

Harish Chawla Vs. State

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Court : Delhi

Decided On : May-03-2011

Judge : Mukta Gupta, J.

Acts : Indian Penal Code (IPC) - Section 307, 302

Appeal No. : Crl. Appeal No. 662/2000

Appellant : Harish Chawla

Respondent : State

Advocate for Def. : Mr. Manoj Ohri, Adv.

Advocate for Pet/Ap. : Mr. K.B. Andley; Mr. M.L. Yadav, Advs.

Judgement :

1. This is an appeal against the judgment of conviction and sentence dated 25th July, 2000 and 29th July, 2000 whereby the Appellant has been convicted for offences punishable under Sections 307 IPC and directed to undergo a sentence of rigorous imprisonment for ten years and a fine of `5,000/-. In default of payment of fine, the Appellant is to undergo Rigorous Imprisonment for a period of one year.

2. The facts leading to the prosecution filing the charge-sheet are that on 19th June, 1998 at about 6:30 A.M. when the Complainant Vinod Kumar Gupta was

present at his shop at 281/80 Pandav Road, Vishwas Nagar, Shahdara, the Appellant Harish Chawla with one Narender who knew him previously came to his shop and asked why he did not send money to him. On the Complainant replying that why he should pay the money, Harish Chawla took out a country-made pistol and fired at his right thigh protruding towards left in the skin of his thigh. On the Complainant escaping from the bullet injuries, Narender also fired at him from the behind. In the meantime, his brother and other persons started collecting. Thus on seeing the people coming, both the accused ran away. On the Statement Ex. PW1/A of the injured, FIR Ex.PW 6/A was registered and both the accused were arrested. After recording the statements of the prosecution witnesses, the accused persons and the defence witnesses, the learned trial court convicted the Appellant for offence punishable under Section 307 IPC and sentenced as abovementioned. Learned Trial Court acquitted co-accused Narender of the charges framed against him.

3. Learned Sr. Counsel for the Petitioner does not challenge the present appeal on merits and confines his arguments to the quantum of sentence. He states that the Appellant was awarded a sentence of imprisonment for a period of ten years out of which he has already undergone a sentence of Rigorous Imprisonment for a period of more than seven years. He prays that the sentence of the Appellant be modified to the period already undergone. Reliance is placed on Pappu @ Hari Om vs. State of Madhya Pradesh, (2009) 3 SCC(Crl.) 1450 and Balkar Singh vs. State of Uttarakhand, (2009) 15 SCC 366. It is contended that the facts as stated do not fall within the ambit of an intention to commit an act that is likely to cause death but an intention to cause an injury which may probably cause death. In the decisions quoted above, the Hon'ble Supreme Court was dealing with the distinction between the knowledge of an offender as to the probability of death of a person or persons in general as distinguished from a particular person or persons being caused from his imminently dangerous act, approximating to a practical certainty. It was held that when the knowledge on the part of the offender must be of the highest degree of probability, the act would amount to an offence punishable under Section 302 IPC having been committed by the offender without any excuse for incurring the risk of causing death or such injury as aforesaid.

4. Per contra learned APP contends that there is no ground that the Appellant should be granted the relief claimed by him. There is sufficient evidence on record to show that the Appellant possessed the intention to kill and cause such a bodily injury which is sufficient to cause death in ordinary course and for an act to constitute an offence under Sec. 307 IPC, it is sufficient that there is intention coupled with some overt act in execution thereof, and thus, there is no merit in the present appeal and the same is liable to be dismissed.

5. I have heard learned counsel for parties and perused the record. The facts of the present case show that on 19 th June, 1998 at about 6:30 to 6:40 A.M. the Appellant along with another associate whom he named as Narender went to the shop of the Complainant PW1 and asked why he did not send money to him. On PW1 stating that he would send the money later on, the Appellant fired shot by a country-made pistol on his right thigh and the bullet shot entered his thigh from right side, protruding towards his left thigh skin. Thereafter the Appellant directed his accomplice Narender to fire a shot who also fired at PW1. When PW1 was running into his house, the Appellant fired a third shot at him. This shows the clear intention of the Appellant was to cause death of PW1. The MLC Ex. PW17/A records that there was a bullet injury on the mid thigh region of PW1, the Complainant though the nature of injury is stated to be simple.

