

(2017) 05 MP CK 0022
In the Madhya Pradesh High Court
Case No : 3155 of 2015

Smt. Seeta Saket

APPELLANT

Vs

State of M.P. and anther

RESPONDENT

Date of Decision : 12-05-2017

Acts Referred:

Indian Penal Code, 1860, Section 307,
Section 294 - Attempt to murder - Obscene acts and song.-
Whoever, to the annoyance of others
Arms Act, 1959, Section

Citation : (2017) 05 MP CK 0022

Hon'ble Judges : J.P.Gupta

Bench : Single Bench

Advocate : Durgesh Gupta, Amit Pandey

Final Decision : Allowed

Judgement

1. The appellant has preferred the present appeal being aggrieved with the impugned judgment dated 31.10.2015 passed by the Third Additional Sessions Judge, Raisen in S.T. No.108/2011 whereby the appellant has been convicted under Section 307 of IPC and sentenced to undergo RI for 7 years with fine of Rs.100/-; with default sentence as stipulated in the judgment.

2. In brief, the relevant facts of the case are that on 18.11.2010 at about 10:25 O'clock in the night the complainant Kishore Khatik had lodged a report in the Police Station Mandideep, District Raisen, against the appellant / accused to the effect that on the date of incident i.e. on 18.11.2010 at about 10 pm he along with his brother was sitting in the mutton shop situated behind graveyard and servant Rinku was also working there. One customer came to take mutton in the shop of the complainant then appellant / accused abused. Bhagwan Singh, brother of the complainant, tried to convince the appellant / accused but the appellant / accused assaulted Bhagwan Singh on his neck with Chhura, due to which, Bhagwan Singh fell on the ground and blood oozed out. Thereafter, the

complainant and the customer took the injured to hospital, from where, the injured was referred to Bhopal. On the basis of the aforesaid report, crime no. 485/10 was registered at the police station Mandideep, District Raisen for the offence punishable under Section 307 of the IPC against the appellant / accused. However, after investigation was over, a charge sheet for the offences under Sections 307, 294 of the IPC and under Section 25 / 27 of the Arms Act was filed against the appellant / accused before the JMFC concerned who on its turn committed the case to the court of Sessions for trial.

3. The learned trial Court framed the charges for the offences under Sections 294, 307 of the IPC and also under Sections 25 (1-Kha) (kha) and 27 (1) of the Arms Act against the appellant. However, the appellant / accused abjured his guilt and pleaded for trial. He also pleaded that he was falsely implicated due to business rivalry.

4. Learned trial court after trial of the case and on the basis of the evidence and material came on record acquitted the appellant / accused of the offence under Section 294 IPC and under sections 25 (1-kha) (kha) and 27 (1) of the Arms Act . However, trial court found the appellant - accused guilty of the offence punishable under Section 307 of the IPC and sentenced as mentioned in the impugned judgment.

5. Being aggrieved by the aforesaid impugned judgment of conviction and order of sentence, the appellant has filed this appeal on the ground that the finding of the learned trial court is contrary to law. On record there is no reliable and plausible evidence to establish the charge against the appellant. It is further contended that on the basis of medical evidence, hardly an offence under section 324 of the IPC is made out. The incident had not taken place in the circumstances in which it can be gathered that the intention of the appellant was to cause death of the deceased or to cause such injury which was sufficient to cause death in ordinary course of nature. Further it is also contended that the sentence is also very harsh. In the view of the facts and circumstances of the case, prayer is made to allow the appeal and set-aside the impugned judgment of conviction and order of sentence.

6. Learned PL appearing for the respondent / State has argued in support of the impugned judgment and stated that the finding of conviction and sentence of the learned trial court is in accordance with law. Hence, the appeal be dismissed.

7. Having considered the rival contentions of both the parties and on perusal of the record, it is found that the nature of the injuries received by injured Bhagwan Singh (PW-3) was not grievous and was not sufficient to cause death of him in ordinary course of nature. Dr. Anand Kale (PW-10) who had examined the injured, Bhagwan Singh (PW-3), has stated that on 12.11.2010 near about 10:45 pm in the National Hospital, Bhopal he examined the injured and found following injuries on his person :-

(i) one incised wound on left side of neck of the injured, size 10 cm. x 2 cm.

muscle deep

(ii) one incised wound on left cheek of the injured, size 15 cm. x. 2 cm. bone deep.

(iii) one incised wound on left forehead of the injured, size 6 cm. x 1 cm. bone deep.

