

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.482 OF 2003

The State of Maharashtra,
Through the Police Station Officer,
Police Station, Degloor,
Tq.Degloor, Dist.Nanded

-- APPELLANT

VERSUS

Sanjay s/o Motiram Chavan,
Age-20 years, Occu-Driver,
R/o in front of Kalamnagar, Degloor,
Tal.Degloor, Dist.Nanded

-- RESPONDENT

Mr.S.G.Sangle, APP for the appellant.
Mr.D.Y.Nandedkar, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE AND
B.U.DEBADWAR, JJ.)

DATE : MARCH 11, 2021

ORAL JUDGMENT :

1. The Trial Court has delivered the impugned judgment on 20/05/2003 in Sessions Case No.132/2002 and has convicted the respondent/ accused for offences punishable u/s 324 and 452 of the IPC. It would be appropriate to reproduce paragraph No.41 and the order thereunder, as follows :-

"As to point No.iv :- In view of the answers to the point Nos. (i) to (iii) and there being no special reasons for not resorting to the provisions of the Probation of Offenders Act, 1958, this Court can

definitely extend the benefit of Section 4 of the Probation of Offenders Act, 1958 to the accused having considered his age, when no previous conviction was proved against the accused, circumstances of the case, the nature of the offences, it feels that instead of sentencing the accused at once to any punishment he be released on his entering into a bond without sureties to appear and receive sentence when called upon for a period of two years for Rs.2,000/- (Rupees Two Thousand) and in the mean time to keep peace and be a good behaviour. Hence this point is answered accordingly. In the result, the following order is passed.

ORDER

- I. The accused is convicted as per Section 235 of the Code of Criminal Procedure, 1973 for the offences punishable under sections 324 and 452 of the Indian Penal Code. However, for the reasons stated above, he be released on his entering into a bond without sureties for Rs.2,000/- (Rupees Two thousand) for two years to appears and receive sentence when called upon, during such period and in the meantime to keep the peace and be of good behaviour.*
- II. The accused is acquitted as per Section 235(1) of the Code of Criminal Procedure, 1973 for the offence punishable u/s 307 of the Indian Penal Code.*
- III. The seized clothes of the victim being shown as worthless and useless be destroyed after the expiry of appeal period.*
- IV. The seized clothes of the accused, the cash amount seized from the possession of the accused be returned to him after expiry of appeal period.*
- V. The seized knife be sent to the District Magistrate, Nanded for disposal as per law after the expiry of appeal period."*

- 2. By this appeal, the State of Maharashtra prays for conviction of the**

respondent u/s 307 of the IPC. In the event, this Court is not convinced that the respondent has committed an offence punishable u/s 307 of the IPC, this Court may award maximum sentence for the offence punishable u/s 324 and 452 of the IPC.

3. It is undisputed that the accused has not challenged his conviction u/s 324 and 452 of the IPC. Since he was acquitted for the offence punishable u/s 307 and was granted the benefit of Section 4 of the Probation of Offenders Act, 1953, he chose to accept the verdict. By this appeal, the State prays for quashing the conclusion of the Trial Court in clause (ii) of the order, reproduced above and by setting aside the conviction u/s 324, it is prayed that the accused be convicted u/s 307 and his conviction u/s 452 of the IPC may be maintained.

4. In the above backdrop, we are required to consider this appeal to a limited extent since the prosecution has succeeded in proving its case u/s 324 and 452 of the IPC. This Court is, therefore, obliged to decide whether the offence committed by the accused could be punishable u/s 307 or whether the conviction u/s 324 with section 452 could be maintained ?

5. Section 307 of the IPC reads as under :-

"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."

6. The Hon'ble Apex Court has recently delivered a judgment in the matter of State of M.P. Versus Kanha @ Omprakash [(2019)3 SCC 605]. The Trial Court had convicted the accused u/s 307 of the IPC. The High Court of Madhya Pradesh at it's Gwalior Bench, delivered it's judgment dated 02/12/2011, converting the conviction to one punishable u/s 324 and thus acquitted the accused from the offence punishable u/s 307. The Hon'ble Apex Court has, therefore, crystallized the Law in paragraph No.11, which reads as under :-

"11 Several judgments of this Court have interpreted [Section 307](#) of the Penal Code. In State of Maharashtra v Balram Bama Patil¹, this Court held that it is not necessary that a bodily injury sufficient under normal circumstances to cause death should have been inflicted:

"9...To justify a conviction under this section it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the

accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in this section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.” (Emphasis supplied)

This position in law was followed by subsequent benches of this Court. In State of M P v Saleem², this Court held thus:

