**Mohd. Yusuf Vs. State**

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**Court** : Delhi

**Decided On :** May-31-2013

**Judge** : R.V. Easwar

**Appellant** : Mohd. Yusuf

**Respondent** : State

**Judgement** :
* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

17. h May, 2013 Date of Decision:

31. t May, 2013 % + CRL.A. 196/2001 MOHD. YUSUF ..... Appellant Through Mr Harendra Singh, Adv.(amicus curiae) versus STATE ..... Respondent Through Ms Jasbir Kaur, APP with SI Hukam Singh, PS Seema Puri CORAM: MR. JUSTICE R.V. EASWAR JUDGMENT R.V. EASWAR, J.: This is an appeal under section 374(2) of the Cr.P.C. against the judgment dated 19.12.2000 passed by the trial court convicting the appellant Mohd. Yusuf, S/o Mahmood Khan R/o 418, Juggi, New Seemapuri, Delhi under section 307 of the Indian Penal Code and the sentence dated 20.12.2000 awarding RI of 7 years and fine of `4,000/- and in default to undergo further RI of one year, with benefit under Section 428 of the Cr.P.C.

2. The appeal arises this way. On the night of 11.8.1999 one Mohd. Aziz was returning home and near the police booth of New Seemapuri met his friend

Muzammil. Both of them decided to have a cup of tea and went to the khoka in F block, New Seemapuri. After ordering for tea they sat on a bench in front of the khoka of the mother of the accused Yusuf. Apparently that shop was closed at the time. As they were waiting for the tea, at about 10.45 p.m. the accused Yusuf came there and questioned them why they were sitting in front of the khoka. He told them that they should not sit there without any purpose. Mohd. Aziz and Muzammil told him that they would go away after taking tea. Enraged at this Yusuf allegedly took out a knife and aimed at the chest of Mohd. Aziz. Aziz bent downwards in order to save himself from the blow but the knife hit on the left side of his neck. Yusuf also inflicted an injury on Muzammil with his knife and Muzammil was injured on his cheek. After this Yusuf ran away from the spot. Both the injured reached the GTB Hospital where they were examined, their wounds were treated. Thereafter, a case was registered against the accused who was arrested on the basis of the statements of the witnesses on 21.9.1999. The knife alleged to have been used by the accused could not however be recovered. The accused Yusuf pleaded not guilty and claimed trial.

3. The prosecution examined 11 witnesses including Mohd. Aziz (PW3) and Muzammil (PW4). Dr. Navneetan (PW6) and Dr. Satish Mishra (PW9) were also examined. The others appeared to be formal witnesses. In his statement under section 313 of the Cr.P.C., the accused stated that he was falsely implicated in the case and denied that he injured Mohd. Aziz and Muzammil. After examining the evidence and taking into account the material placed on record, the trial court held that the appellant was guilty of the offence under section 307 (attempt to murder) of the IPC. It held that the non-recovery of the weapon was not material as it was only corroborative and not substantive and that it was also immaterial that the injured did not see the weapon alleged to have been used. According to the trial court, the prime requirement of section 307 IPC is of intention that the act should cause death and since the appellant had used a sharp weapon and the injuries were also on the vital spots, he was guilty of attempt to murder. The trial court rejected the evidence of the defence witnesses on the ground that there were contradictions relating to the time at which the offence was said to have been committed. The theory that all the three i.e. Yusuf, the accused and Mohd. Aziz and Muzammil fell on broken glass during the scuffle and thereby injured

themselves put forward by the defence did not appeal to the trial court which held that the deposition of the defence witnesses that the scuffle took place at 6 to 7 p.m. or 8 to 8.30 p.m. was completely contradictory to the fact that it was proved to have taken place around 10.45 p.m. The trial court accordingly convicted the appellant under section 307 of the IPC and sentenced him.

