2020, under Sections 147, 148, 149, 307, 323, 302, 504, 506 IPC and therefore, the present case is under consideration before the Session Court.

(viii) The objection (7Kha) to the application (6Kha) was filed by the accused. As per objection (7Kha), in nutshell, with ulterior motive ,the application (6Kha) was filed. To explain the ulterior motives, the accused stated the facts related to Case Crime No. 140 of 2020 (Supra).

(ix) The injuries of Shahrukh have already been indicated in the order impugned dated 30.08.2024, quoted above, as such the same have not been reproduced in this judgment.

6. The trial Court, after considering the material available on record, as also allegations levelled against the accused-opposite party nos. 2 to 5 rejected the application.

7. In order to decide the issue involved in the instant case which relates to framing of charge under Section 307 IPC, it would be appropriate to refer Section 307 IPC as also the some pronouncements on the issue.

8. Section 307 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.

Illustrations

(a) A shoots at Z with intention to kill him, under such circumstances that, if death ensued, A would be guilty of murder. A is liable to punishment under this section.

(b) A, with the intention of causing the death of a child of tender years, exposes it in a desert place. A has committed the offence defined by this section, though the death of the child does not ensue.

(c) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section, and, if by such firing he wounds Z, he is liable to the punishment provided by the latter part of the first paragraph of this section.

(d) A, intending to murder Z, by poison, purchases poison and mixes the same with food which remains in A's keeping; A has not yet committed the offence in this section. A places the food on Z's table or delivers it to Z's servants to place it on Z's table. A has committed the offence defined in this section.'

9. In *State of Maharashtra v. Balram Bama Patil* [*State of Maharashtra v. Balram Bama Patil*, (1983) 2 SCC 28 : 1983 SCC (Cri) 320], Hon'ble Apex Court held that it is not necessary that a bodily injury sufficient under normal circumstances to cause death should have been inflicted :

“9. ... To justify a conviction under this section it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. 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 this section. 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.

(emphasis supplied)”

10. In ***State of M.P. v. Saleem*** [***State of M.P. v. Saleem***, (2005) 5 SCC 554 : 2005 SCC (Cri) 1329], Hon'ble Apex Court held thus :

“13. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. The section makes a distinction between the act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, an accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt.

(emphasis supplied)”

11. In ***Jage Ram v. State of Haryana*** [***Jage Ram v. State of Haryana***, (2015) 11 SCC 366 : (2015) 4 SCC (Cri) 425], Hon'ble Apex Court held that to establish the commission of an offence under Section 307, it is not essential that a fatal injury capable of causing death should have been inflicted :

“12. For the purpose of conviction under Section 307 IPC, the prosecution has to establish (i) the intention to commit murder; and (ii) the act done by the accused. The burden is on the prosecution that the accused had attempted to commit the murder of the prosecution witness. Whether the accused person intended to commit murder of another person would depend upon the facts and circumstances of each case. To justify a conviction under Section 307 IPC, it is not essential that fatal injury capable of causing death should have been caused. Although the nature of injury actually caused may be of assistance in coming to a finding as to the intention of the accused, such intention may also be adduced from other

circumstances. The intention of the accused is to be gathered from the circumstances like the nature of the weapon used, words used by the accused at the time of the incident, motive of the accused, parts of the body where the injury was caused and the nature of injury and severity of the blows given, etc.”

12. In State of Maharashtra v. Kashirao, (2003) 10 SCC 434, the Hon'ble Apex Court identified the essential ingredients for the applicability of the section. The relevant extract is as below:

“The essential ingredients required to be proved in the case of an offence under Section 307 are:

(i) that the death of a human being was attempted;

(ii) that such death was attempted to be caused by, or in 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 injury as : (a) the accused knew to be likely to cause death; or (b) was sufficient in the ordinary course of nature to cause death, or that the accused attempted to cause death by doing an act known to him to be so imminently dangerous that it must in all probability cause (a) death, or (b) such bodily injury as is likely to cause death, the accused having no excuse for incurring the risk of causing such death or injury.”

