



2024:DHC:6828



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on : 30.08.2024

Pronounced on : 05.09.2024

+CRL.A. 78/2024, CRL.M.(BAIL) 150/2024 and CRL.M.(BAIL) 1386/2024

LAL MOHAMMAD

..... Appellant

Through: Mr. Ajay Verma, Advocate

Versus

STATE

..... Respondent

Through: Mr. Laksh Khanna, APP for State
with SI Vinay PS Keshavpuram,
Delhi (M:9540519206)

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal has been filed against the judgement of conviction dated 19.07.2023 and order on sentence dated 23.09.2023 passed by learned ASJ, Rohini Courts New Delhi in Sessions Case No. 01/2016 arising out of FIR No.622/2016 registered under Sections 307 IPC and Section 25/27 Arms Act at P.S. Keshav Puram, New Delhi.

Vide the impugned judgement, the appellant was convicted for the offence punishable under Sections 307 IPC and Section 25 Arms Act and vide the order on sentence, he was directed to undergo rigorous imprisonment for a period of 4 years for the offence punishable under Section 307 IPC with a fine of Rs 5000/- in default whereof, he was directed to undergo further rigorous imprisonment for 1 month. For the offence



punishable under Section 25 Arms Act, the appellant was directed to undergo rigorous imprisonment for 3 years alongwith fine of Rs.5000/- in default whereof, he was directed to further undergo rigorous imprisonment for 1 month. The sentences were directed to run concurrently and the benefit of Section 428 Cr.P.C was also given to the accused.

2. The facts, as noted by the Trial Court, are as under:-

“On 11.09.2016 at about 7-7:30PM, accused Lal Mohmmad picked up a quarrel with his real brother Mohd. Kausar being in an intoxicated state. When Mohd. Afsar @ Afsar A li (PW-I) tried to intervene, the accused Lal Mohammad took out a knife and gave repeated blows on his forehead, chest & neck following which he fled from the spot. As per prosecution, the Accused/ Appellant was working with his brother Md. Kausar in a factory. Md. Kausar, on the instructions of owner of the factory, had instructed the Accused/Appellant not to come to the workplace in intoxicated condition however, the convict being an illiterate person, wrongly assumed that Md. Kausar was trying to get him expelled from his job and picked up a quarrel with him. When the victim tried to step in and neutralize the situation, the accused gave the knife blows to the victim. That on the basis of such complaint given by the victim, the present case was registered under section 307 IPC & 25/27 Arms Act vide FIR No. 622/2016 at P.S. Keshav Puram....”

3. Subsequent to filing of the chargesheet and based on the material collected during investigation, the accused was charged under Section 307 IPC and Sections 25/27 Arms Act, to which, he pleaded not guilty and claimed trial.

4. In support of its case, prosecution cited a total of 13 witnesses. The injured namely, Mohd. Afsar Ali was examined as PW1 and his brother Mohd Kausar was examined as PW2. Besides the above, the other witnesses were formal in nature relating to various aspects of investigation.



In his statement recorded under Section 313 Cr.P.C., the accused claimed that he had been falsely implicated in the present case.

5. Learned counsel for the appellant has assailed the judgment and order on conviction on the ground that the testimonies of the material witnesses are full of contradictions and do not inspire confidence. It is further submitted that the impugned has been passed based on surmises and conjectures. It is contended that the victim in the present case had taken a completely different name in the FIR indicating the presence of other people and that it was not the appellant who had inflicted the injury. It is further submitted that the shirt having a brown stain, Ex. 6/A, sent for forensic test seems to be planted to frame the accused since as per the FIR, the victim was not wearing any shirt at the time of the quarrel. In addition, the victim/PW1 and PW2 have failed to identify the knife allegedly used during the offence and that the said property has been purposely planted by the police officials in order to incriminate the accused. Lastly, it is argued that the alleged act of the accused does not show any intention or knowledge to cause death and thus falls outside the purview of Section 307 IPC. In this regard, Learned Counsel for the appellant has placed reliance on Shivamani and Anr v. State reported as **2023 SCC OnLine SC 1681**, Jage Ram v. State reported as **(2015) 11 SC 366** and State of Madhya Pradesh v. Saleem reported as **(2005) 5 SC 554**.

6. The injured in the present case, who was examined as PW1, has categorically stated of the identity of the appellant being known to him, the latter being the cousin of the injured victim. He has stated that the accused was quarrelling with his brother/PW2 and when he tried to intervene, the accused took out the knife and gave blows to him leading to injury. In



addition, PW1 also identified the blood soaked shirt belonging to his brother/PW2 and the pant belonging to him which were recovered from the spot and exhibited. The testimony of the brother of the victim, Mohd. Kausar, examined as PW2, is factually in line with the statement of the victim. The presence of PW2 at the spot is naturally established since the incident is said to have taken place at his house. PW 2 had also categorically identified the blood soaked shirt recovered from the spot to be belonging to him.

7. Both PW1 and PW2 were briefly cross-examined however besides a few suggestions denying the injuries having been inflicted by the accused, nothing as put to the prosecution witnesses to dispute the presence of the accused at the spot. The appellant/accused in his statement recorded under Section 313 CrPC has also not denied his presence at the spot.