This witness has also stated that from the aforesaid injuries, blood was oozing out. External jugular vein was cut. Indentation was found on left cheek. Left infra-orbital step was found which shows that there was a fracture in left zygomatic and maxillary complex. Therefore, the nature of the injuries was grievous and caused by hard and sharp object. But the confirmation of the aforesaid opinion with regard to the fracture, no x-ray report has been produced or proved. In the aforesaid circumstances, merely on the opinion of the Dr. Anand Kale (PW-10), it cannot be held that the prosecution has proved the aforesaid fact beyond reasonable doubt. So far as the injuries are concerned, learned trial court has observed that at the time of recording of the statement of the injured Bhagwan Singh (PW-3), marks of the aforesaid injuries were present at the forehead, neck and cheek of Bhagwan Singh (PW-3). This observation only confirms the presence of the injury on the person of Bhagwan Singh but it does not confirm the nature of the injury. Similarly, in the case, there is no opinion of the medical expert that the injuries were sufficient to cause death in ordinary course of nature.

8. In view of the aforesaid discussion, it is held that the prosecution has failed to prove that the nature of the injuries received by Bhagwan Singh (PW-3) was grievous. It will be deemed that they were simple and caused by hard and sharp object.

9. Now, the question is whether the aforesaid injuries were caused by the appellant. In this regard, the prosecution case is based on the statements of the injured, Bhagwan Singh (PW-3), eye witness Rinku Lodhi (PW-12) and brother of the injured, Bhagwan Singh, Kishore (PW-2). All these three witnesses have stated that at the time of incident they were present on the mutton shop situated behind the shop of Eysher company, Raisen and near about 10 to 11 pm, one customer came to purchase mutton and when the appellant / accused started abusing Bhagwan Singh (PW-3), the appellant / accused stopped the appellant then appellant / accused assaulted Bhagwan Singh with a sharp weapon "Sakoor" (used for cutting meat) and Bhagwan Singh sustained injuries on head, neck and cheek. Accordingly the witnesses have stated that the aforesaid injuries sustained by Bhagwan Singh were caused by the appellant in the aforesaid circumstances and manner.

10. On perusal of the record and appreciation of the evidence, it is found that the statement of Kishore (PW-2) is not reliable as his presence on the spot at the time of incident is doubtful because Rinku Lodhi (PW-12) who was working in the shop of the injured, Bhagwan Singh (PW-3) has not disclosed the presence of

Kishore (PW-2). Rinku Lodhi (PW-12) has stated that after the incident, he went with Bhagwan Singh on motorcycle to the house of Bhagwan Singh and informed the family members of the injured Bhagwan Singh. Rinku Lodhi (PW-12) is the witness of the prosecution. The prosecution has not challenged his testimony. In such circumstances, the FIR lodged by Kishore (PW-2) is also immaterial but even discarding the statement of Kishore (PW-2), statement of the injured, Bhagwan Singh (PW-3) supported by the independent witness Rinku Lodhi (PW-12) and also supported by the medical evidence, establishes beyond reasonable doubt that the aforesaid injuries caused to Bhagwan Singh were attributed to the appellant / accused by hard and sharp object "Sakoor" used for cutting meat.

11. Now the further question arises, what offence was committed by the appellant. Learned counsel for the appellant has stated that looking to the nature of the injuries, it cannot be said that the appellant had any intention to cause death or had knowledge to cause such injury which is likely to cause death. The aforesaid contention has no substance as for constituting offence under Section 307 of the IPC, injuries on the person of the victim are not must. Even it is not necessary that the bodily injury inflicted must be capable to causing death in ordinary course of nature. See. State of Maharashtra v. Balram Bama Patil and others (AIR 1983 SC 305).

The only requirements that are to be proved to bring home the offence under Section 307 IPC are (i) mens rea (guilty offence) and (ii) actus reus (act of the persons complained against).

12. In the present case, as discussed earlier, the nature of the injuries caused to the victim, Bhagwan Singh (PW-3) are simple and caused by hard and sharp object on face, head and neck. However, the places where the injuries were caused are vital parts of the body but in the circumstances or the manner in which the injuries have been caused, it cannot be said that the intention of the appellant / accused was to cause murder of the victim or to cause such injury which is likely to cause death. Suddenly during quarrel, an assault was made and only one blow was made. The injuries are not very deep which shows that the blow was not made with full pressure with a view to cause severe injury. In the aforesaid circumstances, the appellant / accused cannot be convicted under Section 307 IPC for committing attempt to commit murder of the victim. Therefore, in view of this court, offence committed by the appellant / accused is punishable under section 324 of IPC and not under Section 307 IPC.

13. Resultantly, in view of the foregoing reasons, the impugned judgment of conviction and order of sentence awarded by the trial court under Section 307 IPC against the appellant / accused are hereby set-aside and the appellant is acquitted of the offence under Section 307 IPC. However, the appellant is convicted for the offence punishable under Section 324 of the IPC.

14. So far as the sentence part is concerned, looking to the nature of the injuries

and the period of imprisonment already undergone by the appellant, he is sentenced to undergo RI for 2 years along with fine of Rs.2000/-. In default of payment of fine, he shall further undergo RI for six months. The period of custody undergone by the appellant be set-off.

15. Accordingly, the appeal is allowed in part and disposed of.

16. A copy of this order be sent to the trial court and the jail authorities concerned for information and necessary action.