

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRA-S No.409-SB of 2012 (O&M)
Decided on: 25.11.2017**

Kapil Dev

....Appellant

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Amaninder Preet, Advocate (Legal Aid Counsel)
for the appellant.

Mr. Naveen Sheoran, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (Oral)

Challenge in this appeal is to the judgment dated 17.12.2010 passed by the trial Court convicting the appellant/accused under Section 307 of the Indian Penal Code (in short 'IPC') and the order of sentence dated 18.12.2010 sentencing the appellant to undergo rigorous imprisonment for a period of 06 years and to pay a fine of Rs.5,000/-.

The present appeal is being pursued by the legal aid counsel appointed by the High Court Legal Services Committee. The appeal was admitted on 25.01.2012 and recovery of fine was stayed. Later on, vide order dated 20.03.2012, the sentence of the appellant was suspended.

Brief facts of the case are that on 16.06.2009, one Satish Kumar informed the police post that his tenant Kapil Dev has cut the neck of his wife namely Bharti Devi with a knife near Katana Sewarage Drain and she is admitted in PGIMS, Rohtak. On receiving the said message, ASI Mohinder Singh along with co-officials reached PGIMS,

Rohtak and after obtaining the opinion of the doctor recorded the statement of injured – Bharti Devi in which she alleged that she is a household lady and on 15.06.2009, it was birthday of her son namely Gaurav aged 06 years and in the evening, she along with her husband celebrated the birthday of her son happily in the rented house and all the neighbours were called in that celebration and all the neighbours went back to their house after celebration. Thereafter, her husband asked her that they are already having 03 children namely Sonu aged 12 years, Sourav aged 08 years and Gaurav aged 06 years and since Bharti Devi was pregnant for 02 months, he did not want more children and asked her to accompany him for abortion and to consult a Dai i.e. mid-wife. On this, her husband took her on a bicycle and when they reached near the Sewarage drain on the backside of the tomb near Kabul Bagh, it was dark, the appellant asked her to hold the bicycle on the pretext of meeting the call of nature, it was about 09:30 PM. She caught hold the handle of the bicycle with both hands and in the meantime, her husband took out a knife and caused injuries on her neck and when she protested, her husband stated that she will be done to death. On this, she caught the knife with both of her hands, as a result of which, she sustained injuries on her fingers and neck. When she fell down, her husband presumed her dead and pushed her in the drain and ran away. Thereafter, she came out from the drain in injured condition and went to her rented house where Satish Kumar, owner of the house met and she narrated the entire story to him.

On the basis of the said statement, a formal FIR under Section 324 IPC was registered and during the investigation, Section

324 IPC was deleted and Section 307 IPC was added. The statement of witnesses were recorded, the accused/appellant was arrested and, thereafter, the challan was presented before the trial Court and later on, it was committed to the Court of Sessions vide order dated 06.10.2009 and charges were framed against the accused under Section 307 IPC.

The prosecution in support of its case examined PW1 – EHC Jagbir Singh who proved the scaled site plan Ex.PA. PW2 – ASI Mohinder Kumar who partly conducted the investigation proved the application Ex.PB moved before the Medical Officer for obtaining the opinion regarding fitness of injured – Bharti Devi, opinion of doctor as Ex.PB/1 that injured was in a position to make the statement Ex.PC, the statement of Bharti Devi, the endorsement as Ex.PC/1, FIR Ex.PD recorded by SI Ram Phal with endorsement as Ex.PC/2, recovery memo Ex.PE of the clothes of injured. Disclosure statement of accused recorded by Inspector Ram Kumar as Ex.PF regarding concealing of the knife, the sketch of the weapon as Ex.PF, recovery of the same as Ex.PH and a memo regarding identification of the place of occurrence as Ex.PJ. This witness also proved the clothes of the injured as Ex.P1 to P3 and knife as Ex.P4.

PW3 – Satish Kumar deposed on the line of the information given by him to the police and further stated that on seeing Bharti Devi in an injured condition, he took her to General Hospital, Panipat where she was referred to the PGIMS, Rohtak and on 16.06.2009, he informed the police. He handed over the blood-stained clothes of Bharti Devi Ex.P1 to P3 which were taken by the police vide recovery memo Ex.PE.

