

**Attar Mian Vs. State**

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**Court :** Delhi

**Decided On :** Jul-17-1997

**Reported in :** 70(1997)DLT588

**Judge :** Jaspal Singh, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 307

**Appeal No. :** Criminal Appeal No. 172 of 1992

**Appellant :** Attar Mian

**Respondent :** State

**Advocate for Pet/Ap. :** R.P. Luthra and; H.J.S. Ahluwalia, Advs

**Judgement :**

**Jaspal Singh, J.**

(1) Attar Mian finds himself dissatisfied with the judgment of the learned Additional Sessions Judge convicting and sentencing him under Sections 207 and 324 of the Indian Penal Code. Hence this appeal.

(2) It all started on February 5, 1987 when the appellant blew the smoke of charas at Mohd Jhagir. Obviously the act of the appellant did not win the approval of Mohd Jhagir and when he protested the appellant instead of showing any remorse,

reacted by giving him a slap. Feeling aggrieved Mohd Jhagir went to his brother Mohd Akhtar (Public Witness 2). Both of them then went to the appellant obviously to lodge their protest. This too was found by the appellant to be not to his liking. He not only abused them but even inflicted knife injury towards the left side of the neck of Mohd Akhtar (Public Witness 2). One Ramesh Kumar (Public Witness 6) was also present there. He tried to intervene but then he too was assaulted and given a knife injury on the left thigh. Both the injured were later rushed to the hospital.

(3) That the incident took place in the manner as noticed above finds support not only from the statement of Mohd Akhtar and Ramesh Kumar referred to above, but also from the evidence of Nafis Ahmed (Public Witness 1 ) and Allah Kher (Public Witness 7). Of course, the prosecution has examined other witnesses too but they were police officials, who at one stage or the other participated in the investigation. What, however, needs to be noticed is that both the injured were examined by Dr. D.D. Golani (Public Witness 9). In the case of Ramesh he found him having suffered an incised wound in the lateral aspect of left thigh midway, vertically oriented 3 cms. long. The injury according to him was simple and the injuries found by him were two in number. First was an incised wound on the left side of his ear and the other merely an abrasion.

(4) The appellant in his statement recorded under Section 313 of the Code of Criminal Procedure denied the entire prosecution version and rather alleged that it was he who had received injuries. In support he examined Afraz Ahmed Khan and Sardar Kuldeep Singh as defense witnesses. Both supported the appellant that it was he who was attacked. Needless, however, to say that the learned Additional Sessions Judge found the prosecution evidence as worthy or reliance and the defense version to be of no consequence.

(5) Mr. R.P. Luthra, Advocate, who has argued for the appellant has not chosen to refer to the defense version. He says it may be ignored. His contentions are two. As per him even if the prosecution version is taken to be true and reliable it does not make out a case under Section 307 of the Penal Code. His second argument is that in any case the sentence of ten years and fine awarded under Section 307

needs to be drastically reduced.

(6) I have, with a view to satisfy myself, gone through the statements of the witnesses Nafees Ahmed and Allah Kher and the statements of the injured. Their combined reading points directly towards the guilt of the appellant. Medical evidence lends further support. It is perhaps because of this overwhelming evidence that the learned Counsel for the appellant has pressed the appeal only on the points noted above.

(7) But then, all said and done, can it be said that what has been proved makes out a case under Section 307 of the Indian Penal Code?

(8) It need not be said, for it is too well established to be restated, that to bring home an offence under section 307 the prosecution must establish not only the actus reus but means read too and that the requisite intention be of any of the kinds referred to in Section 300 and that knowledge being the alternative to intention in Section 300, Clause (sic.) Fourthly, if established, it too would be sufficient. And, how do we gather the intention? It may be gathered from the nature of the weapon used, the nature of the injuries caused, their location, and the number of blows inflicted besides other facts and circumstances of the case. In the case in hand there was no premeditation. What happened was all of sudden and at the spur of the moment. The injuries caused to Akhtar Mian which, according to the learned Additional Sessions Judge, invited Section 307 were merely an abrasion and an incised wound on the left side of his ear. Both the injuries were not on vital parts of the body. To add to it, the doctor who examined him and the doctor who opined about the nature of the injuries have not been examined and, therefore, the nature of the injuries have to be taken as simple and I say so on the authority of *Mohinder Singh v. The State*, 1976 Plr 69, *Narinder Kumar v. The State*, : 17(1980)DLT302 and *Rajesh @ Vimal Kumar & Anr. v. State (Delhi Admn.)* 1995 (2) C.C. C 57 . This being the position, the conviction and sentence of the appellant under Section 307 cannot be held to be proper. Of course it was not disputed, and rightly so, that Section 324 of the Penal Code was fully attracted not only with regard to the injury caused to Ramesh but with regard to the injury caused to Akhtar as well. The appeal is thus partly

accepted. The conviction and sentence under Section 307 stand set aside. Instead the appellant is convicted under Section 324 for having voluntarily caused hurt to Akhtar with a knife and is sentenced to undergo one year's rigorous imprisonment. Fine, if deposited, be refunded. However, sentence awarded under Section 324 with regard to Remesh stands.

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