

A ANJANI KUMAR CHAUDHARY
v.
STATE OF BIHAR AND ANOTHER
(Criminal Appeal No. 926 of 2014)

B APRIL 23, 2014
[K.S. RADHAKRISHNAN AND VIKRAMAJIT SEN, JJ.]

Code of Criminal Procedure, 1973:

C ss.227/228 – Discharge/framing of charges – FIR lodged
for offences punishable u/ss 307, 386 IPC and other offences
– Application u/ss 227/228 CrPC – Addl. Sessions Judge
holding that no charge could be framed u/ss 307 and 386 IPC
and transferred the case to Chief Judicial Magistrate – Order
D affirmed by High Court – Held: FIR and statements of
witnesses prima facie indicate that ingredients of s.307 IPC
are made out – Order of Court of Session as affirmed by High
Court, set aside – Penal Code, 1860, ss.307, 386, 147, 148,
504, 384, 324 and 341.

E *Penal Code, 1860:*

s.307 – Ingredients – FIR – Application for discharge u/
s 307 IPC – Held: If anybody does any act with intention or
knowledge that by his act he might cause death, and hurt is
F caused, that is sufficient to attract s. 307 – Further, in order
to attract s. 307, the injury need not be on vital part of the body
– In the instant case, statements, weapons used and taking
into account the nature of injuries and the open declaration
by accused that the appellant would be killed, would indicate
G that, prima facie, ingredients of s. 307 IPC are made out –
Code of Criminal Procedure, 1973 – ss.227/228.

An FIR was registered for offences punishable u/ss
147, 148, 504, 323, 384, 324, 307 and 341 IPC against 7

named persons, i.e. respondents nos. 2 and 10 to 15 and other unknown persons on the allegations that while the appellant, a practicing advocate, was sitting in the house of one of his acquaintance, the accused came there and demanded Rs. 1000 from him as Rangdari for Holi. The appellant gave Rs. 200 and protested the way the money was demanded. After some time respondent no. 2 along with about 12 other persons reached there with lathi, iron rod, fursha, talwar etc. and abused the appellant, dragged him out of the house and brutally assaulted him with the weapons and left the place. The appellant was admitted to the hospital and his statement was recorded. Respondent no. 2 filed an application u/ss 227/228 CrPC before the Additional Session Judge stating that no offence u/ss 307 or 386 IPC was made out and prayed for the discharge and that the case be returned to the Chief Judicial Magistrate. The Court of Session held that no charge could be framed for offences punishable u/ss 307 and 386 IPC and transferred the case to the Chief Judicial Magistrate for trial. The revision petition filed by the appellant was dismissed by the High Court.

Allowing the appeal the Court

HELD:1.1. In *Mohan's case**, this Court has taken the view that if anybody does any act with intention or knowledge that by his act he might cause death, and hurt is caused, that is sufficient to attract s. 307 IPC. Further, this Court has also taken the view that, in order to attract s. 307 IPC, the injury need not be on the vital part of the body. [para 10] [567-H; 568-A]

**State of Madhya Pradesh v. Mohan and Others* 2013 (7) SCR 802 = (2013) 14 SCC 116 – relied on

1.2. In the instant case, the statements given by various witnesses support the case in the FIR. Statements of the witnesses are also on the same lines.

A What is discernible from the statements is that 1st accused and others, while committing the alleged offence, had exhorted that they would kill the appellant if the money was not paid. Open announcement by the accused and others that the appellant would not be alive to practice in the High Court, would *prima facie* indicate that the intention of the accused was, what he had spoken, followed by the infliction of injuries. Further, when several persons attack an unarmed person with deadly weapons, it is reasonable to presume that they had knowledge or intention that such an attack would result in death. In the instant case, the statements, the weapons used, i.e. Lathi, rod, Farsa, Talwar etc. and taking into account the nature of injuries and the open declaration by the accused that the appellant would be killed, would indicate that *prima facie* the ingredients of s. 307 IPC are made out. In the circumstances, the judgment of the Court of Session as affirmed by the High Court is set aside. [para 11 16, and 18] [571-H; 572-A-B, E, G]

E *Vasant Vithu Jadhav v. State of Maharashtra* 2004 (2) SCR 861 = (2004) 9 SCC 31 – relied on

Case Law Reference:

F	2013 (7) SCR 802	relied on	para 7
	2004 (2) SCR 861	relied on	para 16

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 926 of 2014.

G From the Judgment & Order dated 23.02.2012 of the High Court of Judicature at Patna in Criminal Revision No. 676 of 2008.

H Santosh Kumar, V. Sushant Gupta, (for Dr. Kailash Chand) for the Appellant.

