

Sukha Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Apr-21-1995

Reported in : 1996CriLJ1283; 1995(2)WLN90

Judge : N.L. Tibrewal, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 304, 307, 308 and 333

Appeal No. : Criminal Appeal No. 322 of 1994

Appellant : Sukha

Respondent : State of Rajasthan

Advocate for Def. : M.L. Goyal, Public Prosecutor

Advocate for Pet/Ap. : N.A. Naqvi and; N.K. Singhal, Advs.

Judgement :

N.L. Tibrewal, J.

1. This Criminal Appeal is directed against the judgment dated, July 6, 1994 of the Sessions Judge, Jhalawar, in Sessions Case No. 315/92, whereby the appellant was convicted under Section 307 I. P. C. and sentenced to 7 years' rigorous imprisonment and to pay a fine of Rs. 100/-. In default of payment of fine, he was to undergo further rigorous imprisonment for one month.

2. During the course of arguments, learned counsel for the appellant did not challenge the conviction of the appellant and he restricted his arguments on two points. The first contention was that the offence under Section 307 I. P. C. was not made out from the facts and circumstances of the case, specially in the absence of medical opinion that the injuries sustained by the injured Makhan Lal were sufficient to cause death in the ordinary course of nature. The second submission was with regard to quantum of sentence. As the learned counsel has not challenged conviction of the appellant, as then facts of the case need not be given in detail and few facts necessary for this appeal may be described.

In brief, the prosecution case was that on April 24, 1992, A. S. I. Makhan Lal (P. W. 1) was returning from the Police Station after submitting reports to the S. H. O. Police Station, Bhawani Mandi, about criminal cases which were being investigated by him. In the way his cycle went out of order, as such, he stayed to get it repaired. While he was taking tea at the hotel of Shankar Sindhi, the appellant came to him and started quarreling; with him. Sensing the appellant to be in a quarrelsome mood, he left that place and sat in the store of room of one Jugal Kishore. After some time, the appellant came with a knife and assaulted him causing five knife blows in quick succession. The S. H. O. P. S. Bhawani Mandi recorded 'Parcha-bayan' (Ex. P1) of A.S.I. Makhan Lai and registered F. I. R. on the basis of that statement. Accused Sukha was arrested and a knife was recovered at his instance vide seizure memo, Ex. P. 14. The injuries of the injured Makhan Lal, A. S. I. were examined by P. W.5 Srinath Gupta on the same day vide injury report, Ex. P. 6. The following injuries were found on his person :

1. Stab wound 1' x 1/4' x just above left breast nipple.
2. Stab wound 1 1/2' x 1/2' x on left side of neck.
3. Stab wound 1' x 1/4'. x on lateral side chest Lt. side.
4. Incised wound 1' x 1/4' x 1/4' on left thigh.
5. Incised wound 2' x 1/2' x 1/2' on left arm laterally.

All the injuries were found to have been caused by a sharp weapon.

Thereafter, the injured was referred to the Medical Jurist, S. R. G. Hospital, Jhalawar. On X-ray examination of chest - P. A. view, a fracture of 8th left rib was found. Sub-cutaneous emphysema was also found on left side of chest. Dr. G. S. Chouhan (P.W. 11) prepared X-ray report, Ex. P. 8 and opined injuries No. 1 and 3 to be grievous and dangerous to life. As per the F. S. L. report, Ex. P. 14, the knife was found stained with human blood. After completion of the investigation, a charge-sheet was found (framed) and ultimately the appellant was tried in the Court of learned Sessions Judge, Jhalawar for the offences under Section 307 and 333 I. P. C. During trial, 13 witnesses were examined by the prosecution which included P. W. 1 Makhan Lal A. S. I., the injured eye-witness, P. W. 5 Dr. Srinath Gupta, P. W. 11 Dr. G. S. Chauhan and the Investigating Officer, Onkar Singh P. W. 9. The learned trial Judge placed reliance on the testimony of the injured witness, Makhan Lal, A. S. I., which was corroborated by the First Information Report and the Medical Evidence. After going through the statement of P.W. 1 Makhan Lal, A. S.I. I am convinced that the learned trial Court committed no error in placing reliance on his testimony and the learned counsel for the appellant rightly did not challenge his testimony.