“13. It is sufficient to justify a conviction under [Section 307](#) if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. The section makes a distinction between the act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, an accused charged under [Section 307](#) IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt.” (Emphasis supplied)

In Jage Ram v State of Haryana³, this Court held that to establish the commission of an offence under [Section 307](#), it is not essential that a fatal injury capable of causing death should

have been inflicted:

“12. For the purpose of conviction under [Section 307 IPC](#), the prosecution has to establish (i) the intention to commit murder; and (ii) the act done by the accused. The burden is on the prosecution that the accused had attempted to commit the murder of the prosecution witness. Whether the accused person intended to commit murder of another person would depend upon the facts and circumstances of each case. To justify a conviction under [Section 307 IPC](#), it is not essential that fatal injury capable of causing death should have been caused. Although the nature of injury actually caused may be of assistance in coming to a finding as to the intention of the accused, such intention may also be adduced from other circumstances. The intention of the accused is to be gathered from the circumstances like the nature of the weapon used, words used by the accused at the time of the incident, motive of the accused, parts of the body where the injury was caused and the nature of injury and severity of the blows given, etc.” The above judgments of this Court lead us to the conclusion that proof of grievous or life-threatening hurt is not a sine qua non for the offence under [Section 307](#) of the Penal Code. The intention of the accused can be ascertained (2015) 11 SCC 366 from the actual injury, if any, as well as from surrounding circumstances. Among other things, the nature of the weapon used and the severity of the blows inflicted can be considered to infer intent.”

7. The Law is, thus, crystallized in so far as conviction u/s 307 of the IPC is concerned. The Hon’ble Apex Court holds that it is not essential that

a fatal injury capable of causing death should have been caused. Although the nature of injury actually caused may be of assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances like the nature of weapon used, words used by the accused at the time of the incident, motive of the accused, parts of the body where the injury was caused and the severity of the injury. It is concluded that proof of grievous or life threatening injury is not a sine-qua-non for the offence punishable u/s 307 of the IPC. The intention of the accused can be ascertained from the actual injury, if any, as well as from surrounding circumstances.

8. It requires no debate that Section 307 of the IPC is more on the intent and motive of a person. A person may not cause an injury, but Section 307 of the IPC would be attracted if he 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. Section 307 also foresees a situation in which hurt is also caused infurtherance of the act and for which the offender would be liable either to imprisonment for life or such punishment as is provided u/s 307 of the IPC.

9. In the case of State of M.P. Vs. Kanha (supra), the Hon'ble Apex Court noted from the evidence recorded before the Trial Court that the victim was injured on 08/10/2003 with 11 puncture wounds of the sizes

ranging from 0.4 x 0.7 cm to 0.4 x 0.6 cm. The injuries were bleeding and were caused by a fire arm. In the case before us, the act of the respondent/accused is as under :-

[a] The victim Mrs.Seema Vikas Kulkarni, is the wife of the then learned Civil Judge, Jr.Division and J.M.F.C., serving at Degloor Taluka in Dist.Nanded. She had two young children.

[b] On 12/01/2001, the two children had gone to school and her husband was in Court. At about 1.30 p.m., the accused, then aged about 18 to 20 years, entered the official residence of the Judge without permission. He came face to face with the victim who was about 32 years of age. He asked for a spade and a basket (*ghamela* in Marathi). She informed him that he should bring a chit or come alongwith a peon of the Court and take these implements. It is undisputed that she did not open the door and turned him back.

[c] On 13/01/2001, being a holiday, the learned Judge had been out of the house for some domestic work. The two children of the victim were present in the house. Finding the door of the house ajar, the accused entered the house at about 3.45 p.m. and went upto the kitchen room where the victim was alone. He then questioned her as to why she had not given him the spade and the *ghamela* on the earlier day. Before she could even react, he pulled out a knife which he had carried with him and stabbed her in the stomach and on the ribs.

[d] The victim suffered bleeding injuries and started screaming.

Hearing her cries, two peons and one woman came running and the victim was carried to the hospital. With initial medical assistance, she was shifted to the Government Hospital at Nanded. She was an indoor patient and was subjected to surgeries which were performed between 10.00 p.m. to 12.00 mid night.

10. We need not revisit the entire evidence since the offence has been proved. What we need to consider in this appeal is the challenge of the State, contending that the Trial Court has erred in convicting the accused for an offence punishable u/s 324 and 452 of the IPC and whether the accused deserves to be punished u/s 307 of the IPC.