13. Hon'ble Apex Court in Om Prakash v. State of Punjab, 1961 SCC OnLine SC 72, as far back as 1961, observed the constituents of the Section, having referred to various judgments of the Privy Council, as under:

“a person commits an offence under Section 307 when he has an intention to commit murder and, in pursuance of that intention, does an act towards its commission irrespective of the fact whether that act is the penultimate act or not. It is to be clearly understood, however, that the intention to commit the offence of murder means that the person concerned has the intention to do

certain act with the necessary intention or knowledge mentioned in Section 300. The intention to commit an offence is different from the intention or knowledge requisite for constituting the act as that offence. The expression “whoever attempts to commit an offence” in Section 511, can only mean “whoever : intends to do a certain act with the intent or knowledge necessary for the commission of that offence”. The same is meant by the expression “whoever does 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” in Section 307. This simply means that the act must be done with the intent or knowledge requisite for the commission of the offence of murder. The expression “by that act” does not mean that the immediate effect of the act committed must be death. Such a result must be the result of that act whether immediately or after a lapse of time.”

(Emphasis supplied)

14. In Hari Mohan Mandal v. State of Jharkhand, (2004) 12 SCC 220, the Hon'ble Apex Court holds that the nature or extent of injury suffered, are irrelevant factors for the conviction under this section, so long as the injury is inflicted with animus. It has been held:

“10. ...To justify a conviction under this section, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. ... 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 the section. 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.

11. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. If the injury inflicted has been with the avowed object or intention to cause death, the

ritual nature, extent or character of the injury or whether such injury is sufficient to actually causing death are really factors which are wholly irrelevant for adjudging the culpability under Section 307 IPC. The section makes a distinction between the act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, it is not correct to acquit an accused of the charge under Section 307 IPC merely because the injuries inflicted on the victim were in the nature of a simple hurt."

15. In the case of **State of M.P. vs. Kashiram & Ors. (2009 4 SCC 26)**, the scope of intention for attracting conviction under Section 307 IPC was elaborated and it was held as under:-

"13. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. The section makes a distinction between the act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, an accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt.

14. This position was highlighted in State of Maharashtra v. Balram Bama Patil, (1983) 2 SCC 28, Girija Shanker v. State of U.P. (2004) 3 SCC 793 and R. Prakash v. State of Karnataka (2004) 9 SCC 27.

* * *

16. Whether there was intention to kill or knowledge that death will be caused is a question of fact and would depend on the facts of a given case. The circumstances that the injury inflicted by the accused was simple or minor will not by itself rule out application of Section 307 IPC. The determinative question is the intention or knowledge, as the case may be, and not the nature of the injury."

16. In **Surinder Singh v. State (UT of Chandigarh), (2021) 20 SCC 24 : 2021 SCC OnLine SC 1135**, the Hon'ble Apex Court holds as under:

"A. Whether the guilt of the appellant under Section 307 IPC has been proved beyond reasonable doubt?

19. Before we advert to the factual matrix or gauge the trustworthiness of the witnesses, it will be beneficial to brace ourselves of the case law qua the essential conditions, requisite for bringing home a conviction under Section 307 IPC. In *State of M.P. v. Saleem* [*State of M.P. v. Saleem*, (2005) 5 SCC 554 : 2005 SCC (Cri) 1329] , this Court, while re-appreciating the true import of Section 307 IPC held as follows : (SCC pp. 559-60, paras 12-13)

"12. To justify a conviction under this section, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. 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 the section. 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.

13. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. The section makes a distinction between the act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under

circumstances mentioned in the section. Therefore, an accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt.”

(emphasis supplied)

20. These very ingredients have been accentuated in some of the later decisions, including in *State of M.P. v. Kashiram* [*State of M.P. v. Kashiram*, (2009) 4 SCC 26 : (2009) 2 SCC (Cri) 40] , *Jage Ram v. State of Haryana* [*Jage Ram v. State of Haryana*, (2015) 11 SCC 366 : (2015) 4 SCC (Cri) 425] and *State of M.P. v. Kanha* [*State of M.P. v. Kanha*, (2019) 3 SCC 605 : (2019) 2 SCC (Cri) 247] .

21. It is by now a lucid dictum that for the purpose of constituting an offence under Section 307 IPC, there are two ingredients that a court must consider, first, whether there was any intention or knowledge on the part of the accused to cause death of the victim, and, second, such intent or knowledge was followed by some overt actus rea in execution thereof, irrespective of the consequential result as to whether or not any injury is inflicted upon the victim. The courts may deduce such intent from the conduct of the accused and surrounding circumstances of the offence, including the nature of weapon used or the nature of injury, if any. The manner in which occurrence took place may enlighten more than the prudential escape of a victim. It is thus not necessary that a victim shall have to suffer an injury dangerous to his life, for attracting Section 307 IPC.

