

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 13.12.2019

+ **CRL.A. 962/2019**

SHARMILA @ NANHI

..... Appellant

versus

STATE

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr D. K. Pandey, Mr Arun Singh,
: Mr Bimal Prakash and Mr Divas Sharma,
: Advocates.

For the Respondent : Mr Amit Gupta, APP for State with SI Tej
: Ram, PS Najafgarh.

CORAM

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The appellant has filed the present appeal impugning the judgment dated 29.07.2019, whereby the appellant was found guilty of attempting to commit murder and was convicted under Section 307 of the Indian Penal Code, 1860 (IPC). The appellant also impugns the order on sentence dated 31.07.2019, whereby the appellant was sentenced to two years of rigorous imprisonment and a fine of ₹10,000. It was further directed that in default of payment of fine, she would undergo three months of simple imprisonment.

2. The appellant contends that the Trial Court erred in not appreciating the fact that no weapon had been recovered from the possession of the appellant and the said weapon (a surgical blade) had been planted by the police. The appellant further contends that there are several discrepancies in the testimonies of the witnesses and that the testimony of PW1 was unreliable.

3. The case of the prosecution was that on 26.02.2016, at about 9:00 pm, near Tehsil Office, Tehsil Road, Tuda Mandi, Najafgarh, New Delhi, the appellant had given a blow to the neck of the victim by a surgical blade. This resulted in the victim suffering grievous injuries.

4. On completion of investigation, a chargesheet was filed and charges were framed under Section 307 of the IPC. To prove its case, the prosecution examined twelve witnesses. The appellant's statement was recorded under Section 313 of the CrPC. She did not lead any defence witness.

5. The Trial Court first evaluated the testimonies of PW1 and PW2 (the mother of the injured) to ascertain the factual matrix. PW1 (the injured) deposed that on 26.02.2016, after completion of her duty as a nurse, she left her place of work and was walking along with her mother (who had come to take her home) on way to their home. The incident had taken place at Tehsil Road near Tehsil office, Tuda Mandi, while they were on their way to their home. PW1 stated that at about 9 p.m. that day, the appellant came from behind on a bicycle and stopped her cycle near PW1 and her mother and started abusing PW1. As PW1 started walking, the appellant assaulted her from behind with some object and PW1 received injury on the left side of her neck and

the wound started to bleed profusely. PW2 corroborated the abovementioned testimony and deposed that she had put the *pallu* of her saree on the neck of PW1. PW1 was taken to her place of employment at Arogya Ruch Clinic and a co-employee, Sonu had lifted her from there and taken her to Ortho Care Hospital, ahead of Ruchi Clinic, where she was treated at night. The next day she was sent to PGH Hospital where she was admitted for fifteen days.

6. The Trial Court also took note of the part of the testimony, wherein PW1 deposed regarding the curdled relations between her and the appellant. PW1 stated that the appellant resided in her neighborhood and had five sisters and she was friendly with one of her sisters. In the year 2013/2014, the appellant had got married but had left her husband within two months of marriage and came back to her parental home. After coming back, the appellant used to quarrel with PW 1. She and the appellant's family members blamed PW1 for the appellant leaving her husband for her. Apparently, the appellant was in a relationship with PW1. However, PW1 told the appellant that their ways were separate.

7. On perusal of the testimonies of PW1 and PW2, the Trial Court held that PW1 and PW2 had unfolded the genesis of the incident and an essential part of the case of the prosecution. When read as a whole, the Trial Court found the testimonies of PW1 and PW2 to be cogent, reliable and trustworthy and not suffering from any material contradictions or inherent improbabilities. Minor inconsistencies could be said to have arisen due to normal errors of observation, errors of memory due to lapse of time, etc, and the testimonies of PW1 and

PW2 could not be discounted on the said basis. The Trial Court noted that it was made clear by PW1 that she was being blamed for the appellant's decision to leave her husband and hence, she had asked the appellant to proceed her separate way.

8. The Trial Court took note of the statement of the appellant under Section 313 of the CrPC. The appellant had claimed that she had been in a relationship with PW1 and on her insistence, she had left her husband. However, PW1 had refused to marry the appellant and to get rid of her, had implicated her in a false case. However, the appellant did not lead any evidence in her defence. It could not be proved from the examination or cross examination of any of the witnesses that the appellant had been falsely implicated. Further, the Trial Court noted that the evidence on record was shorn of any proof that the injuries of PW1 elicited above were self inflicted.

9. On the contrary, the Trial Court noted that there were several witnesses and evidence that substantiated the testimonies of PW1 and PW2. PW3 in his subsequent medical opinion (Ex. PW3/B), on perusing the medico legal report scribed by him (Ex. PW3/A), stated that that there was a possibility that the wound sustained by PW1 was caused by a surgical blade. DNA profile generated from the source of blood samples of PW1 were similar to the DNA profile (STR analysis) generated from the blood soaked cloth (Ex. PH1), put on injury of PW1 by PW2, after having obtained it from the driver of vehicle passing by at the place of incident.

10. As per PW7 (Ct. Surrender) and PW10 (SI Ravi Tushir), the weapon of offence, a surgical weapon (Ex. PSB) was found in the

sand on investigating the scene of crime very minutely. The Trial Court held that the surgical blade (Ex. PSB) was used as a weapon to assault the neck portion of PW1, resulting in PW1 bleeding profusely and falling on the ground at the place of incident. The appellant, aged 29 years at the date of the incident, was old enough to know that such an assault on the neck of a person, which is a vital part of the body, with a surgical blade could be fatal to the life of that person. Inasmuch as the intention of the appellant to murder PW1 could be inferred from the facts proved on record. The Trial Court held that the act of the appellant came within the ambit of the offence of attempt to murder and convicted her of the offence under Section 307 of the IPC.

