

Sheikh Aashif Vs. State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Jun-25-2009

Reported in : 2010CriLJ140

Judge : S.L. Kochar, J.

Appellant : Sheikh Aashif

Respondent : State of Madhya Pradesh

Judgement :

S.L. Kochar, J.

1. The appellant has preferred this appeal under Section 374(2) of the Cr.P.C. against the impugned judgment and order passed by learned Additional Sessions Judge, Burhanpur in S.T. No. 234/2007 judgment dated 11-8-2008 whereby convicted the appellant under Section 307 and 332 of I.P.C. and sentenced to undergo R.I. for 7 years 3 and fine of Rs. 2,000/- in default whereof to undergo R.I. for 1 year 6 months and R.I. for 3 years and fine of Rs. 1,000/- in default whereof to undergo R.I. for six months respectively.

2. In nut shell, the prosecution case as I placed before the trial Court is that on 1-9-3 2007 appellant was convicted under Section 25(1)(B)(b) of the Arms Act in Criminal Case No. 3556/06 by learned Judicial Magistrate, First Class, Burhanpur and sentenced to R.T. for 2 years with fine of Rs. 500/-. At the time of

pronouncement of judgment complainant (PW 1) Shiv Kumar Yadav was reader and witnesses Saeed, Deposition writer, Rukmani Shah Execution clerk, Rajendra Chaudhary, Peon and Kamal Singh, constable Court moharir were also serving in the same Court. After pronouncement of the judgment appellant was brought in front of the table of complainant for signing of the order-sheet. At this juncture appellant picked up a blade lying on the table for the purpose of cutting cotton tag and caused incised wound below right ear to Shiv Kumar Yadav the complainant. Complainant Shri Yadav was immediately taken to the hospital where attended by (PW 18) Dr. Mumtaj Hussain Ansari who issued medical report Ex. P/15. Dehati Nalishi was recorded by A.S.I. Ramesh Piplodiya who was posted at police outpost Neharu Government Hospital Ex. P/1. On the basis of this Dehati Nalishi in Kotwali police Burhanpur, First Information Report (F.I.R.) Ex. P/8 was registered for, the offence under Section 333/307 of I.P.C. Complainant was also examined and treated by (PW 24) Dr. Jinuddin Bohara who recorded bed head ticket Ex. P./24. The Investigating Officer prepared spot map and also collected blood in cotton from the floor of the Court room. Blood stained shirt and handkerchief of the complainant were also Seized. Police after recording the statements of the witnesses acquainted with facts of the case, filed charge-sheet against the appellant for the above mentioned offence. Appellant denied charges, therefore put on, trial. He did not examine any witness in defence, however, in accused statement recorded under Section 313, Cr.P.C. in answer to questions Nos. 11 and 12 appellant admitted causing of injury to complainant Shiv Kumar by blade which was lying on the table in Court room. Prosecution examined as many as 24 witnesses and adduced in total 24 documents to prove its case. Learned trial Court after hearing both the parties convicted and sentenced the appellant as mentioned hereinabove.

3. Having heard learned Counsel for the parties and after perusing entire record carefully, it is boiled out that conviction is based mainly on eye witnesses Recount, statement of complainant (PW 1) Shiv Kumar Yadav and medical evidence of (PW 18) Dr. Mumtaj Hussain Ansari as well as (PW 24) Dr. Jinuddin Bohara.

The main question arises before this Court for adjudication that even if complete prosecution case is admitted whether offences under Sections 333 and 307 of

I.P.C. are made out against the appellant?

4. (P.W. 1). Shiv Kumar Yadav and other eye-witnesses, as discussed in paragraph 12 of the impugned judgment, have unequivocally stated on oath that on 1-9-2007 appellant was convicted by the trial Court for the commission of offence under Arms Act and when he was brought in front of table of the complainant/Reader Shiv Kumar Yadav the appellant picked up blade lying on the table which was being used for cutting cotton tag and caused solitary' injury below right ear admeasuring 3 2 c.m. 3 m.m. It is also clear from the statement of complainant and by other eye-witnesses that appellant did not try to cause second injury.