8. The versions of PW1 and PW2 that the injuries were inflicted with a knife are further supported by the MLC(Ex. PW4/A), wherein PW4 Dr Anil Ranjan clearly mentioned the incised injuries caused on the victim by a sharp weapon. The MLC records following injuries:

- (i) Clean incised wound 2X1 Cm. on forehead
- (ii) Clean incised wound 3X1 Cm. and 3 cm over anterior chest.
- (iii) Clean incised wound 2X1 Cm. and 6-7 cm. deep on back.

9. A perusal of the testimony of SI Suraj Pal i.e. PW12 would show that it was on the basis of the disclosure statement of the appellant, the blood stained knife allegedly used in the commission of the crime, was recovered from the bushes near his jhuggi situated at N-86, Lawrence Road.



10. The FSL report was also exhibited during the trial, a reading of which would show that the blood samples obtained from the clothes and the knife were found to be a match with the blood sample of the injured victim.

11. The above-mentioned facts are sufficient to conclude that the injuries inflicted on the victim were done so using a knife which further corroborate the versions of PW1 and PW2. The sole contention that PW2 was unable to identify the knife when produced before him is not sufficient to disregard the case of the prosecution and no material contradictions have been pointed out in the cross-examination of the eye-witnesses which would favour the case of the appellant.

12. When assessing whether an offence committed falls under the provisions of Section 307 IPC, as per settled law, it is for the Court to look at the seat of the injury, the nature of the weapons used and the severity with which the blows were inflicted.

13. In the case of The State of Madhya Pradesh v. Kanha @ Om Prakash reported as **(2019) 3 SCC 605**, while considering its earlier decisions in Jage Ram (Supra) and Saleem (Supra) the Supreme Court had observed that :-

“10. Several judgements of this Court have interpreted Section 307 of the Penal Code. In State of Maharashtra v Balram Bama Pati1 reported as (1983) 2 SCC 28, 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.

11. *In State of M P v Saleem reported as (2005) 5 SCC 554, 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.”

12. *In Jage Ram v State of Haryana reported as (2015) 11 SCC 366, 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.”

13. *The above judgements 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 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.”*

14. Though learned counsel has referred to the decision in Shivamani (supra), a perusal of the same would show that the fact situation in that case was different as there was a single blow, which is not the case here.

15. Recently, in the case of Sadakat Kotwar and Anr v. The State of Jharkhand reported as **2021 SCC OnLine SC 1046**, the apex court has categorically observed that :-

“7.....As the deadly weapon has been used causing the injury near the chest and stomach which can be said to be on vital part of the body, the appellants have been rightly convicted for the offence under Section 307 read with Section 34 of the IPC. As observed and held by this Court in catena of decisions nobody can enter into the mind of the accused and his intention has to be ascertained from the weapon used, part of the body chosen for assault and the nature of the injury caused. Considering the case on hand on the aforesaid principles, when the deadly weapon – dagger has been used, there was a stab injury on the stomach and near the chest which can be said to be on the vital part of the body and the nature of injuries caused, it is rightly held that the appellants have committed the offence under Section 307 IPC.”

16. A perusal of the MLC, Ex. PW4/A, shows that the injuries inflicted



on the victim were on the forehead, chest and on the back of the victim. The MLC shows the wounds to be sufficiently deep so as to consider them life threatening and have also been opined to be grievous in nature. The MLC also records that due to the injuries, the victim was unable to move his right upper limb. A perusal of the testimony of PW1 shows that the injuries were to such an extent, that he had to remain hospitalised for a period of about 8-9 days. The witness has categorically stated that the injuries were inflicted upon him with the intention to kill.

Further, as per the sketch of the knife recovered, Ex. PW2/C, the blade of the knife was found to be 22.5 cm in length and 2.8 cm in width. Adequate material has not been brought on record by the accused to establish as to why the victim would falsely implicate him in the said case.

It is to be noted that in the testimony of PW2 Mohd. Kausar, it has been stated that the appellant was reprimanded by PW2 for coming to the workplace in a drunken state at about 8:00 am on 11.09.2016. The offence in question took place the same day in the evening at 7:30 pm when the accused armed with a knife came to the house of PW2. The above-stated facts show that the said offence cannot be said to have happened without any element of deliberation or premeditation and it can be inferred that the same was an outcome of the argument that took place earlier on the same day between the parties.

17. Upon a careful analysis of the testimonies as well as the material placed on record and keeping in mind the nature of injury, the weapon used and the fact that the injuries were inflicted on vital parts of the body, this Court is of the considered opinion that the allegations against the appellants under Section 307 IPC and Section 25 Arms Act have been conclusively



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proved. Consequently, the appeal fails and the appellant's conviction under the aforesaid Sections is upheld.

18. The appeal alongwith pending applications is disposed of in above terms.

19. A copy of this judgment be communicated to the concerned Trial court alongwith the records as well as to the concerned Jail Superintendent for information.

MANOJ KUMAR OHRI
(JUDGE)

SEPTEMBER 5, 2024

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