22. It would also be fruitful at this stage, to appraise whether the requirement of “motive” is indispensable for proving the charge of attempt to murder under Section 307 IPC.

23. It is significant to note that “motive” is distinct from “object and means” which innervates or provokes an action. Unlike “intention”, “motive” is not the yardstick of a crime. A lawful act with an ill motive would not constitute an offence but it may not be true when an unlawful act is committed with best of the motive. Unearthing “motive” is akin to an exercise of manual brain-mapping. At times, it becomes Herculean task to ascertain the traces of a “motive”.

24. This Court has time and again ruled : (*Bipin Kumar Mondal case* [*Bipin Kumar Mondal v. State of W.B.*, (2010) 12 SCC 91 : (2011) 2 SCC (Cri) 150] , SCC p. 97, para 23)

“23. ... that in case the prosecution is not able to discover an impelling motive, that could not reflect upon the credibility of a witness proved to be a reliable eyewitness. Evidence as to motive would, no doubt, go a long way in cases wholly dependent on circumstantial evidence. Such evidence would form one of the links in the chain of circumstantial evidence in such a case. But that would not be so in cases where there are eyewitnesses of credibility, though even in such cases if a motive is properly proved, such proof would strengthen the prosecution case and fortify the court in its ultimate conclusion. But that does not mean that if motive is not established, the evidence of an eyewitness is rendered untrustworthy.”

(emphasis supplied)

[See : Shivaji Genu Mohite v. State of Maharashtra [Shivaji Genu Mohite v. State of Maharashtra, (1973) 3 SCC 219 : 1973 SCC (Cri) 214] and Bipin Kumar Mondal v. State of W.B. [Bipin Kumar Mondal v. State of W.B., (2010) 12 SCC 91 : (2011) 2 SCC (Cri) 150]]

25. We are thus of the considered opinion that whilst motive is infallibly a crucial factor, and is a substantial aid for evincing the commission of an offence but the absence thereof is, however, not such a quintessential component which can be construed as fatal to the case of the prosecution, especially when all other factors point towards the guilt of the accused and testaments of eyewitnesses to the occurrence of a malfeasance are on record."

17. The above judgments of Hon'ble Apex Court leads to the conclusion that proof of grievous or life-threatening hurt is not a sine qua non for the offence under Section 307 of the Penal Code. 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.

18. The Apex Court has held that for conviction under Section 307 IPC the intention to cause death is also required to be proved along with the injuries inflicted.

19. For the purpose of conviction under Section 307 IPC, prosecution has to establish (i) the intention to commit murder and (ii) the act done by the accused. The burden is on the prosecution that accused had attempted to commit the murder of the prosecution witness. Whether the accused person intended to commit murder of another person would depend upon the facts and circumstances of each case. To justify a conviction under Section 307 IPC, it is not essential that fatal injury capable of causing death should have been caused. Although the nature of injury actually caused may be of assistance in coming to a finding as to the intention of the accused, such intention may also be adduced from other circumstances. The intention of the accused is to be gathered from the circumstances like the nature of the weapon used, words used by the accused at the time of the incident, motive of the accused, parts of the body where the injury was caused and the nature of injury and severity of the blows given etc.

20. For the conviction under Section 307 IPC 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.

21. Considered the aforesaid including the case set up by the prosecution, indicated in FIR, as also the relevant portion of the application (6Kha), quoted in para 5(iv) of this judgment, as also the statement of the injured Shahrukh, quoted in para 5(v) of this judgment, and unrefuted injuries indicated in the order impugned sustained by injured(s) including Shahrukh and the statements of witnesses on record namely Imran (Annexure No. 4), Saida Begum (Annexure no. 5), Aija Begum (Annexure No. 6).

22. Upon due consideration, this Court finds that intention or motive or element of planning or premeditation is not apparent which indicates that the offence could have committed by the accused on impulse.

23. For the aforesaid, this Court is of the view that the trial Court has rightly rejected the application for framing of charge under Section 307 IPC. The order, to the view of this Court, is just and proper.

24. The instant application is accordingly **rejected**. Cost made easy.

25. It is clarified that observations made in this judgment shall have no bearing on the merits of the trial and the trial Court shall not be influenced by any observation made in this judgment.

Order Date :- 18.11.2024
Mohit Singh/-