4. I have heard the rival contentions and also perused the judgment of the trial court in the light of the evidence led in the case. I am of the view that the trial court erred in convicting the appellant under section 307 of the IPC. Under this section 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 10 years and shall also be liable to fine. 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 herein before mentioned. As rightly pointed out on behalf of the state by the learned Additional Public Prosecutor, under the section it is the intention of the accused which is the only material consideration; such intention should be to cause death and under the first part of the section even if no injury is caused the offender shall be liable to punishment. Under the second part of the section if hurt is caused the offender shall be liable to a higher punishment.

5. The main argument of the learned counsel for the appellant was that since the medical evidence showed that the wound was simple and not very deep, it cannot be said that the blow given by the weapon-whatever it wasused by the accused was given with substantial force and consequently it cannot be said that the intention of the accused was to cause death of Mohd. Aziz and Muzammil. In support of his submission he referred to the judgment of a single Judge of this Court (V K Jain, J) in Rajpal and Anr. Vs. State 2010 Cri.LJ 3683.CRL. A. 196/2001 witnesses to the scuffle but none of them was examined by the prosecution which was fatal to its case as held by the Himachal Pradesh High Court in Omkar Singh Vs. State of HP (2008) Cri.LJ 1880.It is submitted that at the time when the scuffle took place there were several eye witnesses and the prosecution did not examine any one of them to prove that the accused Yusuf intended to cause the murder of Mohd. Aziz and Muzammil. It is contended that

therefore the case of the prosecution cannot be said to have been proved beyond reasonable doubt. It is further contended on the basis of the judgment of the Karnataka High Court in Raghunath & Ors. Vs. State (2011), Cri.LJ 54.that if the nature of injuries sustained is not sufficient to cause death and they were inflicted on non-vital parts of the body and though the injuries are severe but none of them independently or collectively could have caused death, it cannot be said that the ingredients of section 307 are satisfied. Reliance was also placed on the judgment of another single Judge of this Court (Sunil Gaur, J) in Somesh Pal Vs. State 157 (2009) DLT 133.It was further contended on behalf of the appellant that the incised wounds were not deep or wide nor were they on the vital parts of Mohd. Aziz and Muzammil and therefore it is not a case of hurt caused with intention to murder. It was suggested that the scuffle took place at the spur of the moment and during the scuffle some glasses (kept in the tea shop) were broken and the broken pieces could have caused the injuries to the complainants. It was the contention of the learned counsel for the appellant that an intention to cause death can hardly be spelt out from the sequence of events leading to the scuffle and therefore the trial court erred in convicting the accused under section 307 of the IPC.

6. On the other hand the learned Additional Public Prosecutor submitted that this is a case where there was intention or knowledge on the part of the accused that death would be caused and therefore the provisions of section 307 of the IPC were attracted. Referring to the statement of Mohd. Aziz, one of the victims, she contended that this victim has clearly stated that he was to be given a knife blow on his chest but since he (the victim) tried to save himself the blow landed and struck his neck on the left side. The contention was that the accused aimed at the chest with the knife which proved his intention to cause death. According to the learned APP the intention of the accused was to cause death or at any rate he had knowledge that the knife can cause death of the injured if the victim is stabbed at his chest. She read out from the evidence of Dr Satish Mishra (PW9) where he stated that while examining the MLC and giving his first opinion on that basis, he missed that the external jugular vein of Mohd. Aziz was cut and therefore the injury was a grievous injury and not a simple one. This statement of Dr. Satish Mishra remains, according to the learned APP, uncontroverted since nothing was brought out in the course of cross-examination. The learned APP also relied on that part of

the judgment of the trial court where reasons have been given as to why the evidence of the defence witnesses cannot be relied upon. She further submitted that the non-recovery of the weapon was not material; it is only corroborative evidence and not substantial evidence.

7. In his rejoinder the learned counsel for the appellant reiterated his case that it was a case of a sudden quarrel after some arguments, that nobody saw the weapon and this coupled with the non-recovery of any weapon, pointed out to the absence of any intention to cause death, thus taking the case out of the clutches of section 307 IPC. Moreover, without prejudice it was submitted that the injuries were inflicted on non-vital parts of the injured and therefore at the most, it could be a case of section 323 IPC, but it certainly cannot be one of attempt to murder coming within section 307.

