

PASUPULETI SIVA RAMAKRISHNA RAO

v.

STATE OF A. P. & ORS.

(Criminal Appeal No. 466 of 2014)

FEBRUARY 20, 2014

[H. L. DATTU AND S. A. BOBDE, JJ.]

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PENAL CODE, 1860: s.307 r/w s.34, s.452; s.324 - Attempt to murder - Attack on victim when he was sitting in worker union office - Accused entered the office and attacked victim with cold drink bottles lying there and strangulated him with telephone wire and hit him iron rod - Trial court found them guilty u/s.307 r/w s.34 and s.452 - High Court modified conviction u/s.307 r/w s.34 to s.324 holding that accused had not come to the place of incident with dangerous weapons nor caused injuries on the vital part of the body and set aside conviction u/s.452 on the ground that the victim was sitting at the Union Office and not at any private place - On appeal by complainant, held: The plea that the act of strangulating a person by the throat by a telephone wire and pulling it from both sides would not attract s.307 cannot be accepted - The first part of s.307 makes any act committed with the intention or knowledge that it would amount to murder if the act caused death punishable with imprisonment up to ten years, the second part makes such an act punishable with imprisonment for life if hurt is caused thereby - Thus, even if act does not cause any injury it is punishable with imprisonment up to 10 years - If it does cause an injury and therefore hurt, it is punishable with imprisonment for life - s.307 does not require that the hurt should be grievous or of any particular degree - The intention to cause death is clearly attributable to the accused since the victim was strangulated after throwing a telephone wire around his neck and telling him that he should die - Further, the law protects any house from trespass and

- A *further protects persons within the house from being assaulted or even put in fear of hurt or wrongful restraint within their own house - There is nothing in s.452 to suggest that the use to which the house is put makes any difference - The accused were not entitled to be acquitted for the offences u/s.452 r/w*
- B *s.34 - The judgment of the High Court is set aside and the judgment of the trial court is restored.*

- The prosecution case was that PW-1 was the President of workers union. The accused were annoyed with PW-1 as he had collected donation for marriage of driver's daughter from their locality. On the fateful day, when PW-1 was sitting in Union Office, the accused persons entered the Office and attacked PW-1. A-1 picked up a cold drink bottle from there and hit PW-1 on head and thereafter along with A-2 and A-3 tied telephone wire around his neck and pulled it from both sides to strangulate him. A-4 then attacked him with iron rod. PW-1 was somehow rescued. Charges were framed against the accused persons under Sections 307 and 452 IPC r/w Section 34 IPC and trial court convicted them under the charged offences. On appeal, the High Court accepted that the accused tied a telephone wire around the neck of P.W. 1 and pulled it from both sides but observed that this act may not actually amount to being dangerous. Further observing that no intention could be attributed to the accused to cause the death of P.W. 1 since the accused had not come to the scene with dangerous weapon or caused injuries on the vital part of the body, the High Court modified the conviction under Section 307 IPC r/w Section 34 IPC to Section 324 IPC. As regards the charge under Section 452 IPC, the High Court observed that the incident occurred when P.W. 1 was in the Union Office and not at any private place and, therefore, ipso facto set aside the conviction and sentence under Section 452 IPC r/w Section 34 IPC. Aggrieved, the complainant filed the instant appeal.**
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Allowing the appeal, the Court

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HELD: 1. It is not possible to accept the contention in the circumstances of the case that the act of strangulating a person by the throat by a telephone wire and pulling it from both sides does not amount to the commission of the offence of attempt to commit murder under Section 307 IPC. The first part of Section 307 IPC makes any act committed with the intention or knowledge that it would amount to murder if the act caused death punishable with imprisonment up to ten years. The second part makes such an act punishable with imprisonment for life if hurt is caused thereby. Thus even if the act does not cause any injury it is punishable with imprisonment up to 10 years. If it does cause an injury and therefore hurt, it is punishable with imprisonment for life. [Para 16] [1149-B-D]

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2. There is no merit in the contention that the statement of Medical Officer that there is no danger to life unless there is dislocation or rupture of the thyroid bone due to strangulation means that the accused did not intend, or have the knowledge, that their act would cause death. The circumstances of this case clearly attract the second part of Section 307 since the act resulted in injury No.5 which is a ligature mark of 34 cm x 0.5 cm. Section 307 IPC provides for imprisonment for life if the act causes 'hurt'. It does not require that the hurt should be grievous or of any particular degree. The intention to cause death is clearly attributable to the accused since the victim was strangled after throwing a telephone wire around his neck and telling him he should die. Also, there is no merit in the contention on behalf of the appellant that there was no intention to cause death because the victim admitted that the accused were not armed with weapons. Very few persons would normally describe the Thums-up bottle and a telephone wire used