A.K. Yadav, B.B. Pradhan, Kameshwar Singh (for K.V. Mohan), Rudreshwar Singh (for Samir Ali Khan) for the Respondents.

The Judgment of the Court was delivered by

K. S. RADHAKRISHNAN, J. 1. Leave granted.

2. Appellant, a practicing advocate in the Patna High Court, had gone to his village at Nehra, in the district of Darbhanga for celebrating Holi festival. On 15.3.2006 at about 10.00 PM while he was sitting in the house of one Ranjit Chaudhary along with Gautam Chaudhary and others, few persons by name Ramesh Sahni, Dinesh Sahni and others, came there and demanded Rs.1,000/- as Rangdari for meeting Holi expenses. Appellant gave Rs.200/- but wanted the money to be returned which was not to the likings of the persons who came there. Twenty minutes thereafter, 2nd Respondent (1st accused) Sunil Sahni along with about 12 other persons came with Lathi, iron rod, Fursha, Talbar etc. and abused the appellant and dragged him out of the house and brutally assaulted him with the weapons and left the place after inflicting several injuries on the appellant.

3. The appellant was later admitted to the hospital at Sakri and his statement was recorded and a criminal case No. 46 of 2006 was registered under Sections 147, 148, 504, 323, 384, 324, 307 and 341 IPC against seven named persons and 10-15 unknown persons, vide FIR dated 16.3.2006. The police started investigation and, after completing the investigation, the police submitted its final report under Section 173 Cr.P.C. and the accused persons were sent for trial.

4. The trial Court took cognizance of the offences on 9.10.2007 and the case was committed to the Sessions Court.

5. 1st accused then filed an application for quashing the charge-sheet vide Criminal Misc. No. 13987 of 2007 before

A the Patna High Court. Later, that application was withdrawn
seeking liberty to agitate the grievances before the trial Court
at the time of framing of charges, which was allowed by the
High Court by its order dated 5.11.2007. 1st accused also filed
B an application under Sections 227/228 CrPC on 15.1.2008
before the Additional Sessions Judge, Darbhanga stating that
no offence under Sections 307 or 386 IPC was made out and
hence prayed for the discharge and that the case be returned
to the Chief Judicial Magistrate after framing charge under rest
of the provisions.

C 6. The Sessions Court, after hearing both the parties,
came to the conclusion that no charge can be framed under
Sections 307, 386 IPC against the accused, except the rest of
the charges levelled against him. The Sessions Court vide its
order dated 27.5.2008 transferred the case to the Chief Judicial
D Magistrate for trial. Aggrieved by the said order, the appellant
herein preferred Criminal Revision No. 676 of 2008 before the
High Court, which was dismissed on 23.2.2012, against which
this appeal by special leave has been preferred.

E 7. Shri Santosh Kumar, learned counsel appearing for the
appellant, submitted that the Courts below were not justified in
holding that no offence under Sections 307/308 IPC was made
out. Learned counsel pointed out that the Courts below have
failed to appreciate the statement of the witnesses at
F paragraphs 5, 6, 17 and 19 of the case diary, which would
clearly indicate that the 1st accused along with other accused
persons inflicted blows by sharp weapons and had thus acted
with the intention and knowledge that the same would cause
the death of the appellant. Learned counsel also pointed out
that the Courts below have failed to appreciate that when about
G 10-15 persons attacked an unarmed person with sharp
weapons, one has to presume that the intention was to cause
death and the injuries sustained by the appellant would also
indicate that his life was in danger. Learned counsel submitted
that, in order to sustain a charge under Section 307 IPC, it is

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ANJANI KUMAR CHAUDHARY v. STATE OF BIHAR 567
[K.S. RADHAKRISHNAN, J.]

not essential that bodily injury capable of causing death should have been inflicted and what the Court has to consider is whether the act, irrespective of the result, was done with the intention or knowledge that death would be caused. In support of his contention, learned counsel placed reliance on the judgment of this Court in *State of Madhya Pradesh v. Mohan and Others* (2013) 14 SCC 116.

8. Shri A. K. Yadav, learned counsel appearing for the 2nd respondent (1st accused), submitted that there is no reason to interfere with the order of the Sessions Judge, which is affirmed by the High Court. Learned counsel pointed out that the complainant has not brought on record sufficient materials for framing charge under Section 307 IPC against the 1st accused and neither the informant, nor any of the witnesses have stated that the 1st accused had assaulted the appellant with an intention or knowledge to commit the murder, or had he given any blow on his person.

9. The Sessions Court as well as the High Court, after perusing the statement of the witnesses and the first information report, took the view that what emerges from the statement of witnesses was that, initially, the intention was to teach a lesson for non-payment of Rs.1000/- and whatever followed by way of subsequent action, could not be held to be an act done with the intention to kill. Further, the Courts below have taken the view that there could not be an intention to kill in the background of the incident, since the appellant did not pay the amount demanded on the occasion of Holi festival.