6. It would be relevant to reproduce Section 307 IPC:

"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.

Attempts by life-convicts.

Attempts by life-convicts.-When any person offending under this section is under sentence of imprisonment for life he may, if hurt is caused, be punished

with death.

7. The Hon'ble Supreme Court in Sarju Prasad vs. State of Bihar AIR 1965 SC 843 in para 6 observed that mere fact that the injury actually inflicted by the accused did not cut any vital organ of the victim, is not by itself to take it out of the purview of Section 307 IPC. Hon'ble Supreme Court in State of Maharashtra vs. Balram Bana Patil, 1983 Cri.L.J 331 had observed:

"9. 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 cases 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 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. 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.

10. The High Court, in our opinion, was not correct in acquitting the accused of the charge under Section 307 IPC merely because the injuries inflicted on the victims were in the nature of a simple hurt."

8. The reliance placed by learned Senior Counsel for the Appellant on the decision in Pappu @ Hari On (supra) and Balkan Singh(supra) is misconceived. In Balkan Singh (supra) there was an old enmity and the Appellant wanted the deceased to drink with him. On the refusal of the deceased, the Appellant therein first fired in the air then indiscriminately at the tractor resulting in the death of the deceased. In Pappu(supra) the Appellant therein quarrelled with the deceased and his companions for not letting him play cards and on their refusal a quarrel ensued resulting in the Appellant giving a gun shot injury on the right shoulder of the deceased. Whereas in the present case, the Appellant along with one other person arrived at the shop of the injured and asked why he did not send the money to him. On PW1's telling that he would send the money later on, the Appellant fired a shot at his thigh. This shot certainly cannot be with the intention of causing murder. However later he asked his co-accomplice to fire a shot, who fired and then the Appellant also shot another bullet but the same did not hit PW1. Though initially the common intention of the Appellant may have been not to commit murder of PW1 but only to threaten him that he pays the money but the subsequent acts of asking the co-accused to fire and himself firing cannot be held to be not caused with an intention to commit the murder of PW1. The intention is born out clearly from the sequence of events of the overt acts.

9. Thus, on a perusal of Section 307 IPC and in the light of the law laid down by the Hon'ble Supreme Court, the present case falls clearly within the ambit of Sec. 307 IPC. The weapon of offence used is a firearm which is a dangerous weapon. The intention of the Appellant is clear from the fact that after shooting once at the thigh of PW1 the Appellant again shot him and also asked his accomplice to shoot him and it was mere co-incidence that both the bullets did not hit the Complainant as he ran into the house.

10. Section 307 deals with two situations so far as the sentence is concerned. Firstly, 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 secondly 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 indicated in the first part i.e. 10 years.

11. A perusal of the order on sentence passed by the learned Additional Sessions Judge would show that he came to the conclusion that the young age and that he had a widowed mother to look after were the mitigating circumstances in his favour and awarding of the maximum sentence would be too harsh and disappointing in the life. However, the learned trial court erred in coming to a conclusion that facts of the case attracted the punishment which may extend to life. As held above the injury was caused by the Appellant first when the Appellant had no intention to commit murder and when the Appellant had the intention to commit murder and two shots were fired no injury was caused. Thus, in the facts of the present case, the maximum punishment that could be awarded to the Appellant was imprisonment for a period of 10 years and fine. The learned trial court rightly held the offence committed by the Appellant was a serious one where he was illegally demanding money and on refusal fired gun shots, but in view of the mitigating circumstances, he should not be awarded the maximum sentence.

12. Thus, while maintaining the conviction of the Appellant for offence punishable under Sec. 307 IPC the order on sentence is modified to the extent the Appellant will undergo Rigorous Imprisonment for a period of 8 years and a fine of Rs.30,000/- out of which if realized Rs.25,000/- will be given as compensation to the complainant and in default of payment of fine will undergo simple imprisonment for a period of one year. The appeal is accordingly disposed of. The Appellant is in custody. He will undergo the remaining sentence.

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