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A as weapons. That the victim honestly admitted that the accused did not have any weapons cannot be held against him and in favour of the accused. [para 17] [1150-F-H; 1151-A-B]

B 3. This is a clear case of intention to commit the murder of P.W. 1 the appellant and the accused acted in concert and committed an offence under Section 307 IPC. As regards the setting aside of the conviction by the High Court under Section 452 IPC, the reasoning is completely unacceptable and untenable. The High Court simply set
C aside the conviction of the accused under Section 452 IPC r/w Section 34 IPC only on the ground that the victim was sitting at the Union Office and not at any private place. There is no doubt that the trespass was into a
D house and that the appellant entered the office having prepared to assault the victim and in any case for putting him in fear of hurt or of assault. There is nothing in Section 452 IPC to suggest that the use to which the house is put makes any difference. It is not the requirement of Section 452 IPC that for a trespass to be
E an offence the house must be a private place and not an office. The law protects any house from trespass, vide Section 448 IPC and further protects persons within the house from being assaulted or even put in fear of hurt or wrongful restraint within their own house. The accused
F were not entitled to be acquitted for the offences under Section 452 IPC read with Section 34 IPC. The judgment of the High Court is set aside and the Judgment of the trial court is restored. [Paras 18, 19, 20, 21] [1151-B-D, F-H; 1152-A-B]

G CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 466 of 2014.

H From the Judgment and order dated 01.02.2007 of the High Court of A.P. at Hyderabad in CRLA No. 719 of 2003.

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A.T.M. Rangaramanujam, Altaf Ahmed, Annam D.N. Rao, A. Venkatesh, Neelam Jain, Sudipto Sircar, D. Mahesh Babu, Suchitra Hrangkhawl, Amjid Maqbool, Amit K. Nain, Aditya Jain, Ramakrishna Rao, D. Bharathi Reddy, G. Pramod Kumar, Guntur Prabhakar for the Appearing Parties.

The Judgment of the Court was delivered by

S.A. BOBDE, J. 1. Leave granted.

2. The appellant/defacto complainant has filed this appeal against the judgment dated 1st February, 2007 passed by the learned Single Judge of the High Court of Judicature at Andhra Pradesh. The High Court allowed the appeal in part, and acquitted the accused for the offences under Section 452 read with Section 34 of the Indian Penal Code [hereinafter referred to as "IPC"]. The High Court further modified the conviction and sentence under Section 307 read with Section 34 IPC to one under Section 324 IPC and accordingly reduced the sentence of 10 years to rigorous imprisonment for two months each and also to fine of Rs. 2,000/- each, in default to suffer simple imprisonment for a period of six months. Further, an amount of Rs. 4,000/- is directed to be paid by each of the accused collectively as compensation to P.W. 1 (Pasupuleti Siva Ramakrishna Rao) - the victim. Earlier, the Trial Court convicted the accused as follows:

A-1 to A-4 under Section 452 read with Section 34 IPC for rigorous imprisonment for 7 years and fine of Rs. 100/- each, in default, to suffer simple imprisonment for a period of 3 months each and under Section 307 read with Section 34 IPC for rigorous imprisonment for 10 years and fine of Rs. 100/- each, in default, to suffer simple imprisonment for a period of 3 months each.

Aggrieved by the Judgment passed by the High Court, the present appeal is filed.

3. The prosecution case is that the victim P.W. 1

A (Pasupuleti Siva Ramakrishna Rao) was the President of Bhimavaram Taluk Lorry Workers Union. A-1 - Chintha Srinivasa Rao @ Bandi Srinu and A-2 - Chintha Krishna @ Bandi are brothers. A-4 -Chintha Lakshmana Rao is their cousin. A-3 -Addla Umamaheswara Rao is the close associate

B of A-1, A-2 and A-4. They are all residents of Bhimavaram. About a fortnight prior to the date of incident - 20.04.1998, the victim P.W. 1 (Pasupuleti Siva Ramakrishna Rao) and some other Lorry Workers collected Rs. 10,000/- as donations to perform the marriage of the daughter of a poor lorry worker.

