

In the High Court of Punjab and Haryana at Chandigarh

CRR-3623 of 2012

Date of Decision:15.1.2015

State of Union Territory Chandigarh

---Petitioner

versus

Brij Bhushan @ Bhakhal

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr.Gagandeep Wasu,Addl. P.P. For Chandigarh
for the petitioner**

1. Whether Reporters of local papers 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?

REKHA MITTAL, J.

The present petition has been directed against the judgment dated 23.7.2012 passed by the Additional Sessions Judge, Chandigarh seeking enhancement of sentence awarded to the respondent for offence punishable under Section 307 of the Indian Penal Code (in short “IPC”).

Brij Bhushan @ Bhakhal, the respondent was charged for committing offence punishable under Sections 307 and 506 IPC in regard to occurrence which took place on the intervening night of 4/5.9.2011 wherein complainant Shyam Dhari sustained injuries at the hands of respondent-accused in a sudden quarrel in Colony No. 4, Chandigarh. Shyam Dhari sustained an injury described as “right parietal extra dural haematoma with fronto parietal coronal suture diastases”. The said injury was declared dangerous to life, as per medical opinion.

As per allegations of the complainant, the accused had thrown him on the ground in front of complainant's house by giving him a push resulting in head injury.

Counsel for the petitioner (State of U.T.Chandigarh) would submit that substantive sentence awarded by the trial court for commission of offence punishable under Section 307 IPC is not commensurate with the gravity of offence proved against the respondent-accused, therefore, sentence awarded is liable to be enhanced.

The respondent was earlier being represented by a counsel but there is no representation on his behalf to counter the arguments advanced by counsel for the petitioner.

I have heard counsel for the petitioner and perused the records.

The Additional Sessions Judge, Chandigarh for the reasons recorded in the order of sentence held, quoted thus:-

“The assailants did not use any weapon to cause injury to the victim. There was no previous enmity between the parties and the occurrence appears to have taken place at the spur of moment and not the result of pre-mediated mind. In the said quarrel between the complainant and the accused, both residents of Colony No. 4, the accused allegedly gave a push to the complainant as a result whereof he had fallen on the ground and sustained injury which was opined to be dangerous to life.”

Indisputably, the trial court convicted the accused for committing offence punishable under Section 307 IPC and it appears that

the convict has not preferred any appeal against his conviction. Nevertheless, the court cannot lose sight of the fact that under Section 307 IPC what the court has to see is whether the act irrespective of its result, was done with an intention or knowledge and under circumstance mentioned in that Section. The intention or knowledge of the accused must be such as is necessary to constitute murder. Without this ingredient being established, there can be no offence of attempt to murder. Under Section 307, the intention precedes the act attributed to the accused. Therefore, the intention is to be gathered from all circumstances and not merely from the consequence 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 afflicted are some of the factors that are to be taken into consideration to determine intention.

In the instant case, the accused and the complainant involved in a sudden quarrel and the accused gave a push to him and the victim struck against the ground and sustained injury on parietal region. In view of the circumstances under which the victim sustained injury, in my considered opinion, no fault can be found in the sentence awarded by the trial court which is otherwise based upon due consideration of mitigating circumstances in favour of the accused.

In view of what has been discussed hereinabove, finding no merit, the petition fails and is dismissed accordingly.

(REKHA MITTAL)
JUDGE

15.1.2015
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