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The State Vs. Raman

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Court : Kerala

Decided On : Jun-28-1990

Reported in : 1990CriLJ1967

Judge : M.M. Pareed Pillay, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 299, 300, 307, 324 and 325

Appeal No. : Criminal Appeal No. 528 of 1988

Appellant : The State

Respondent : Raman

Advocate for Def. : Party-in-Person

Advocate for Pet/Ap. : Ayisha Youseff, Adv.

Disposition : Appeal allowed

Judgement :

M.M. Pareed Pillay, J.

1. State has filed the appeal challenging the finding of the Assistant Sessions Judge, Irinjalakuda that the accused (respondent) committed offence only under Section 324 and not under Section 307 of the Indian Penal Code.

2. The prosecution case is that on 7-1-1985 at about 12.15 p.m. accused attempted to commit murder of Thomas (P.W.4) by voluntarily causing grievous hurt to him by beating on his head and chest several times with crow bar. The learned Assistant Sessions Judge held that the offences under Sections 307 and 325 have not been established and the prosecution has succeeded only in establishing the guilt of the accused under Section 324 of the I.P.C. This finding has been challenged by the State.

3. M.O. I'llavanku' has a length of 115 cm. The wound certificate Ext. P-2 shows that P.W.4 had sustained lacerated wounds. Ext. P-2 also shows that there was suspected fracture of skull bone. P.W.4 was treated in the Medical College Hospital.

4. A formidable weapon was used by the accused to assault P.W.4 and that too on a vital part of the body. The evidence in the case certainly shows that accused inflicted the injury on the head of P.W.4. It can never be said that he was blissfully ignorant of the consequences of his act in hitting P.W.4 with the weapon. Knowledge that the injury was likely to prove fatal has to be necessarily imputed to the accused as he used the weapon with force to hit on the head of P.W.4.

5. In a case where the victim had a providential escape or due to timely medical assistance death was averted accused cannot take up the stand that the injury inflicted was not sufficient to cause death and so Section 307 is not attracted. To constitute an offence under Section 307 what is relevant is the intention or knowledge and not the consequence of the actual act. The section is attracted when the act is done with the intention of causing death or with the knowledge of its likelihood of causing death. The failure to achieve the intended result on account of the intervention of a cause operating independently of the volition of the assailant is of no consequence. Intention and knowledge are alternative ingredients of Sections 299 and 300. Hence an offence under Section 307 can be made out where no intention has been proved but when undoubtedly knowledge can be imputed to the imminently dangerous nature of the act. Once intention or knowledge is established, the nature of the act is immaterial. Section 307 may be attracted in a case where no hurt has been caused. Causing of hurt is merely an

aggravating circumstance. For the application of Section 307 it is not necessary that the injury capable of causing death should have been actually inflicted. The four illustrations to Section 307 throw a great deal of light on the intention of the Legislature in enacting the section. In a case where accused did not have the intention but had the knowledge that his act is likely to cause death, Section 307 applies. It is useful to refer to Bharat Dube v. Emperor, AIR 1941 Patna 51 : (1941 (42) Cri LJ 303) where the Court held thus:

'In order that an act shall amount to an attempt to murder all that is necessary to prove is that if the act had caused death it would have amounted to murder provided that it was done with such intention or knowledge as would be necessary to be proved in the case of murder. The fact that an act results in minor injuries or even in no injuries at all is not relevant for the purpose of deciding whether it amounted to an attempt to murder or not.'

6. The Assistant Sessions Judge was not justified in holding that the offence would only come under Section 324 of the I.P.C. as the intention and knowledge can be discerned from the nature of the assault and the injury being on a vital part of the body. In view of the evidence in the case it has to be held that the offence comes under Section 307.

7. The conviction and sentence entered against the accused under Section 324 of the I.P.C. is modified and he is convicted under Section 307. While sustaining the sentence the conviction is altered from Section 324 to Section 307.

The Criminal Appeal is allowed.

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