11. In State of M.P. Versus Kanha (supra), the Hon'ble Apex Court has noted the puncture injuries in paragraph No.12, reproduced hereinabove. In the case before us, Dr.Janardan Irannna Bhume, P.W.No.4 has noted two injuries which are as under :-

- "1. A stab injury. It was on the right side of hypochondrium are a of abdomen below the ribs in the mid axillary line. Its size was 2.5 cm long x 1 cm depth x 1 cm breadth.
2. A stab injury on the right epigastric area of abdomen. Its size was 2 cm long x 1 cm breadth x 2.5 cm depth. It was peritoneal deep."

12. In his testimony, P.W.No.4 had stated that both the injuries were

grievous in nature and were dangerous to life. He has then expressed an opinion after perusing the knife, that if the patient would not have been given immediate treatment, she would have died and both the injuries could have turned out to be equally fatal.

13. P.W.No.10 Dr.Jamdade was the Professor and HOD of the department of Surgery, Government Medical College and Hospital, Nanded. The victim was referred to him at 7.30 p.m. on the same day. He has narrated the positioning of the injuries, one being in the epigastric region and the other being in the illiacfossa on lateral region. Noticing the seriousness of the injuries, he had the patient wheeled into the operation theatre and performed the surgery in between 10.00 p.m. to 12.00 midnight. He also noted that not only the abdomen and inner muscles were bleeding from the wounds, the outer layer of the colon was also injured. The patient was discharged after 10 days on 23/01/2001.

14. As has been held by the Hon'ble Apex court in State of M.P. (supra), to justify a conviction u/s 307 of the IPC, it is not essential that an injury capable of causing death should have been inflicted. The intention of the accused has to be gathered from circumstances like, nature of the weapon, motive of the accused, parts of the body where the injury was caused, nature of injury and severity of the blows.

15. In the instant case, the accused, who appears to be wayward as in 2001, had tried to enter the house of a Judge when the victim, wife of the judge, was alone inside the house. As she was alone, the door of the house was locked from inside and the accused could not gain an entry. There is no evidence to indicate as to whether masonry work was in progress in the house of the victim or it was merely a ploy to enter the house. It is, however, admitted that she told him to get a chit from the Court or bring a peon alongwith him. This appears to be a very simple incident or it could be an act of providence, a matter of co-incidence, that the victim did not open the door of the house.

16. The sequel to this part of the case is very serious. The accused seems to have been very much annoyed as the victim did not open the door. On the very next day, he came to her house and as it was a holiday and the children were at home, the victim appeared to be complacent. The door of the house was open and the accused walked inside the house right upto her kitchen. He had the courage and the audacity to question the victim as to why she did not give him a spade and a *ghamela* on the earlier day. Before she could answer, he whipped out a *Rampuri* knife with a blade length of 9.4 cms. and with a sharp age. It was 2.3 cms in width. It was a button knife meaning thereby that when the button is pressed, the blade opens with a spring action. He straight away stabbed her in her abdomen from behind and inflicted two injuries on her vital

parts as described by the doctors. One injury was 2.5 cms. long with 1 cm depth and 1 cm breadth. The second stab injury was of the size 2 cms.long X 1.00 cm. breadth x 2.5 cm.depth. Her right epigastric area was damaged, the right side of hypochondrium area of the abdomen was also injured below the ribs. A third injury of the size 0.5 cm x 0.2 cm was inflicted on the left great toe anteriorly showing sharp edges. The doctors have relied upon the medical papers to further state that the victim had suffered hemoperitoneum and contusion to the right kidney.

17. We are, therefore, considering the following circumstances to assess whether the accused had any intention of causing injury to the victim or as canvassed by his learned Advocate, the intent, motive and the injuries caused would fall u/s 324 :-

[a] The accused apparently was furious when his attempt to enter the house on the pretext of acquiring a spade and a *ghamela* had failed.

[b] Knowing that the house belonged to a Judge and his wife would normally be alone in the afternoon, he once again came to the said house in the afternoon on the next day.

[c] He carried a weapon beneath his clothes indicating that he had every intention and motive of using the knife against the victim.

[d] The knife was quite large and was a *Rampuri* with a sharpened steel blade of 9.4 cms. length and 2.3 cms width.

[e] He had the courage to question the victim for her refusal to open

the door and give him the spade the earlier day.

[f] Evidence does not indicate any heated exchange of words between the two except that the accused questioned the victim and in no time, pulled out the knife and stabbed her 3 times before she could even answer or become alert.