PW4 – SI Ram Phal, deposed about recording of the formal FIR, Ex.PD receipt of a ruqa, Ex.PC in the Police Station as well as the endorsement Ex.PC/2 made on this information Ex.PC.

PW5 – Inspector Ram Kumar (since retired) who also conducted the investigation deposed about preparation of the report under Section 173 Cr.P.C. by Inspector Ajit Singh.

PW6 – Dr. Nancy, a Radiologist of PGIMS, Rohtak appeared as PW6 and tendered into evidence her duly sworn affidavit Ex.PO. She also proved the X-ray report of the injured as Ex.PO/1. As per this report, no fracture was seeing regarding the injuries sustained by Bharti Devi.

Dr. Narender Rathee, Medical Officer, General Hospital, Panipat appeared as PW7 and tendered into evidence his affidavit as Ex.PO. This witness proved the copy of MLR as Ex.PO/1. In cross-examination, this witness stated that as per his opinion Ex.PR/1, the injuries sustained by Bharti Devi were not dangerous to life.

The injured – Bharti Devi appeared as PW8 and in examination-in-chief supported the case of the prosecution. In cross-examination, this witness resiled from her statement made in examination-in-chief and stated as under:-

“Accused was near to me when he had gone to answer the call of nature. It is correct that it was a dark night. It is correct that I could not identify the person who had caused injuries to me.”

Later on, this witness was declared hostile by the Public Prosecutor and he was allowed to cross-examine this witness and in cross-examination by Public Prosecutor, she again stated *“I had not*

seen as to whether injury with knife was caused by accused or not.”

After cross-examination by the Public Prosecutor, she was again cross-examined by the defence counsel and stated that *“it is correct that I was not in full senses when I made my statement in examination-in-chief.”*

Thereafter, the statement of the accused was recorded under Section 313 Cr.P.C. and he denied all the incriminating evidence put to him during his statement, however, no defence evidence was led.

The trial Court vide impugned judgment dated 17.12.2010 held the appellant guilty of offences punishable under Section 307 IPC and vide order of sentence dated 18.12.2010, he was awarded sentence of 06 years rigorous imprisonment and to pay a fine of Rs.5,000/-.

Counsel for the appellant has submitted that from the evidence led by the prosecution, the ingredients of Section 307 IPC are not made out. It is submitted on behalf of the appellant that from the statement of PW6 – Dr. Nancy, the Radiologist, it has come on record that no fracture was seen and Dr. Narender Rathee PW7 who medico legally examined the complainant has clearly deposed that as per his opinion Ex.PR/1, the injuries were not dangerous to life. It is further submitted that PW3 – Satish Kumar is not an eye-witness and he has informed the police on the basis of the information given by the injured – Bharti Devi and, therefore, his statement regarding the incident is only hearsay. It is further submitted that a careful perusal of the deposition of PW8 – Bharti Devi injured who is wife of the appellant, it is apparent that no specific motive has been attributed as it is the own case of the prosecution that immediately before this occurrence, the

appellant and the injured being husband and wife has celebrated the birthday of their 06 years old son – Gaurav and even their neighbours were called who attended the function and went back thereafter. Counsel for the appellant has further submitted that even this witness has not fully supported the version of the prosecution as in the cross-examination, she has stated that she could not identify the present who has caused injuries and further in the cross-examination by the Public Prosecutor, she stated that she has not seen whether the injuries were caused by the accused or not. This witness further stated that she was not in full senses when she made her statement in examination-in-chief. Counsel for the appellant has further submitted that it is not stated by PW8 – Bharti Devi that when the knife injury was given by the appellant, she was caught hold by him. Counsel for the appellant has also submitted that in the absence of any specific opinion by the doctor that the injuries were dangerous to life, the intention to kill PW8 is also not proved from the statement of the prosecution evidence as PW8 – Bharti Devi has not fully supported the prosecution version.

