

(2016) 03 KL CK 0006
In the High Court Of Kerala
Case No : Crl. A. No. 1831 of 2004

Podiyan @ Valuthakunju Erathu Village, Pathanamthitta
Vs

APPELLANT

State of Kerala

RESPONDENT

Date of Decision : 01-03-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 300, 307

Citation : (2017) CriLJ 106 : (2016) 3 ILRKerala 726 : (2016) 3 KLT 84

Hon'ble Judges : P.D. Rajan, J.

Bench : Single Bench

Advocate : Sri. P. Vijaya Bhanu (Sr.), Sri. V.C. Sarath and Sri. P.M. Rafiq, Advocates, for the Appellant/Accused; P.P, Sri Dhanesh Mathew Manjooran, for the Respondent/Complainant

Final Decision : Dismissed

Judgement

P.D. Rajan, J.—This appeal is preferred by the accused against the conviction and sentence in S.C.791 of 2003 of additional District and Sessions Judge adhoc I, Pathanamthitta under section 307 IPC. The charge against the accused is that on 7.2.2000 at 7 pm, while PW1 and 2 were settling the quarrel between the accused and his wife(PW3). The accused assaulted PW2 with MO1 stone and attempted to murder him. In this incident, Adoor police registered a crime and after investigation, C.I of Police, Adoor laid charge before Judicial First Class Magistrate, Adoor. From there, the case was committed to Sessions Court, Pathanamthitta. Subsequently, it was made over to additional Sessions Court, Adhoc I.

2. During trial, prosecution examined PW1 to PW11 and marked Ext.P1 to P8 as documentary evidence. MO1 and MO2 were admitted as material objects. The incriminating circumstances brought out in evidence were denied by the accused while questioning him. He did not adduce any defence evidence. Learned additional Sessions Judge convicted the accused under section 307 IPC and sentenced him to rigorous imprisonment for two years and fine of Rs.25,000/-, in

default of payment, simple imprisonment for one year. Being aggrieved by that, he preferred this appeal.

3. The main contention advanced by the learned counsel appearing for the appellant is that the prosecution failed to prove the intention necessary to attract the offence of attempt to murder. When there is no intention to cause death and no evidence to prove that ingredient, the mere bodily injury will not attract the offence under Section 307 IPC. I heard the learned Public Prosecutor also. Relied the decision in *Sumersimbh Umedsinh Rajput v. State of Gujarat* 2007 (13) SCC 83.

4. In order to constitute an offence under Section 307 IPC, attempt to commit murder, two elements are essential. First, the intention or knowledge to commit murder. Secondly, the actual act of trying to commit the murder. The question whether a certain act amounts to the commission of a particular offence, is a question of fact dependant on the nature of the offence and the steps necessary to take, in order to commit it. No exhaustive and precise definition of what would amount to an attempt to commit an offence is possible. Apex Court in *Hari Singh v. Sukhir Singh and others* 1988 SCC (Cri 984) it was held as follows:-

"Under Section 307 IPC 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 that section. The intention or knowledge of the accused must be such as is necessary to constitute murder. Without this ingredient being established, there can be no offence of "attempt to murder". Under Section 307 the intention precedes the act attributed to accused. Therefore, the intention is to be gathered from all circumstances, and not merely from the consequences that ensue. The nature of the weapon used, manner in which it is used, motive for the crime, severity of the blow, the part of the body where the injury is inflicted are some of the factors that may be taken into consideration to determine the intention. In this case, two parties in the course of a fight inflicted on each other injuries both serious and minor. The accused, though armed with ballam, never used the sharp edge of it. They used only the blunt side of it despite their being attacked by the other side. They suffered injuries but they were not provoked or tempted to use the cutting edge of the weapon. It is very significant showing that they had no intention to commit murder. They had no motive either. The fight might have been a sudden flare up. Where the fight is accidental owing to a sudden quarrel, the conviction under Section 307 is generally not called for. There is, therefore, no reason to disturb the acquittal of the accused under Section 307 in this case".

5. In this context, I have examined the oral testimony of the injured in this case. The occurrence was deposed by PW2, who is injured in this case. PW2 deposed that on 7.2.2000 at 7 pm, he sustained injury on the left side of his head. On 5.2.2000, the father in law of the accused visited his house and informed that the accused is making problems to his daughter and take initiative to settle the family dispute. As per the request, he arrived at the place of occurrence on

7.2.2000 at 6.30 pm with PW1. The accused at that time came there. PW2 informed him that there was an allegation that the accused is assaulting his wife. Hearing this, immediately he flared up, assaulted his wife, thereafter caught hold on the testicles of PW4. He again approached PW2 with a stone and hit on the left side of head. PW2 fell down and sustained serious injuries. Immediately he was removed to Maria hospital. The blood stained shirt was marked as MO2. The witnesses were cross examined by the defence counsel. Nothing has been brought out to discredit the oral testimony of PW2 even after repeated cross examination. PW1 who was the member of Enathu Panchayat was present there, supported the oral testimony of PW2. He also stated a same version given by PW2 and gave Ext.P1 to the police. PW3 who is the wife of the appellant also supported the evidence of PW2. She also identified MO1 stone. PW4, the father in law also supported the oral evidence of PW2. Analysing the oral testimony of PW1 and MO1 to MO3, it is clear that PW2 sustained injury due to the attack with MO1 by the appellant.