5. In the opinion of (PW 18) Dr. Mumtaj Hussain Ansari, who examined complainant and issued M.L.C. Report Ex. P/15, injury was simple in nature and in his opinion if any artery underneath the injury would have been cut then there was possibility of death of complainant. (PW 24) Dr. Jinuddin Bohara has proved bed head ticket Ex. P/24 and gave specific opinion that injury was simple in nature and victim was discharged in one day after repairing wound and treatment. There is no medical evidence available in the record that injury was grievous in nature or sufficient in ordinary course of nature to cause death.

6. It is true that nature of injury alone is not sufficient to consider whether offence under Section 307 of I.P.C. (i.e.) to attempt commit murder is made out or not. For constituting the offence under Section 307 of I.P.C., intention of the appellant has to be seen at the time of causing injury and same can be determined on the basis of surrounding circumstances i.e. motive nature of weapon, part of the body on which the injury was caused, number of injuries, nature of injuries and intervening factor present at the time of incident because of which victim was saved or accused was restrained to fulfill his desire. Supreme Court in case of Sarju Prasad v. State of Bihar : AIR 1965 SC 843 : 1965 (1) Cri LJ 766 has observed as under relying on several earlier judgments:

Penal Code (1860), Sections 307 and 324 -- Accused causing injury to A in a vital region with a knife -- Fact that no vital organ of A has been cut would not by itself be sufficient to take the act of accused out of the purview of Section 307 -- But in

order to bring the offence home to accused the prosecution must establish that his intention was one of the three kinds mentioned in Section 300 -- State of mind of accused has to be deduced from surrounding circumstances -- Evidence not sufficient to establish with certainty existence of requisite intention or knowledge of accused--Accused can be convicted only under Section 324.

In case of Provincial Government, C.P. & Berar v. Abdul Rahman : AIR 1943 Nag 145 : 1943 Cri LJ 512 learned Division Bench of Nagpur High Court for the purpose of making out offence under Section 307 of I.P.C. under given facts and circumstances of the case observed as under:

The knife and the injury on the chest are no doubt material but not conclusive. These two factors are, however, not sufficient in themselves to prove the requisite intention or knowledge contemplated in Section 307. Where the assailant's immediate purpose was to release himself from the constable's hold and run away, his object in dealing the blow would be nothing more than to disable the constable. If the surrounding circumstances make no contribution to the proof of the intention or knowledge, it has to be inferred only from the nature of the act itself. In such a case the agent must be presumed to intent only the natural consequences of the act which was simple hurt in this case.

7. In the instant case, there is no evidence available on record for establishing the motive of the appellant. Appellant was not having any inimical term with the complainant. He was also not having any weapon in his possession and it appears that after pronouncement of judgment spontaneously he picked up the blade and caused blow without aiming any particular part of the body and blow fell on vital part which caused simple injury to complainant. In these circumstances, it would be very difficult to discern that appellant was having intention to commit murder of complainant or knowledge that because of his act the complainant would die.

8. According to the medical evidence, injury was simple in nature. There is no opinion given by both the Doctors that injury was grievous in nature and there is no data available in both the medical reports Ex. P/15 and Ex. P/24 that Injury was grievous in nature, in any way as defined under Section 320 of I.P.C., therefore, the appellant cannot be convicted neither for commission of offence under Section

307 of I.P.C. nor under Section 333 of I.P.C. causing grievous hurt to deter public servant from (his duty. Since injury was simple in nature, therefore, appellant would at the most be liable for conviction under S-332 of I.P.C., voluntarily causing hurt to deter public servant from his duty.

9. Consequently, this appeal is allowed in part. Conviction and sentence of the appellant under Section 307 and 333 of I.P.C. are hereby set asides instead thereof he is convicted under Section 332 of I.P.C. and sentenced to R.I. for 3 years and with fine of Rs. 3,000/-in default of payment of fine he shall suffer additional R.I. for 9 months. Full jail sentence has been granted to the appellant looking to the special feature of the case i.e. appellant caused injury to Reader of the Court, inside the Court, in Court hours after pronouncement of judgment of conviction. There is also material available on the record that appellant was facing prosecution for several criminal offences.

10. Office is directed to send copy of this judgment along with record immediately to the trial Court.