3. In the back ground of the above facts, the crucial question for determination is whether the offence under Section 307, I. P. C. was made out against the appellant? The contention of the learned counsel in this connection is that the Doctor has not opined that the injuries sustained by Makhan Lal A. S. I. were sufficient to cause death in the ordinary course of nature, as such, the offence Under/Section 307, I. P. C. was not made out. Reliance in this connection has been placed on a decision of this Court in Munna v. State of Rajasthan, 1984 Cri LR (Raj) 529. In that case, the injured had sustained a single stab wound having measurement of 1/4' x 1/8' x cavity deep vertical on Rt. I Iliac fossa and the injury was not found sufficient in the ordinary course of nature to cause death by the Doctor. In the facts and circumstances of the case, it was held that in case the injured had died, the accused would have been guilty of culpable homicide not amounting to murder punishable under Section 304, I. P. C, as such, he could be held guilty for the offence punishable under Section 308, I. P. C. and not under Section 307 I. P. C.

4. To appreciate the argument of the learned counsel, it is necessary to examine Section 307, I. P. C. which reads as under:-

'Section 307. Attempt to murder - Whoever does any Act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.'

A bare perusal of the above section shows that it makes a distinction between an act of the accused and its result if any. It is not always necessary that bodily injury capable of causing death should have been inflicted in all cases to justify a conviction under Section 307 I. P. C. The intention of the accused is relevant to determine the offence, and though, the nature of injury actually caused may often give considerable assistance to gather intention of the accused, such intention may also be gathered from other circumstances and may even in some cases be ascertained without any reference at all to actual wounds. It is sufficient in law to make out offence under Section 307 I. P. C. if there is present the requisite intention coupled with some overt act in execution thereof.

4-A. In *State of Maharashtra v. Balaram Bama Patil*, : 1983 CriLJ331 , the Apex Court of the country had an occasion to examine the ambit and scope of Section 307 I. P. C. in reference to the nature of injury actually caused to the victim and it was observed as under:-

'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 causes 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 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.'

5. In the back-ground of the above proposition of law, further question arises whether the conviction of the appellant under Section 307 I.-P. C. was justified. The facts of the case show that the appellant first had a quarrel with the victim, Makhan Lal A. S. I. and then went away. After some time, he returned back with a knife in his hand and opened attack declaring that he would kill him. He gave five successive blows on the body of the injured. Two stab wounds were inflicted on chest, while one stab wound was given on the back. Out of the five stab wounds, stab wounds caused on the chest were found to be grievous and dangerous to life. From the evidence of the A. S. I. Makhan Lal it also appears that the incident did not take place all of a sudden but the accused came with preparation and with intention to inflict injuries to the injured. His conduct of causing successive blows and the vital part chosen for inflicting injuries makes his Intention quite clear. The intention of the assailant was to cause death of the injured or to cause such bodily injury likely to cause his death, as such, he was guilty for the offence under Section 307 I. P. C. The learned trial Court committed no error in holding the appellant guilty under Section 307 I. P. C.

6. The next question is about the quantum of sentence. The appellant is a Harijan, a member of Scheduled Caste. It appears that on account of some previous enmity, he was enraged and inflicted injuries to A. S. I. Makhan Lal. At the time of the incident, he was 25 years of age. On the other side, . the victim is a police officer who was assaulted without any cause. Taking into consideration the entire facts and circumstances, I am of the opinion that a sentence of four years rigorous imprisonment and a fine of Rs. 500/- will meet the ends of justice.

Consequently, the conviction of the appellant under Section 307 I. P. C is maintained. The sentence awarded by the trial Court is modified to the extent that he is awarded four years R. I. and to pay a fine of Rs. 500/-. In default of payment of fine, the appellant shall undergo further rigorous imprisonment for three months.

The appeal is disposed of as indicated above.

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