6. Now the question is whether the injury sustained to PW2 is with the intention to cause death. The medical evidence shows that immediately, after the incident, PW2 was brought in a Hospital at Choorakodu. PW5 noticed an injury on left temporal region and there was profused bleeding. After giving first aid, he referred the patient to the Maria Hospital, Adoor. On 07.02.2002 at 9.00 p.m., PW6 treated PW2 at Maria Hospital, Adoor, noticed a lacerated injury on parato temporal region of left side of head measuring 15x 2x 1Cm in Ext.P2 wound certificate. The X-ray of skull was taken and admitted in the hospital and discharged on 12.02.2002. They alleged a cause of injury was assault with stone at 7.45 p.m and no fracture on the head. MO1 is sufficient to cause injury mentioned in Ext.P2, and it is not sufficient to cause death. PW2 has no case that the appellant assaulted him with the intention to cause death. Therefore the oral evidence of PW1 to 4 shows that the appellant voluntarily caused hurt with a dangerous weapon MO1. Analysing the medical evidence and oral testimony of PW2, it is clear that the appellant had no intention to cause death which is an essential ingredient to attract the offence of attempt to murder.

7. The case was registered by PW10, the Assistant Sub-Inspector of Police, Adoor, who recorded Ext.P1 statement of PW1. On the basis of Ext.P1, he registered Ext.P5 FIR. PW11 arrived at the place of occurrence and prepared Ext.P3 scene mahazar. MO1 was recovered from the place of occurrence and MO2 was recovered at the time of preparing Ext. P6 mahazar. MO1 and MO2 were produced before court with Ext.P7 property list. He also obtained Ext.P4 site plan from the Village Officer and completed the investigation and laid charge before Court.

8. A close scrutiny of the above evidence show that the intention of the accused is only to inflict the injury and not any attempt to murder. Therefore, however, in the gathered circumstances like the nature of weapon and the words used by the accused at the time of attack and the motive behind the attack and it's severity,

it is clear that the accused committed an offence punishable under Section 324 IPC alone. This position has been explained by the Apex Court in Sarju Prasad v. State of Bihar AIR 1965 SC 843 held as follows :

"In this state of the evidence we must hold that the prosecution has not established that the offence committed by the appellant falls squarely under Section 307, I.P.C. In our opinion, it amounts only to an offence under Section 324, I.P.C."

9. An academic discussion has been made in Antony alias Appachan v. State of Kerala AIR 1995 SC 2450 held as follows :

"It is then urged that the offence of the appellant fell under Section 326, I.P.C. and not under Section 307, I.P.C. The victim has narrated that when he was accosted and exhortation raised to finish him and a blow was raised towards him by the appellant, he cried out that he should not be killed and, at the same time, raised his right arm to ward off the blow which, on falling, instantaneously severed his hand. The severity of the blow speaks for itself. The damage done has its own story to tell. Had the hand not been raised in a bid to defend, the aim was the head of the victim. The blow thus aimed would have clearly spelled out the murderous intent of the appellant. It is from that angle the guilt of the appellant need to be viewed rather than the result achieved. In any case, it would be an academic exercise if the matter is pressed any further, for even under Section 326, I.P.C., a sentence of five years is impossible."

In order to attract offence punishable under Section 307 IPC, prosecution has to prove the intention or knowledge to commit murder and the actual act of trying to commit murder. Therefore the words "such intention" found in Section 307 refers to the meaning "intention" referred under section 300 IPC. It means, intention to cause death, intention to cause such bodily injury which the offender knows it as likely to cause death. The intention to cause such bodily injury which is sufficient in the ordinary course of nature to cause death. Therefore the intention to cause death is the essential element to attract the offence of attempt to murder. From the evidence, it is clear that the appellant had no intention to commit murder, on the other hand, he inflicted an injury with MO1 which is an offence under Section 324 IPC alone.

10. In the result, the conviction and the sentence passed by the trial court under Section 307 I.P.C. is set aside. The appellant is convicted under Section 324 I.P.C and sentenced thereunder.

11. The appellant is sentenced to imprisonment till rising of court and also to pay a fine of Rs. 25,000/- (Twenty Five Thousand only) and in default of payment of fine, rigorous imprisonment for six months. He is directed to surrender in the trial court to undergo the modified sentence failing which the learned Additional Sessions Judge Adhoc I, shall issue non-bailable warrant forthwith.