

**Prem Prakash Alias Prem Vs. State**

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**Court : Delhi**

**Decided On : Apr-25-1995**

**Reported in : 1995CriLJ3360**

**Judge : M.S.A. Siddiqui, J.**

**Acts : Indian Penal Code, 1860 - Sections 34, 300, 304, 307 and 324**

**Appeal No. : Crl. A. 19 with Crl. A. 22 and 29 of 1977**

**Appellant : Prem Prakash Alias Prem**

**Respondent : State**

**Advocate for Pet/Ap. : Dhanbir Singh and; P.K. Sharma, Advs**

**Judgement :**

1. These appeals are directed against the judgment dated 31-8-1976 passed by the Additional Session Judge, Delhi whereby the appellants were convicted under section 307/34 I.P.C. and were sentenced to undergo rigorous imprisonment for four years each together with a fine of Rs. 200/- each or in default of payment of fine to suffer further rigorous imprisonment for four months. These appeals shall be disposed off by the common judgment.

2. The incident giving rise to the present appeals took place on 7-9-75. It appears that the complaint Anil Kumar (P.W. 5) and the appellants were in love with Ms.

Uttam (P.W. 6). Since Ms. Uttam (P.W. 6) used to remain in the company of Anil Kumar (P.W. 5), the appellant felt ill about it. According to the prosecution, on 7-9-75 at about 8 p.m., while Anil Kumar (P.W. 5) and Ms. Uttam (P.W. 6) were proceeding towards Dina Ka Talab, the appellants came from behind. Appellants Amir Chand and Prem Prakash secured Anil Kumar and dragged him in a nearby lane. Appellant Ved Prakash followed them. Thereafter, the appellant Ved Prakash took out a knife and inflicted two blows with it as a result whereof Anil Kumar sustained one injury on the left side of his stomach and the other on his left thigh. Anil Kumar (P.W. 5) raised an alarm, which attracted Ganpat (P.W. 8) to the spot, seeing whom the appellants Amir Chand and Prem Prakash showed their heels. When Anil kumar (P.W. 5) started going towards Basant Restaurant the appellant Ved Prakash again inflicted another knife blow on his back. Anil Kumar (P.W. 5) fell on the ground and became unconscious. Immediately thereafter, he was removed to the Irwin Hospital where he was medically examined by Dr. Y. P. Kapoor. A message was flashed from the spot to the flying squad which, in turn, informed P. S. Roshanara about the occurrence. A case under section 307/34, IPC was registered at the P. S. Roshanara. Investigation, thereafter, followed. On completion of this investigation, the charge was laid.

3. The appellants abjured their guilt and alleged that a false case has been foisted on them. On the evidence adduced by the prosecution, the learned Sessions Judge came to the conclusion that the appellants had some leaning towards Km. Uttam (P.W. 6) who was not favorably inclined towards any one of them but was actually carrying on an affair with Anil Kumar which was not liked by the appellants. Apparently, the appellants wanted to get rid of Anil Kumar and for that reason, they assaulted Anil Kumar. According to the learned Sessions Judge, the appellant Prem Prakash and Amir Chand secured Anil Kumar and the appellant Ved Prakash inflicted two knife blows to him, one on the left side of his stomach and the other on his left thigh. Anil Kumar raised an alarm, which attracted Ganpat (P.W. 8) to the spot seeing whose the appellants Prem Prakash and Amir Chand showed their heels. When Anil Kumar started going towards Basant Restaurant, the appellant Ved Prakash inflicted another knee blow on his back. In the result, the learned Additional Sessions Judge found the appellants guilty and convicted them under section 307/34, IPC and sentenced each of them to suffer rigorous

imprisonment for four years together with a fine of Rupees 200/- in default to suffer rigorous imprisonment for four months.

4. The mainstay of the prosecution case is the testimony of Anil Kumar (P.W. 8) and Ganpat (P.W. 8). Learned counsel for the appellants strenuously contended that the learned Additional Sessions Judge has committed a grave error in holding that the offence under section 307, IPC was made out on the basis of the testimony of Anil Kumar (P.W. 5) and Ganpat (P.W. 8). I find considerable force in this contention. Learned Additional Sessions Judge has not held that the prosecution has established that the intention of the appellant Ved Prakash in causing the injuries to Anil Kumar (P.W. 5) was any of the three kinds, referred to in Section 300, IPC. To justify a conviction under Section 307, IPC, 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. 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 to all to actual wounds. In *State of Maharashtra v. Balram Rama Patel*, : 1983 CriLJ331 , it has been laid down that : at page 333; of Cri LJ.

'an attempt in order to be criminal need not be penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.'

Thus, the intent is the principle ingredient of the offence punishable under Section 307, IPC. It is not however the only ingredient. Some thing must be done to put the intent into execution. It is the offender's actual state of knowledge and intent which determines his criminal responsibility in such cases. Here I must point out that the burden is still upon the prosecution to establish that the intention of the appellant accused Ved Prakash in causing the particular injury to Anil Kumar (P.W. 5) was any of the three kinds referred to in section 307, IPC. For, unless the prosecution discharges the burden the offence under Section 307, IPC cannot be brought

home to the appellant Ved Prakash.

