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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment delivered on:30.08.2018

+ CRL.REV.P. 323/2017

BHANWAR SINGH & ORS

..... Petitioners

versus

STATE (GOVT OF NCT) DELHI

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Gaurav Kochar with Mr. Dollar Jain, Advocates.

For the Respondent : Ms. Neelam Sharma, APP for the State.
SI Shailendra Kumar Singh, PS
Gokulpuri.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

30.08.2018

SANJEEV SACHDEVA, J. (ORAL)

CRL.REV.P. 323/2017 & CrI.M.A.7299/2017 (stay)

1. The petitioners impugn order dated 28.01.2017, whereby, charge, *inter alia*, under Section 307 Indian Penal Code (IPC for short) has been framed against the petitioners.

2. The allegations in the FIR are that the complainant had suspected that his wife was having an affair with one of the co-accused and, as such, there was enmity between them. It is further

contended that at 9 am in the morning, when he was walking by his house, the petitioners are alleged to have made an allegation against him of misbehaving with the sister of the petitioner No.3. Thereafter, it is alleged that two of the petitioners brought iron rods and two of the petitioners had wooden sticks in their hands, they held him and thereafter assaulted him, because of which, he sustained injuries on his head, face and body.

3. Learned counsel for the petitioner submits that the petitioners have been falsely implicated and from a bare perusal of the FIR and the statement of the witnesses recorded during investigation, no offence under Section 307 IPC is made out. He further submits that even charge sheet was filed only under Section 308 IPC. However, by the impugned order, the petitioner has been charged with, *inter alia*, Section 307 IPC.

4. Learned APP for the State submits that as per the medical report, since injury was sustained on the forehead, charges have rightly been framed under Section 307 IPC. She further submits that the fact that they were armed with sticks and iron rod was reason enough for the court to frame charges under Section 307 IPC.

5. 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.]”

6. For an *act* to constitute an offence under Section 307 IPC, the requirement is that such *act* should be done with the intention or knowledge that if such *act* caused death, the person would be guilty of murder.

7. For constituting an offence of murder, the ingredients of Section 300 IPC would have to be satisfied.

8. Section 300 IPC reads as under:-

“300. Murder.—Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

(Secondly) —If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

(Thirdly) —If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

(Fourthly) —If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and

commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

9. Section 300 IPC enumerates four situations, one where an act is done with the intention of causing death; second where the act is done with the intention of causing such bodily injury as the offender knows is likely to cause death of the person to whom the harm is caused, thirdly, if the act is done with the intention of causing bodily injury and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death and fourthly, if the person committing the act knows that it is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death. Such an act if results in death, would constitute the offence of murder, as defined under Section 300 IPC, however, if death does not occur, such act would constitute an offence of attempt to murder under Section 307 IPC.

10. For an act to amount to an “*attempt*” the person must have done all that said person intended to do still the desired result is not achieved because of factors beyond his control. To constitute an attempt of an offence, the actor must have done everything that the actor intended to do, to achieve the desired result, still the result does not occur.

11. To constitute the offence of “*an attempt to murder*”, the

accused should have acted in the manner as enumerated in section 300 IPC, but death does not occur because of factors beyond the control of the accused.

12. Reading of Section 307 IPC with Section 300 IPC shows that if a person does the acts referred to in Section 300 IPC, with such intention or knowledge that if such act results in the desired consequence of the action of the perpetrator (i.e. death), said person can be charged with an attempt of murder. For *attempt* to be complete, insofar the actor is concerned, he should have done all that was within his power and ability for the purposes of achieving the desired result. If death occurs, offence of murder is complete, if death does not occur, it would be an attempt under Section 307 IPC.

13. The MLC shows that the nature of injuries sustained is simple. The injuries sustained by the victim, as mentioned in the MLC, are, *inter alia*, laceration on the forehead right side, laceration on the central part of upper lip, multiple abrasions and contusion, injuries to upper arm and forearm, both chest and back.

14. The medical report does not substantiate the contentions of the learned APP for the State and does not show that the injuries sustained are of nature as would satisfy the requirements of Section 300 IPC. Merely because wooden sticks and iron rods are alleged to have been used, would not in itself, be sufficient for framing of charge under Section 307 IPC. Merely because injuries are caused on the forehead

would not in itself be sufficient to frame a charge under Section 307 IPC. Trial Court, while framing charge is also to examine as to what are the nature of injuries sustained and/or attempted to be inflicted.

15. There is apparently no fracture sustained by the victim of any vital bone or injury to any vital organ. The injury sustained on the forehead is laceration of 3 x 0.5 cm, which in the opinion of the doctor is simple in nature. The record comprising of *inter alia* the MLC and the statement of witnesses and the injured does not justify framing of charge under Section 307 IPC.

16. In view of the above, the impugned order dated 28.01.2017 is set aside to the limited extent that it frames a charge against the accused-petitioners under Section 307 IPC. The matter is remitted to the Trial Court to reframe an appropriate charge. Trial Court shall appropriately reframe the charge in view of the observations contained herein.

17. The petition is disposed of in the above terms.

18. Order *Dasti* under the signatures of the Court Master.

AUGUST 30, 2018
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SANJEEV SACHDEVA, J