10. We can, at this stage, proceed only on the basis of the statement recorded in the FIR as well as on the statements of the witnesses recorded in the case diary to find out whether they satisfy the ingredients of Section 307 IPC. The scope of Section 307 IPC has elaborately been dealt with by this Court in *Mohan's case* (supra), wherein this Court has taken the view that if anybody does any act with intention or knowledge that

A by his act he might cause death and hurt is caused, that is sufficient to attract Section 307 IPC. Further, this Court has also taken the view that, in order to attract Section 307 IPC, the injury need not be on the vital part of the body.

B 11. We notice from the FIR and the statements given by various witnesses that, on the eve of Holi, the appellant was sitting at the residence of one Ranjit Chaudhary and, at that time, few persons came and demanded Rs.1,000/- for meeting Holi expenses but the appellant gave only Rs.200/-. Following that, about 12 persons, including the 1st accused, came there
C armed with Lathi, iron rod, Farsa, Talwar etc. and attacked the appellant and dragged him out of the house and gave blows and he fell down and sustained injuries. The relevant portion of the FIR reads as follows:

D “Along with 10 to 12 unknown persons after having armed with Lathi, Iron road, fursha and Talbar (both Sharp cutting weapon) came there and soon after arrival they told Advocate SHALA we shall force you to leave your profession of Advocacy and they dragged me out from
E house and brutally assaulted with Lathi, rod and fursha and gave farsa blow over my head but I could be saved anyhow and got injury over right ear and over backside of throat and over the left hand as result of which I sustained injury on my person and fell down. Even then they continued assaulting me and threatened you did not pay today Rs.1,000/- as demanded by us you will be killed. Sunil Sahni told neither you will be alive nor will go to High Court for practicing there. Sometime after some villagers and my associates namely Anil Choudhary s/o Late Narendra Choudhary, Baiju Kant Choudhary s/o Hira Kant Choudhary, Mithilesh Choudhary s/o Satish Kumar Choudhary and several others came there and saved me. They surrounded my house. Thereafter, my associates got me admitted at Sakari Hospital.”

H (emphasis added)

ANJANI KUMAR CHAUDHARY v. STATE OF BIHAR 569
[K.S. RADHAKRISHNAN, J.]

12. The nature of injuries noticed on the body of the appellants are as follows: A

1. Incised wound over Rt temporal region of scalp just at the base of Rt ear (1-1/2" x 1/2" x 1/4")
2. Incised wound over Rt side of occipital region of scalp (1-1/4" x 1/2" x 1/6") B
3. Incised wound over Lt side of occipital region of scalp (2" x 1/2" x 1/4")
4. Pain, swelling, scattered abrasions and scattered lacerated wounds over Lt. forearm on dorsal side (4" x 2"). C

Nature of injury: Inj. No. (1), (2) & (3) simple in nature caused by sharp cutting weapon and (4) simple in nature caused by hard blunt substance. D

Age of injury: Within 24 ms

M.I. An old healed wound scar mark over upper part of chest is middle."

13. The recorded statement of Ranjeet Choudhary reads as follows: E

"..... Ramesh Sahni and Dinesh Sahni came there and asked the interment that Sunil Sahni has demanded Rs.1000/- (one thousand) as Rangdari for meeting Holi expenses Wakil Saheb (the informant) after making them convinced gave Rs.200/- and got them return but while returning they started whispering Wakil Saheb this is not proper way you ought to have been given entire amount and soon after twenty minutes accused Sunil Sahni along with Ramesh Sahni, Dinesh Sahni, Deepak Sahni, Mohan Sahni, Buchchu Sahni after having variously armed with Farsa, rod, Talwar and lathi came there and just after their arrival Sunil Sahni ordered his associates "AJ WAKILWA KO WAKALAT CHHURADO" saying this Sunil Sahni gave Farsa blow over the head of the interment with killing H

A intention which inflicted near the rig hear of the informant and Mohan Sahni with intent to kill him gave Talwar blow over the throat of the informant but the informant could be saved and how and proceeded ahead but got injury over throat and started bleeding. Deepak Sahni having armed iron road assaulted the informant with rod which inflicted injury over the left wrist of the informant and other accused person namely, Ramesh Sahni, Dinesh Sahni, Buchi Sahni assaulted with lathi, feets and slaps other accused person not named in FIR, namely, Asharni Sahni, Lakshmi Sahni, Santosh Sahni insulted and abused the informant with intent to provoke breach of the peace and in the mean time persons residing in the vicinity came there and seeing them accused persons fled away.”