5. It needs also to be emphasized that the nature of the offence punishable under Section 307, IPC does not depend merely on the location of the injury caused by the accused. The intention of the person causing the injury has to be gathered from a careful examination of the facts and circumstances of each given case. The nature of the weapon used, the manner in which it is used, severity of the blow, the part of the body where the injury is inflicted, are some of the factors that may be taken into consideration to determine the intention.

6. The question is whether the appellant Ved Prakash intended to cause such injury to Anil Kumar (P.W. 5) as he knew to be likely to cause his death or intended to inflict an injury which was sufficient in the ordinary course of nature to cause his death or that he knew that his act was so imminently dangerous that it must in all probability cause death.

7. It is true that Anil Kumar (P.W. 5) and Ganpat (P.W. 8) deposed that the appellant Ved Prakash used a knife in inflicting the injuries to Anil Kumar. It is also true that the appellant Ved Prakash had inflicted three stab wounds but the fact remains that no vital organ of the body was injured thereby. It is significant to note here that Dr. Y. P. Kapoor, who examined Anil Kumar (P.W. 5) was not produced in the witness box. It is well settled that a medical witness who examines the victim of assault is a witness of fact, though he also gives an opinion on certain aspects of the case. In *Smt. Nagendra Bala Mitra v. Sunil Chandra Roy*, : 1960 CriLJ1020 , it was observed by their Lord-ships that : at page 1034; of Cri LJ.

'the value of a medical witness is not merely a check upon the testimony of eye witnesses because it may establish certain facts, quite apart from the other oral evidence. It is wrong to say that it is only opinion evidence; it is often direct evidence of the facts found upon the victim's person.'

It is evident that the doctor who has the initial advantage of examining the victim of assault and observing the nature of injuries on his body is in the best position to depose about the medico legal aspect of the offence committed on the victim. However, Dr. Y. P. Kapoor has nowhere stated in his medical report (Ex. P.W.

11/A) that the victim Anil Kumar (P.W. 5) had sustained any grievous injury on his person.

8. Yet another very important circumstance which has not been accorded any importance by the learned Additional Sessions Judge is that even the weapon of offence was not produced before the trial Court. It can't be disputed that nature of the weapon used gives a vital clue to the intention of the accused. In the instant case we do not know how big the knife was and, therefore, it cannot be said that it was sufficiently long to penetrate the abdomen deep enough to cause an injury to a vital organ which would in the ordinary course of nature be fatal. The prosecution at least should have elected from the prosecution witness particulars about its size. The prosecution has led no evidence from which it could be inferred that the appellant Ved Prakash had a motive to kill Anil Kumar (P.W. 5). There is no medical evidence on record to show that in inflicting these injuries to Anil Kumar (P.W. 5), the appellant Ved Prakash had exposed him to the risk of the probable death. I am, therefore, unable to hold that the appellant Ved Prakash had such intention or knowledge. In this state of the evidence. I find that the prosecution has not established that the offence committed by the appellant Ved Prakash falls squarely under section 307/304, IPC.

9. However, the evidence of Anil Kumar (P.W. 5) and Ganpat (P.W. 8) clearly proves that on the day in question, the appellant Ved Prakash voluntarily caused hurt to Anil Kumar (P.W. 5) by means of a knife which is an instrument for stabbing. I accordingly alter the conviction of the appellant Ved Prakash from under section 307/34, IPC to one under section 324, IPC.

10. Evidence of Anil Kumar (P.W. 5) and Ganpat also proves that at the relevant time the appellants Amir Chand and Prem Prakash secured Anil Kumar (P.W. 5) and dragged him in a nearby lane and thereafter, the appellant Ved Prakash administered knife blows to him. Thus the evidence of both the witnesses showed that all the three appellants were acting in concert in securing and dragging Anil Kumar (P.W. 5) in a nearby lane and also in inflicting knife blows to Anil Kumar (P.W. 5). Consequently, I have no hesitation in coming to the conclusion that the appellants had shared the common intention to cause hurt to Anil Kumar (P.W. 5)

by means of a knife. I accordingly, alter the conviction of the appellants Amir Chand and Prem Prakash from under section 307/34, IPC to one under section 324/34, IPC.

11. Coming to the question of sentence, it is noteworthy that the occurrence took place in the year 1975 and the appellants had undergone the proceedings for a period of two decades. Having regard to the age of the appellants on the date of offence and looking to the circumstances in which the offence was committed and the nature of injuries. I am satisfied that it is a fit case in which if the sentence of the appellants is reduced to the sentence already undergone it would meet the ends of justice. Subject to this modification, the appeals are dismissed.

12. Appeals dismissed.

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