Counsel for the appellant has further argued that the trial Court has held the appellant guilty of the offence punishable under Section 307 IPC on the statement of PW7 – Dr. Narender Rathee who has proved 03 injuries on the person of Bharti Devi i.e. 1. Multiple incised wound over neck varying from size 14 x 2 cm to 4 x 1 cm. 2. Multiple incised wound over palmer aspect of right hand varying from size 4 x 0.5 cm to 3x 4.0 cm. 3. Multiple incised wound over palmer aspect of the left hand varying from size 3 x 0.4 m to 2 x 0.3 cm over left hand.

Counsel for the appellant with reference to the aforesaid injuries has submitted that PW7 – Dr. Narender Rathee has clearly stated in his cross-examination that the injuries were not dangerous to life and, therefore, the offence under Section 307 IPC is not made out. It is, thus, submitted that the deposition of PW8 – Bharti Devi do not make out that the appellant with intention or knowledge had assaulted her to cause injuries which were capable of causing death.

Counsel for the appellant has further argued that the appellant has 03 minor children and even after the alleged occurrence, the appellant and the complainant are residing happily as husband and wife. It is further submitted that out 06 years rigorous imprisonment awarded by the trial Court, the appellant has already undergone 03 years, 01 month and 29 days of actual sentence and 03 years, 08 months and 21 days of total sentence including remission before the appellant was released on bail. It is also submitted that the appellant has faced the agony of protracted trial since 2009 and has already undergone substantive period of sentence. It has also been submitted that after this incident, the appellant has improved his behaviour substantively and has not committed any offence after he was granted bail on 20.03.2012 and is not involved in any other case.

On the other hand, counsel for the State has filed the Custody Certificate dated 25.11.2017 and as per this custody certificate, the appellant has undergone 03 years, 08 months and 21 days of total sentence including remission and he is not involved in any other case. Counsel for the State has further submitted that in order to prove the offence under Section 307 IPC, it is not essential that the bodily injuries

capable of causing the death should have been inflicted and the intention of the accused should be taken into consideration in view of the circumstances and evidence which has come on record even without reference to the injuries sustained by the injured person.

After hearing counsel for the parties, I find merit in the present appeal. Though, the injuries sustained by the injured PW8 – Bharti Devi are multiple incised wound on neck, palmer aspect of right and left hand both and as per the opinion of the doctor, the injuries were caused with a sharp edged weapon, yet on a careful perusal of the statement of PW8 – Bharti Devi, the intention on the part of the appellant to commit the offence under Section 307 IPC is not made out as this witness has later on, resiled from her statement recorded in examination-in-chief and has even refused to identify the appellant as an accused person who had caused injuries to her. It may be for the reasons that PW8 – Bharti Devi being wife of the appellant and mother of 03 minor children wanted to save her matrimonial life. From the statement of PW8, no specific motive is also proved that the appellant, caused bodily injuries to Bharti Devi with intention and knowledge to kill, as it has come in her statement that immediately before the incident, the have celebrated the birthday of their 06 years old son in the rented premises owned by PW3 – Satish Kumar and their neighbours were called and everyone was in a happy mood and after the birthday celebration was finished, all the neighbours went back to their home which show that both the husband and wife enjoyed good relations. PW8 – Bharti Devi has further not stated anywhere in her statement that even prior to this incident, the relationship between the

appellant and the complainant being husband and wife were strained or there were any allegation of maltreatment on the part of the appellant. From the statement of PW6 – Dr. Nancy, a Radiologist, no fracture was seen. However, considering the fact that the injuries were on the neck of Bharti Devi in a specific question put to PW7 – Dr. Narender Rathee regarding nature of injury and he has stated that as per his opinion Ex.PR/1, the injuries were not dangerous to life.

In view of the above, I hold that Section 307 IPC is not made out against the appellant and it is a case of falling under Section 326 IPC.

Considering the fact that the appellant has already undergone substantive sentence of 03 years, 08 months and 21 days of total sentence including remission; he has not misused the concession of bail and is not involved in any other case; the appellant and the complainant are living as husband and wife and they have 03 minor children; the appellant is the sole bread earner of the family and is not a previous convict and has faced the agony of protracted trial since 2009, the sentence and fine awarded to the appellant by the trial Court is reduced to the period already undergone by him i.e. 03 years, 08 months and 21 days.

With the aforesaid modification made hereinbefore, the present appeal is allowed.

25.11.2017
yakub

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No