C That incensed the accused who believed that P.W. 1 (Pasupuleti Siva Ramakrishna Rao) ought not to have collected donations from their locality. On 20.04.1998 at about 8.00 pm when P.W. 1 (Pasupuleti Siva Ramakrishna Rao) was in the Lorry Workers Union Office near Anakoderu Canal in Undi Road, Bhimavaram, the accused armed with deadly weapons

D entered the office, abused P.W. 1 (Pasupuleti Siva Ramakrishna Rao) in filthy language and threatened him with death because he had collected donations from their area. They attacked him. A-1 - Chintha Srinivasa Rao hit him on his head with the cool drink bottle causing a grievous injury and instigated

E other accused to tie a telephone wire around his neck to kill him. He along with A-2 - Chintha Krishna and A-3 - Addla Umamaheswara Rao tied the telephone wire around the neck of P.W. 1 (Pasupuleti Siva Ramakrishna Rao) and pulled it from both sides to strangulate him with the intention to kill him.

F A-4 - Chintha Lakshmana Rao beat him on his right cheek with an iron rod. A-2 - Chintha Krishna beat him on the forehead and A-3 - Addla Umamaheswara Rao and A-4 - Chintha Lakshmana Rao beat him on the left eye and on the cheek. On making a hue and cry, P.W. 1 (Pasupuleti Siva Ramakrishna

G Rao) was rescued by others, who were present. On a complaint, Crime No. 85/98 under Sections 307 and 452 IPC read with Section 34 IPC was registered, investigated and a charge sheet was filed against all the accused. Charges were framed and read over to the accused. They did not plead guilty.

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4. P.Ws. 1 to 11 were examined and Exhibits P1 to P17 were marked apart from M.Os. 1 to 5 on behalf of the prosecution. No oral evidence was adduced on behalf of the accused. A

5. The learned trial Judge convicted and sentenced the accused as indicated above. B

6. P.W. 3 (Kotipalli Srinivas) and P.W. 5 (Sunkara Sreenivasa Rao) eye witnesses were declared hostile. P.W. 7 (Marri Sambhasiva) is the circumstantial witness. P.W. 8 (Dirisala Murali) is the photographer. P.W. 9 (Grandhi Sree Rama Murthy) is the panch witness. C

7. P.W. 10 (Dr. B. Swarajya Lakshmi, C.A.S.) is the medical officer, who examined P.W. 1 (Pasupuleti Siva Ramakrishna Rao) and found the following injuries: D

"1. Irregular bleeding lacerated injury of 3 cm x ¼ cm x ¼ cm size present on the left parietal region of the scalp.

2. A contusion of 3 cm x size present lateral to the left eye with overlying abrasion of ¼ cm size red in colour. E

3. A contusion of 2 cm x 1 cm size present on the left eye upper eye lid.

4. A contusion of 4 cm with abrasion of ¼ cm size present lateral on the right side of the fore head. F

5. Ligature mark of 34 cm x 0.5 cm size present below the thyroid cartilage on the front, right side and left side of the neck, red in colour.

6. A contusion of 2 cm x 1 cm size present on the right temple. G

7. A contusion of 2 cm x 2 cm size present on the right cheek. H

A 8. An oblique abrasion of 10 cm x 5 cm size present on the ventral aspect of the left arm, red in colour."

B 8. The Medical Officer [MO] opined that Injury No. 5 endangered the life of P.W. 1 (Pasupuleti Siva Ramakrishna Rao). That the other injuries are simple in nature and could have been caused as alleged.

C 9. P.W. 1 (Pasupuleti Siva Ramakrishna Rao) deposed that he collected donations for performing the marriage of the daughter of Pasupuleti Satyanarayan, a driver and a poor man.

D The accused questioned and threatened him about the collection of contribution from their territory and warned him that they would take away his life. On 20.04.1998 at about 8.00 PM when he was in the Lorry Workers Union Office, the accused trespassed into the Union Office and abused him. They told him that he cannot become a leader of their territory and collect donations and they would not leave the Office unless they beat him. A-1 - Chintha Srinivasa Rao beat him on his head with a cool drink (Thums up) bottle and said he should die. He directed others to tie a telephone wire around his neck therefore

E A-2 - Chintha Krishna beat him on the forehead and A-3 - Addla Umamaheswara Rao tied a telephone wire around his neck and pulled wire. Then A-4 - Chintha Lakshmana Rao beat him with the rod on his right cheek along with abuses. A-2 - Chintha Krishna also beat him with the rod on his forehead and A-3 -

