

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM No. M-7095 of 2016
Date of decision : 28.03.2017

ManishaPetitioner
versus

State of Haryana and others ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ramesh Sharma, Advocate
for the petitioner

Mr. D.R. Singla, DAG, Haryana

RITU BAHRI, J.

In the present petition filed under Section 482 Cr.P.C, prayer is for setting aside/modifying order dated 28.07.2015 passed by learned Judicial Magistrate 1st Class, Hisar vide which the learned Magistrate refused to frame charges under Section 307 IPC against the respondents/accused and further prayer is for setting aside order dated 07.12.2015 whereby the revision petition filed by the petitioner for addition and framing of charge under Section 307 IPC, was declined by learned Addl. Sessions Judge, Hisar

The marriage of the complainant/petitioner was solemnized with accused No. 1-Dharmender on 04.02.2014. After some time of the marriage, accused started taunting the complainant for bringing insufficient dowry and made a demand of Rs.10-12 lacs. The accused gave severe beatings to the complainant in this regard. On 05.10.2014, when the complainant was sleeping in her room accused No. 1-Dharmender and accused No. 2-Shakuntala came in her room and started beating her. The complainant's husband tried to strangle her with a dupatta, however, the complainant

succeeded in rescuing herself from their clutches and narrated the whole incident to her father telephonically. Thereafter, father of the complainant/petitioner came to the matrimonial house of the complainant and got her admitted in Civil Hospital, Hansi. On the same day itself i.e 05.10.2014, information was sent through VT Control Room Hisar that petitioner was admitted in Government Hospital Hansi due to receipt of beatings in quarrel. ASI Pawan Kumar along with HC Anoop Singh reached the hospital and recorded the statement of the petitioner.

When the police did not incorporate Section 307 IPC against accused, petitioner moved an application for addition/framing of charges under Section 307 IPC but the learned trial Court framed charges under Section 498-A/323/506/34 IPC on 28.07.2015 and declined to frame charges under Section 307 IPC against the respondents/accused, vide impugned order dated 28.07.2015 (P-3).

Feeling aggrieved against the above order, petitioner preferred a revision petition for addition of charge under Section 307 IPC against the accused, which was also dismissed on 07.12.2015 (P-5).

Learned counsel for the petitioner at the very outset referred to the medico legal examination of the petitioner (P-1), which reads as under:-

- (i) ***7X1 cm abrasion on ant. Part of upper neck. Redness prominent on lat. Asp of neck more on right side in line of abrasion (simple blunt).***
- (ii) ***3X1 cm redness on ant. Part of lower neck (simple blunt).***
- (iii) ***3X1 cm redness on upper part of L. Chest (simple blunt).***
- (iv) ***4X1 cm redness (L) side of midline umbilical region (simple blunt).***
- (v) ***7X0.5 cm redness (R) side of midline umbrical and lumber region.***
- (vi) ***Redish blue 1X0.5 cm bruise on fourth finger on right foot dorsal asp. Near fingernail (KUO).***
- (vii) ***3X1 cm redness (R) part asp of mid fore arm (simple blunt).***
- (viii) ***C/o pain (R) clavicular region. No external mark of injury (KUO). ”***

Reference has further been made to photographs of the petitioner taken by the photographer in the hospital (P-2).

Learned counsel while referring to the MLR report and photographs of the petitioner contends that this is clear case of strangulation i.e attempt to murder but the police did not incorporate Section 307 IPC in the challan and the application as well as the revision petition filed by the petitioner to incorporate Section 307, has wrongly been dismissed.

On the other hand, learned State counsel while referring to reply dated 30.07.2016 stated that an enquiry was conducted by DSP, Hisar in presence of both the parties and after going through the evidence on record, report under Section 173 Cr.P.C was filed incorporating Sections 498-A/323/506/34 IPC against accused/respondents. The version of the complainant with regard to attempt of murder by the respondents/accused were found to be false during investigation.

Heard learned counsel for the parties.

Reference at this stage can be made to Section 307 IPC which 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 1 [imprisonment for life], or to such punishment as is hereinbefore mentioned. Attempts by life convicts.—2[When any person offending under this section is under sentence of 1[imprisonment for life], he may, if hurt is caused, be punished with death.]”

The learned Courts below had not incorporated Section 307 IPC against the accused/respondents on the ground that the injuries on the person of the petitioner are simple in nature and caused by blunt weapons. Further

no opinion has been given by the doctor that any of injury is dangerous to life or to cause death in ordinary course of nature.

Reference at this stage can be made to a judgment of Hon'ble the Supreme Court in a case of ***Pasupuleti Siva Ramakrishna Rao vs. State of Andhra Pradesh and others, 2014 (2) RCR (Crl) 129*** wherein the accused strangled the victim by throat by a telephone wire and pulled it from both sides. This resulted in ligature mark. The contention that no offence under Section 307 IPC was made out as injury was not grievous, was held to be not tenable, as Section 307 provides for imprisonment for life if the act caused hurt. It does not require that the hurt should be grievous or of any particular degree. In para 16 and 17 of the judgment, it has been observed as under:-

16. It is not possible to accept this contention in the circumstances of the case that the act of strangulating a person by the throat by a telephone wire and pulling it from both sides, which is proved here, does not amount to the commission of the offence of attempt to commit murder under Section 307 IPC. The first part makes any act committed with the intention or knowledge that it would amount to murder if the act caused death punishable with imprisonment up to ten years. The second part makes such an act punishable with imprisonment for life if hurt is caused thereby. Thus even if the act does not cause any injury it is punishable with imprisonment up to 10 years. If it does cause an injury and therefore hurt, it is punishable with imprisonment for life

17. There is no merit in the contention that the statement of Medical Officer that there is no danger to life unless

there is dislocation or rupture of the thyroid bone due to strangulation means that the accused did not intend, or have the knowledge, that their act would cause death. The circumstances of this case clearly attract the second part of this Section since the act resulted in injury No.5 which is a ligature mark of 34 cm x 0.5 cm. It must be noted that Section 307 IPC provides for imprisonment for life if the act causes 'hurt'. It does not require that the hurt should be grievous or of any particular degree. The intention to cause death is clearly attributable to the accused since the victim was strangled after throwing a telephone wire around his neck and telling him he should die. We also do not find any merit in the contention on behalf of the appellant that there was no intention to cause death because the victim admitted that the accused were not armed with weapons. Very few persons would normally describe the Thums-up bottle and a telephone wire used as weapons. That the victim honestly admitted that the accused did not have any weapons cannot be held against him and in favour of the accused."

This judgment is directly applicable to the facts of the present case, where the accused tried to strangle the petitioner/complainant but luckily she rescued herself from the clutches of the accused and informed her father, who immediately took her to Civil Hospital, Hansi where some photographs were clicked. The photographs as well as MLR of the petitioner clearly shows that the accused tried to strangle the petitioner.

In the present case, there was intention of the accused to commit

murder of the petitioner, as she was not fulfilling the demands of the accused and there were marks on her neck to substantiate this fact, as per MLR report and the photographs of the petitioner. The injuries though simple in nature have caused hurt to the petitioner. The accused tried to strangle the petitioner with a '*chunni*'. This act in itself shows that there was intention of the accused to kill the petitioner and thus, the charge under Section 307 IPC should have been framed against the accused.

In view of the discussion made above, the petition stands allowed and orders dated 28.07.2015 and 07.12.2015 are hereby set aside. Accordingly, the trial Court is directed to proceed, in accordance with law.

28.03.2017
G Arora

(RITU BAHRI)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>