D 14. The relative portion of the statement of FIR witness Ranjit Chaudhary reads as follows:

E “.....Ramesh Sahni and Dinesh Sahni came there and asked the interment that Sunil Sahni has demanded Rs1000/- (one thousand) as Rangdari for meeting Holi expenses. Wakil Saheb (the informant) after making them convinced gave Rs.200/- and got them return but while returning they started whispering Wakil Saheb this is not proper way you ought to have been given entire amount and soon after twenty minutes accused Sunil Sahni along with Ramesh Sahni, Dinesh Sahni, Deepak Sahni, Mohan Sahni, Buchchu Sahni after having variously armed with Farsa, rod, Talwar and lathi came there and just after their arrival Sunil Sahni ordered his associates “AJ AAKILWA KO WAKALAT CHHURADO” saying this Sunil Sahni gave Farsa blow over the head of the interment with killing intention which inflicted near the rig hear of the informant and Mohan Sahni with intent to kill him gave Talwar blow over the throat of the informant but the informant could be saved any how and proceeded ahead but got injury over throat and started bleeding. Deepak Sahni having armed with iron rod assaulted the informant with rod which

inflicted injury over the left wrist of the informant and other accused person namely Ramesh Sahni, Dinesh Sahni, Buchi Sahni assaulted with lathi, feets and slaps other accused person not named in F.I.R. namely Asharni Sahni, Lakshmi Sahni, Santosh Sahni insulted and abused the informant with intent to provoke breach of the peace and in the mean time persons residing in the vicinity came there and seeing them accused persons fled away.”

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15. The relative portion of the statement of FIR witness Gautam Chaudhary reads as follows:

“.....Soon after, Sunil Sahni along with Ramesh Sahni, Deepak Sahni, Mohan Sahni and Bachu Sahni after variously armed with farsa, Talwar, Iron road, Lathi, paipa (small size of Lathi) came there and Sunil Sahni soon after his arrival told “AAJ WAKILVA KO SABAK SIKHA DENA HAI” (today we have to teach lesson to the Advocate) “SHALA PAISA NAHI DIYA HAI” stating this he having armed farsa, gave farsa blow intent to kill him over his head to which the informant wanted to save him but the said farsa blow inflicted near his right ear and Mohan Sahni gave Talwar blow over the throat of the informant which resulted injury over his throat and the informant fell down and even then Deepak Sahni having Iron road in his hand assaulted the informant with Iron rod which inflicted injury over the left wrist of the informant and other accused persons Ramesh Sahni, Dinesh Sahni and Shunbhu Sahni assaulted with Lathi, feet and slaps in the mean time. Asbari Sahni, Laxmi Sahni, Santosh Sahni, Jagdish Sahni and four to five unknown persons came there and abused the informant with intent to provoke breach of the peace and they stated to teach lessons to the Advocate who is Partaking much.”

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16. Statements of the witnesses Baiju and Manoj Chaudhary are also in the same lines. What is discernible from the above statements is that 1st accused and others, while

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A committing the alleged offence, had exhorted that they would kill the appellant if the money was not paid. Open announcement by the accused and others that the appellant would not be alive to practice in the High Court, would *prima facie* indicate that the intention of the accused was, what he had spoken, followed

B by the infliction of injuries. Further, when several persons attack an unarmed person with deadly weapons, it is reasonable to presume that they had knowledge or intention that such an attack would result in death. In the instant case, as per the statements, the weapons used were Lathi, rod, Farsa, Talwar

C etc. and when we look at the nature of injuries, it is clear that the injuries were caused by using sharp cutting weapons and also with hard blunt substance. Injuries were inflicted on the right temporal region of scalp at the base of the right ear, right side of occipital region of scalp, left side of occipital region of scalp

D etc. Open declaration by the accused that a person would be killed, indicates his intention and, as held by this Court in *Vasant Vithu Jadhav v. State of Maharashtra* (2004) 9 SCC 31, the question as to whether there was intention to kill or knowledge that death will be caused is a question of fact and

E would depend on the facts of a given case which has to be attributed on evidence by the trial court. Above facts would indicate that the ingredients of Section 307 IPC are made out.

17. We make it clear that this is only a *prima facie* view to decide as to whether the FIR and the statements of

F witnesses contain averments so as to charge-sheet the accused under Section 307 IPC and ultimately it is for the trial court to decide whether the offence under Section 307 IPC has been made during trial, which ought to be ultimately decided on the basis of evidence tendered before the criminal Court.

G 18. In such circumstances of the case, we are inclined to allow the appeal and set aside the judgment of the Sessions Court, which was affirmed by the High Court. Ordered accordingly.