F Addla Umamaheswara Rao and A-4 - Chintha Lakshmana Rao beat him on the upper side of his eyebrow and his cheek. He named others who were present and intervened to rescue him stating that but for that he would have been killed. His shirt was stained with his blood. They left behind the broken Thums-up bottle, telephone wire and iron rod. He was hospitalized for

G about 20 days. In cross examination his version was not shaken. He accepted that the accused were not armed with any weapon and said that the Thums-up bottle broke on his head, because of the impact. The deposition of other witnesses support the version of the injured witness - P.W. 1 (Pasupuleti Siva

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Ramakrishna Rao). We have not referred to the depositions of witnesses who have been declared hostile since such declaration is not of much consequences in this case. The other depositions are in tune with the deposition of PW1, the injured witness.

10. The Trial Court correctly appreciated the evidence and rejected the argument that the other witnesses were not reliable because they were interested witnesses. As regards charge under Section 34 IPC, the Trial Court relied on the settled position in law that it is not necessary that there should be a clear positive evidence about the meeting of mind before the occurrence and that if there are more than one accused a common intention to kill can be inferred from the circumstances of the case. The prosecution need not prove the overt act of the accused. As regards the charge under Section 452 IPC the Trial Court held that there was clear intention of accused here and that it was clearly established that the accused went to the office of P.W. 1 (Pasupuleti Siva Ramakrishna Rao) in a car and the other circumstances clearly establish that there was preparation for committing the offence. As noticed earlier, the Trial Court convicted and sentenced accused under Section 452 IPC for 7 years and under Section 307 IPC for 10 years read with Section 34 IPC.

11. The High Court in appeal, referred to the deposition of P.W. 1 (Pasupuleti Siva Ramakrishna Rao) where he had honestly admitted that accused did not come there armed with any weapon. The Appellate Court observed that the injuries were not only simple but were trivial. As regards Injury No. 5, it observed that though the Medical Officer stated that the injury was dangerous to life, it is not clear as to how the witness stated so, meaning thereby that there was no explanation for the medical opinion. Even though the High Court noticed that this injury is a ligature mark of 34 cm x 0.5 cm size around the neck. The High Court accepted that the accused tied a telephone wire around the neck of P.W. 1 (Pasupuleti Siva Ramakrishna Rao)

A and pulled it from both sides but observed that this act may not actually amount to being dangerous. It was of the opinion that if a knife is used and only a grazing injury is caused but no actual stabbing is done on any vital part of the body, it cannot be said that the injury is dangerous. Further observing that no
B intention could be attributed to the accused to cause the death of P.W. 1 (Pasupuleti Siva Ramakrishna Rao) since the accused had not come to the scene with dangerous weapon or caused injuries on the vital part of the body, the High Court modified the conviction under Section 307 IPC read with
C Section 34 IPC to Section 324 IPC.

12. As regards the charge under Section 452 IPC, the High Court observed that the incident occurred when P.W. 1 (Pasupuleti Siva Ramakrishna Rao) was in the Lorry Workers Union Office and not at any private place and hence ipso facto
D set aside the conviction and sentence under Section 452 IPC read with Section 34 IPC.

13. During the pendency of this matter, respondent Nos. 4 & 5, namely, Addla Umamaheswara Rao (accused No. 3) and
E Chintha Lakshmana Rao (accused No. 4) expired. Hence the special leave petition insofar as those respondents has already abated, vide order dated 04.02.2014.

14. Shri Altaf Ahmed, senior advocate, appearing for respondents 2 to 5 vehemently supported the Judgment of the
F High Court to the extent that it has rightly held that Section 307 IPC is not attracted and neither was Section 452 IPC. He also opposed the conviction under Section 324 IPC on the ground that no dangerous weapon or means were used for causing the injury which according to the learned counsel was simple in
G nature.

15. As regards the act of the tying the telephone wire around the neck and pulling it on both sides and causing an injury thereby, the learned counsel for the accused, heavily
H relied on a statement in the cross examination of the Medical

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Officer that the Injury No. 5 is simple in nature and the further statement that if the strangulation is of high nature the thyroid bone may be dislocated and ruptured and that there is no danger to life unless there is dislocation or rupture of the thyroid bone. A

16. It is not possible to accept this contention in the circumstances of the case that the act of strangulating a person by the throat by a telephone wire and pulling it from both sides, which is proved here, does not amount to the commission of the offence of attempt to commit murder under Section 307 IPC. The first part makes any act committed with the intention or knowledge that it would amount to murder if the act caused death punishable with imprisonment up to ten years. The second part makes such an act punishable with imprisonment for life if hurt is caused thereby. Thus even if the act does not cause any injury it is punishable with imprisonment up to 10 years. If it does cause an injury and therefore hurt, it is punishable with imprisonment for life. The Section reads as under: B C D

"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. E F

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. G

Illustrations

(a) A shoots at Z with intention to kill him, under such H

A - circumstances that, if death ensued A would be guilty of murder. A is liable to punishment under this section.