Discussions and Conclusion

11. The learned counsel appearing for the appellant submitted that there was no intention to cause any death or any injury that is likely to cause death and therefore, the necessary ingredients of Section 307 of the IPC were not established. He submitted that the appellant could not be convicted of an offence of attempting culpable homicide in the absence of any such intention.

12. He submitted that the injury suffered by the victim (PW1) was 10 cm in length, 4 c.m in width and 0.5 to 1 c.m. deep i.e. muscle deep. He stated that such a wound could not have been caused by a surgical blade. He emphasized that since the width of the wound was 4 cms, it was obvious that the same had not been inflicted by a sharp object. He further contended that the MLC (Ex. PW 3/A) described the wound to be a contused lacerated wound (CLW). He submitted

that the laceration could not be caused by a sharp weapon. He relied on a text from a journal 'ACEP Now' downloaded from the internet and on the strength of the same, contended that a *laceration is a tear in the tissue caused by a shearing or crushing force*. He submitted that such a wound is not caused by any sharp object. He contended that a *laceration is a result of blunt-trauma mechanism and is further characterized by incomplete separation of stronger tissue element such as blood vessels and nerves*. In view of the above, he contended that the appellant could not have caused the said wound as there was no object in her hand, whereby such a wound could have been caused. None of the witnesses have testified that there was any object in her hand which could have fit the description of a blunt object.

13. Lastly, he contended that even if it is accepted that the appellant had inflicted the said wound, the appellant could be convicted for an offence punishable under Section 324 of the IPC; that is, voluntarily causing hurt by means of an instrument and not for an offence under Section 307 of the IPC.

14. The aforesaid contentions are unmerited.

15. In the present case, the victim who deposed as PW 1, testified that the appellant had come from behind her, on a bicycle, and had stopped her. She stated that the appellant had started abusing her and had assaulted her from behind with some object. She stated that she received the injury on the left side of her neck; the same resulted in blood coming out of the injury; and she had fallen down and had lost her senses. She testified that her mother had put a cloth on the injury and had taken her to Arogya Ruchi Clinic and, thereafter, an employee

of the clinic had taken her to Ortho Care Hospital where she was treated that night and on the next date sent to PGH Hospital. She had remained in the hospital for about fifteen days.

16. PW 1's testimony was fully corroborated by her mother who was accompanying her at the time of the incident. She had deposed as PW 2. Neither PW 1 nor PW 2 could identify the object used for inflicting the said injury. However, the accused was arrested and thereafter, she was taken to the place of the incident and a surgical blade approximately 4 centimeters in length was found on searching the site.

17. Dr Kshiteej Gaur, Chief Medical Officer, Orho Care Hospital had testified as PW 3. He testified as to the injury suffered by the victim and he affirmed his opinion that the nature of the injury was grievous. He stated that at the time when the victim was brought to the hospital, she was bleeding profusely. He also testified that in his opinion, the injuries sustained by PW1 were possibly inflicted by a surgical blade.

18. It is important to note that the said testimony remained uncontroverted as PW 3 was not cross-examined. In the aforesaid circumstances, the contention that the wound in question could not have been caused by a surgical blade is unmerited and there is no evidence to support this view. The journal relied upon by the learned counsel for the appellant describes the difference between a laceration and an incised wound. A plain reading of the said text also indicates that emergency medicine providers commonly describe any break in the skin as a laceration. In the circumstances, the fact that the injury

suffered by the victim has been described as a laceration would not in any manner dilute PW 3's testimony that the same could have been caused by a surgical blade. The wound was 10 c.m. long and 0.5 c.m. to 1.00 c.m. deep. This also indicates that the injury was caused by a sharp object. On being injured, the victim had bled profusely and this is established beyond any doubt by the testimony of PW 3, as well as by the MLC (Ex. PW 3/A).

19. In view of the unambiguous testimonies of PW 1 and PW 2, there is no doubt that the injury suffered by PW 1 was at the hands of the appellant. It is also established that the injury suffered was grievous. It took sixteen stitches to suture the wound and the injured had to remain in the hospital for a period of fifteen days.

20. The petitioner's contention that the appellant ought to have been convicted under Section 324 of the IPC and not under Section 307 of the IPC, is unmerited. Section 324 of the IPC is set out below:-

“324. Voluntarily causing hurt by dangerous weapons or means – Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

It is, at once, clear that the said provision is inapplicable since in the

present case, the appellant had inflicted a grievous hurt.

21. The wound inflicted on the victim was on the neck and there is little doubt that inflicting such wound on the neck was likely to cause death. There is no reason to believe that the appellant did not know that such an attack would be dangerous, and in all probability, could cause death. Such an act is described in the fourth limb of Section 300 of the IPC, which 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 xxxxxxxxxxxxxxxx

or

Thirdly- xxxxxxxxxxxxxxxx

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.”

22. In view of the above, this Court is unable to accept that the appellant’s conviction, under Section 307 of the IPC, cannot be sustained.

23. The appeal is unmerited and is, accordingly, dismissed.

VIBHU BAKHRU, J

DECEMBER 13, 2019

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