8. I am of the view that this is a case which arose out of a sudden quarrel between the accused Yusuf on the one hand and Mohd. Aziz and Muzammil on the other. Mohd. Aziz and Muzammil were friends having a cup of tea. At that time Yusuf, the accused, came there and objected to their sitting on the bench in front of his mothers tea shop. Mohd. Aziz and Muzammil said that they will go away after taking tea but for some reason this was not acceptable to the accused. He attacked both Mohd. Aziz and Muzammil. Mohd. Aziz has deposed that he was given a knife blow. This has not been disproved in the evidence. The non-recovery of the knife, to my mind, is not conclusive since it is only a corroborative evidence and not substantive evidence. The statement of the defence witnesses that the victims fell on the broken glass and thus sustained injuries is not acceptable to me since their evidence does not inspire confidence for the reason that both the defence witnesses have given the wrong timing of the scuffle. According to one of them, it took place between 6 p.m. and 7 p.m. and according to the other, it took place between 8 and 8.30 p.m. It is however, in evidence that the victims were taking tea around 10.30 p.m. The MLCs also show the hour of arrival of the victims at the hospital as 11.30 p.m./11.45 p.m. This is more in accord with the probability that the scuffle took place around 10.30 p.m. or a little later. The evidence of the defence witnesses was therefore rightly discarded by the trial court.

9. It is therefore, clear to me that the injury to Mohd. Aziz and Muzammil was not caused by any broken glass pieces but that they were caused by the knife used by the accused for attacking the victims.

10. The next question is whether there was any intention to cause death, on the part of the accused. As far as this point is concerned, I am unable to accept the contention of the prosecution that the accused used the weapon with intention to cause death or knowledge that his act will cause death. The nature of the injuries as evident from the medical certificates, is that they were simple injuries caused by a sharp weapon. The evidence of Dr. T S Daral who examined Mohd. Aziz shows that there was one clean incised wound on the left neck which is 2 inches long, half inch wide and 1 cm deep. The other injury was just blow and 1 inches long. I am not inclined to accept the evidence of Dr Satish Mishra inasmuch as he stated that he re-examined the case and found that he had missed that the external jugular vein of Mohd. Aziz was cut which was grievous. Jugular vein is a vital part of the body and if that had been cut, the blood flow would have been huge and I do not think that Dr T S Daral who examined Mohd. Aziz on the day of the occurrence would have missed it. It is also unlikely that Dr Satish Mishra to whom the matter was referred by Dr Daral on that date itself, would have missed it. In these circumstances, I am not prepared to accept the evidence of Dr Satish Mishra, given on 18.3.2000, that he looked at the whole case-sheet again and it came to light that he had missed, at the time of giving his first opinion, the fact that the external jugular vein was cut and therefore, he is changing his opinion that the injury was simple, to the opinion that it was grievous. He has even admitted during the cross-examination that the injured was not produced before him at the time of giving his opinion. In these circumstances his revised opinion that he missed the fact that the external jugular vein of Mohd. Aziz was cut does not appeal to me.

11. I am now left with the findings that the injuries were caused by a knife used by the accused Yusuf, and that those injuries were simple. In these circumstances, I am unable to uphold the view of the trial court that the case falls under section 307 of the IPC. I am of the view, agreeing with the learned counsel for the accused, that the case falls under section 321 read with section 323 of the IPC. Section 321 says that whoever does any act with the intention of thereby causing hurt to any

person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said to voluntarily cause hurt. Under section 323 whoever voluntarily causes hurt shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to `1,000/- or with both. The trial court has sentenced the accused to 7 years RI and fine of `4,000/- under section 307 of the IPC; in case of default in the payment of fine, the accused was to undergo further RI of one year. The accused has undergone sentence of 2 years 10 months and 14 days as per the nominal roll dated 1.11.2003. He has thus served more than the sentence prescribed by section 323. For the reasons stated above, I set aside the conviction u/s 307 of the IPC and allow the appeal. The personal bond and surety stand discharged. (R.V. EASWAR) JUDGE MAY 31.2013 vld