B (b) A, with the intention of causing the death of a child of tender years, exposes it in a desert place A has committed the offence defined by this section, though the death of the child does not ensue.

C (c) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section, and, if by such firing he wounds Z, he is liable to the punishment provided by the latter part of [the first paragraph of] this section.

D (d) A, intending to murder Z by poison, purchases poison and mixes the same with food which remains in A' s keeping; A has not yet committed the offence in this section. A places the food on Z's table or delivers it to Z's servants to place it on Z's table. A has committed the offence defined in this section."

E 17. There is no merit in the contention that the statement of Medical Officer that there is no danger to life unless there is dislocation or rupture of the thyroid bone due to strangulation means that the accused did not intend, or have the knowledge, that their act would cause death. The circumstances of this case
F clearly attract the second part of this Section since the act resulted in injury No.5 which is a ligature mark of 34 cm x 0.5 cm. It must be noted that Section 307 IPC provides for imprisonment for life if the act causes 'hurt'. It does not require that the hurt should be grievous or of any particular degree. The
G intention to cause death is clearly attributable to the accused since the victim was strangulated after throwing a telephone wire around his neck and telling him he should die. We also do not find any merit in the contention on behalf of the appellant that there was no intention to cause death because the victim
H admitted that the accused were not armed with weapons. Very

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few persons would normally describe the Thums-up bottle and a telephone wire used as weapons. That the victim honestly admitted that the accused did not have any weapons cannot be held against him and in favour of the accused.

18. We are thus of the view that this is a clear case of intention to commit the murder of P.W. 1 (Pasupuleti Siva Ramakrishna Rao) the appellant and the accused acted in concert and committed an offence under Section 307 IPC. As regards the setting aside of the conviction by the High Court under Section 452 IPC, we find the reasoning completely unacceptable and untenable. The High Court has simply set aside the conviction of the accused under Section 452 IPC read with Section 34 IPC only on the ground that the victim was sitting at the Lorry Workers Union Office and not at any private place. Section 452 of the IPC reads as follows:

"452. House-trespass after preparation for hurt, assault or wrongful restraint.- Whoever commits house-trespass, having made preparation for causing hurt to any person or for assaulting any person, or for wrongfully restraining any person, or for putting and person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

19. There is no doubt that the trespass was into a house and that the appellant entered the office having prepared to assault the victim and in any case for putting him in fear of hurt or of assault. There is nothing in Section 452 IPC to suggest that the use to which the house is put makes any difference. It is not the requirement of Section 452 IPC that for a trespass to be an offence the house must be a private place and not an office. The law protects any house from trespass, vide Section 448 IPC and further protects persons within the house from being assaulted or even put in fear of hurt or wrongful restraint within their own house.

A 20. We thus find that the accused were not entitled to be acquitted for the offences under Section 452 IPC read with Section 34 IPC.

B 21. We accordingly set aside the judgment of the High Court and restore the Judgment of the Trial Court dated 31st July, 2003 passed by the learned Assistant Sessions Judge, Bhimavaram in Sessions Case No. 234 of 1999. The respondent Nos. 2 [A-1-Chintha Srinivasa Rao] and 3 [A-2-Chintha Krishna] are sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs. 100/- each, in default to suffer simple imprisonment for a period of three months each for the offence under Section 452 with Section 34 IPC. The respondent Nos. 2 [A-1-Chintha Srinivasa Rao] and 3 [A-2-Chintha Krishna] are also sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs. 100/- each, in default simple imprisonment for a period of three month each for the offence under Section 307 read with Section 34 IPC. Both the sentences shall run concurrently. Sentence already undergone, if any, shall be set off.

E 22. Accordingly this appeal is allowed. The respondent Nos. 2 [A-1-Chintha Srinivasa Rao] and 3 [A-2-Chintha Krishna] are directed to surrender before Judicial Magistrate/ Superintendent of Police concerned forthwith. In case, they failed to do so within one month, steps be taken, in accordance with law, to apprehend them.

D.G.

Appeal allowed.