18. The Hon'ble Apex Court in State of M.P. (supra), has observed in paragraph Nos. 16 and 17 as under :-

"16 The evidence establishes that the injuries were caused by a fire-arm. The multiplicity of wounds indicates that the respondent fired at the injured more than once. The fact that hurt has been caused by the respondent is sufficiently proven. The lack of forensic evidence to prove grievous or a life-threatening injury cannot be a basis to hold that [Section 307](#) is inapplicable. This proposition of law has been elucidated by a two-judge bench of this Court in Pasupuleti Siva Ramakrishna Rao v State of Andhra Pradesh :

"18. 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 5 which is a ligature mark of 34 cm × 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 that he should die. We also do not find any merit in the contention on behalf of the accused 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.” (Emphasis supplied)

17 In the present case, the nature of the injuries shows that there were eleven punctured wounds. The weapon of offence was a firearm. The circumstances of the case clearly indicate that there was an intention to murder. The presence of 11 punctured and bleeding wounds as well as the use of a fire arm leave no doubt that there was an intention to murder. Thus, the second part of [Section 307](#) of the Penal Code is attracted in the present case. The judgment of the High Court overlooks material parts of the evidence and suffers from perversity.”

19. With the above conclusions, the Hon’ble Apex Court concluded that the second part of Section 307 of the IPC was attracted and the High Court had overlooked material parts of the evidence and had delivered a perverse judgment.

20. Taking into account the factors which we have summarized in

paragraph No.18 hereinabove, we do find that the Trial Court has fallen in a patent error in concluding that Section 324 of the IPC would be attracted and no offence is proved u/s 307 of the IPC. The conviction of the accused so as to be punished u/s 452 of the IPC, deserves to be maintained. We also find that the Trial Court had exercised its power u/s 4 of the Probation of Offenders Act without compliance of Sub Section 2 of Section 4 since no report was called for from the Probation Officer. Without taking into account the earlier conviction of the accused u/s 379 of the IPC (as a juvenile) in Reg.Criminal Case No.55/1993, the Trial Court had erroneously granted the benefit of Section 4 of 1958 Act to the accused.

21. We are shocked by the frightful conclusion of the Trial Court in paragraph No.38 of the impugned judgment holding that *“even after the incident, for more than 6 hours the patient was conscious and was given immediate treatment. The above circumstance surely attracts the ingredients of Section 324 of the IPC”*. It is then concluded in paragraph No.39 that *“the circumstances do not attract the ingredients of the offence punishable u/s 307 of the IPC.”*

22. With the above conclusions that the accused stands convicted for the offence punishable u/s 307 and 452 of the IPC, we called upon the learned Advocate for the accused to make his submissions on the quantum of the punishment. He consulted the accused present in the Court and has

submitted as under :-

[a] 18 years have passed by, ever since the incident.

[b] Though the accused has been acquitted in 2 cases RCC No.17/2001, u/s 394 of the IPC and RCC No.59/2001 u/s 394 of the IPC and though he has been convicted as a juvenile in 1993 and in the present case as well, he should be awarded minimum sentence.

[c] The accused is now married, has a grown up daughter and two sons and is the sole earning member of the family. Mercy may be shown towards him and by adopting a lenient view, minimum punishment may be awarded.

23. The learned Prosecutor submits that the accused must have carried rage in his mind as he could not gain an entry in the house of a Judicial Officer and he returned the next day and committed the crime, which indicates that he planned his moves by thinking over the said incident and planned his entry in the house when the door was opened and he found the victim alone in the kitchen. Before she could enter into any argument with him or seek someone's help to drive him out, being a stranger, he began stabbing her. Two life threatening injuries and another knife injury, which was not serious, indicates that he had decided to stab her multiple times. As such, he prays for life sentence.

24. We have thoughtfully considered the submissions of the learned

Advocate. We would have been justified in handing down a sentence of life imprisonment. However, keeping in view that the accused is married, has a family of 3 children and a wife and appears to be the earning member of the family, we are sentencing him to suffer rigorous imprisonment for 7 years and with a fine of Rs.10,000/- (Rs.Ten thousand only), i.d. of which further rigorous imprisonment for 6 months.

25. The period spent by him behind bars as an under trial from 31.1.2001 till the pronouncement of the impugned judgment dated 20.5.2003, shall be set off against the sentence u/s 428 of the Cr.P.C.

26. The accused shall surrender forthwith and shall be produced before the Trial Court by the Court Constable who has kept him present in the Court today by accompanying him. For the present, he will be lodged in the Harsul Central Jail at Aurangabad till tomorrow and after this judgment is uploaded, he shall be taken to the Trial Court for surrendering. The learned Trial Court shall follow the procedure prescribed in Law for remanding the accused to the prison for undergoing the sentence.

(B.U. DEBADWAR, J.)

(RAVINDRA V. GHUGE, J.)