

State of Rajasthan Vs. Arjun Singh

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Court : Rajasthan

Decided On : Apr-02-1998

Reported in : 1998CriLJ2561

Judge : Amaresh Ku. Singh, J.

Acts : Indian Penal Code (IPC) - Sections 307, 323, 324, 326, 435, 447 and 509;
Code of Criminal Procedure (CrPC) , 1974 - Sections 482

Appeal No. : Cri. Revision Petition No. 37 of 1994

Appellant : State of Rajasthan

Respondent : Arjun Singh

Advocate for Def. : N.S. Charan, Adv.

Advocate for Pet/Ap. : D.S. Rathore, Public Prosecutor and Suresh Kumbhat,
Adv.;

Disposition : Petition allowed

Judgement :

ORDER

Amaresh Ku. Singh, J.

1. Heard the learned Public Prosecutor, the learned counsel for the complainant and the learned counsel for the accused Arjun Singh.

2. This petition under Section 482 of the Criminal Procedure Code is directed against the order dated 2-11-1993 passed by the District and Sessions Judge, Pali in Sessions Case No. 36/ 1993, State V Arjun Singh, whereby the accused Arjun was discharge of the offence under Section 307 of the Indian Penal Code and the case was made over to the Chief Judicial Magistrate, Pali for trial on charges under Sections 326, 324, 323, 447, 435 and 509 of the Indian Penal Code.

2A. The learned Public Prosecutor has submitted that there was sufficient ground to frame a charge under Section 307 of the Indian Penal Code and, therefore, the order of discharge is improper and amounts to abuse of the process of the Court and deserves to be set aside. The learned counsel for the complainant has supported the petition and the learned counsel for the accused has supported the order passed by the Sessions Judge.

3. On 26-7-1993 Smt. Naju Devi was admitted at the Govt. hospital Marwa Junction in an injured condition. On that she gave statement to A.S.I. Birad Singh who was posted at Police Station Marwar Junction. According to statement of Smt. Naju, her field is adjoining the field of Arjun Singh. On 26-7-1993, in the morning she went to her field with daughter; daughter-in-law and sister-in-law. Two labourers were also hired for the purpose of constructing a fencing around the field. At about 10.00 A.M. Arjun Singh, armed with a naked sword, went there and asked the labourers why they were constructing the fencing. They told Arjun Singh that they acting under the directions of Kesa Ram who was the owner of the field. Arjun Singh called Smt. Naju, who was working in the field. When she was asked why the fencing was being constructed, she told that the same was for the protection of the crop. Arjun Singh then started showering abuses. Smt. Naju then sent her daughter to the village and asked her to bring her father. She herself started going towards the fencing. At that time Arjun Singh attacked Smt. Naju and by holding the sword with both hands he inflicted a sword injury when landed on the right arm of Smt. Naju. As a result the right arm was cut in the middle and blood started coming out of the wound and Smt. Naju fell on the ground. Arjun

Singh inflicted another injury with sword. The second injury was caused on the shoulder. It was stated by Smt. Naju that the second injury would have landed on her neck, had she not tried to save herself. The accused did not stop at that stage. He brought an axe and started inflicting injuries. When the daughter-in-law of Smt. Naju came to the scene of occurrence to save Smt. Naju she was also assaulted and 4-5 injuries were inflicted on her body also. It was also stated by Smt. Naju that Arjun Singh set fire to the fencing and destroyed it.

3.1 On the basis of the statement of Smt. Naju the Station House Officer of the Police Station Marwar Junction registered a case under Sections 447, 323, 324, 307 and 435 of the Indian Penal Code. The injuries of Smt. Naju were examined. Following injuries were found on her body.

1. Wound (incised) 20 cm. x 5 cm. x 3.5 cm. over right arm middle 1/3 to lower 1/3, simple and sharp.
2. Wound (incised) 10 cms. x 3.5 cms. x 3 cms. over rt. shoulder, simple and sharp.
3. Wound (incised) 8 cms. x 1 cm. x 1 cm. over occipital region of scalp post laterally towards right side - simple and sharp.

At the time of examination Smt. Naju was in a state of shock and was not in a position to be transferred. On conducting X-ray examination, fracture of parietal bone of skull was detected by the Radiologist.

4. The learned Sessions Judge has discharged the accused of the offence under Section 307 of the Indian Penal Code because Smt. Naju did not say anything about the fracture of her skull bone, in her statement and, the accused had also received seven injuries and he did not kill Smt. Naju though he was armed with a sword. I have carefully considered the facts and circumstances of the case and the reasons given by the learned Sessions Judge for discharging the accused Arjun Singh of the offence under Section 307, IPC. Offence under Section 307 of the Penal Code is committed when any person attempts to commit homicide in such circumstances and with such intention/knowledge as would attract the provisions

of Section 302 of the Indian Penal Code. Generally, intention and knowledge cannot be proved by direct evidence. They are to be inferred on the basis of circumstantial evidence produced by the prosecution. While drawing inference about intention or knowledge all relevant circumstances are required to be taken into consideration, if they have been proved and after taking them into consideration, it is to be inferred whether the presence of intention or knowledge is proved. No one circumstance can be sufficient to prove the intention or knowledge if considered in isolation, but in the context of other relevant facts and circumstances, inferences may be drawn by the Court.

4.1 In the instant case, according to the statement on the basis of which the police registered the case, the accused was armed with a sword when he reached the field. After the exchange of words between Smt. Naju and the accused, when Smt. Naju was going towards the other part of her field, the accused attacked her. While inflicting the sword blow on unarmed complainant, the accused held the sword with both hands and inflicted a blow which landed on her right arm and caused an injury of the size of 20 cm. x 5 cm. and 3.5 cm. On receiving this injury Smt. Naju fell on the ground as there was profuse bleeding from her injury. The accused was not satisfied with the wound which he had inflicted. He hurled another blow with sword. This blow landed on the right shoulder of Smt. Naju and according to Smt. Naju the blow would have landed on her neck had she not moved her neck to save herself. It shows that the second blow was designed to land on the neck and cut the neck. The third wound was on par tal bone and the impact was so severe that fracture of the parietal bone occurred. This blow prima facie appears to be the result of attempt to inflict sword blow on the head. I am, therefore, satisfied that the accused intended to inflict injuries on the head and neck of Smt. Naju and that in the facts and circumstances of the case, a prima facie case for framing the charge under Section 307 of the Indian Penal Code was made out.

5. For the above reason it must be held that discharge of the accused from the offence under Section 307 of the Indian Penal Code was improper and it has resulted in abuse of the process of the Court and it is a fit case in which this Court should set aside the order of discharge ordered by the learned Sessions Judge.

6. For reasons mentioned above, the petition is allowed and the order dated 2-11-1993 passed by the Sessions Judge, Pali is hereby quashed and set aside. The case is remanded to the learned Sessions Judge, Pali with the direction that charges under Sections 307,326,324,447 and 435 of the Indian Penal Code be framed against the accused Arjun Singh and after recording his plea, trial should be conducted according to law.

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