

VANEET MAHAJAN

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v.

STATE OF PUNJAB & ORS.

(Criminal Appeal No. 718 of 2017)

APRIL 13, 2017

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[A. K. SIKRI AND ASHOK BHUSHAN, JJ.]

Penal Code, 1860 – s. 307 – Attempt to murder – Framing of charge u/s. 307 – On facts, the High Court deleted charge framed u/s. 307 while maintaining the charge in respect of other offences – Sustainability of – Held: Approach of the High Court is clearly unsustainable – In the challan filed by the police after investigating into the incident, it was categorically recorded on the basis of the statement of the complainant that 10-12 persons armed with swords, baseball, etc. suddenly attacked the victims in a car, by smashing the front, backside and driving side glass of the car – Appellant and other victim suffered grievous injuries inflicted with sharp-edged weapon as also simple injuries – Thus, having regard to the statement of the persons and the medical report, High Court could not have concluded, at the stage of framing of the charge itself, that guilty intention of the accused persons was conspicuously missing – Facts of the case indicate that the ingredients of s. 307 are made out – Thus, the order of the High Court is quashed and set aside – Accused persons also to be tried for offence u/s. 307.

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Anjani Kumar Chaudhary v. State of Bihar and Another
(2014) 12 SCC 286 : [2014] 5 SCR 562 – referred to.

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Case Law Reference

[2014] 5 SCR 562 referred to Para 10

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 718 of 2017.

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From the Judgment and Order dated 28.08.2015 of the High Court of Punjab and Haryana at Chandigarh in Crl. Rev. Petition No. 922 of 2015.

Manu Sharma, Ms. Ridhima Mandhar, M. Shoeb Alam, Ms. Fauzia

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A Shakil, Ujjwal Singh, Mojahid Karim Khan. Advs. for the Appellant.

Jitendra Mohan Sharma, Sr. Adv., Ajit Sharma, Sandeep Singh, Ms. Shweta Jain Pahlad Singh Sharma, Advs. for the Respondents.

The following Judgment of the Court was delivered:

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J U D G M E N T

1. Leave granted.

2. Heard the matter finally.

3. The appellant is the complainant at whose instance FIR No. 138/2014 dated 10.05.2014 was registered at Police Station Civil Lines, Amritsar, Punjab, under Sections 307, 326, 324, 323, 427, 148, 149, 120-B and 341 of the Indian Penal Code (IPC). The matter was investigated and *challan* was filed in the Court. The Sessions Judge framed charges under the aforesaid provisions, including Section 307 IPC. This order of framing of charge was challenged by respondent No. 2 by filing revision petition in the High Court. The High Court has, vide the impugned judgment dated 28.08.2015, partly allowed the said revision petition and deleted the charge framed under Section 307 IPC as unsustainable while maintaining the charge in respect of other offences. Being dissatisfied of the aforesaid outcome, the appellant has challenged the said order on the ground that the Sessions Judge has rightly framed the charge under Section 307 IPC as well.

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4. The prosecution story, on the basis of which FIR was registered and chargesheet was filed in the Court, may be recapitulated in brief.

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5. According to the appellant, who is a practicing Advocate enrolled with the Bar Counsel of Punjab, he was brutally attacked on 10.05.2004 with intention to kill him, his brother, Avnish Mahajan, and their employee, Avtar Singh, by 10-12 persons, who were armed with sharp and deadly weapons including Gandassa, daatars, baseball bat, etc. at the instance of one Anil Joshi, Cabinet Minister in Punjab Government. Further, the said attack by the 11 accused persons named in the Final Report under Section 173 of the Code of Criminal Procedure (Cr.P.C.), including respondent Nos. 2 to 4, was in execution of the common object of the assailants to punish the appellant/ teach him a lesson for instituting four cases against the said Anil Joshi. Resultantly, the appellant suffered 11 injuries, including two grievous injuries, and he remained admitted in

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Hospital for a period of 12 days. Similarly, victim Avnish Mahajan sustained three injuries, one of which was declared grievous in nature, and victim Avtar Singh sustained four simple injuries. During the course of investigation carried out by the Special Investigation team, 11 accused persons, including respondent Nos. 2 to 4 came to be arrested; weapons and vehicles used in the attack were recovered at their instance; call detail records were summoned and analyzed; and CCTV footage of cameras installed in Indian Overseas Bank, nearby the place of occurrence, was procured and examined. A comprehensive perusal of the material on record led the SIT to file charge sheet under Sections 307, 326, 323, 324, 420, 468, 471, 427, 341, 148, 149 and 120B IPC. Accordingly, the Sessions Judge framed charge under Sections 307, 326, 325, 324, 323, 341, 427, 148 and 149 IPC.

6. A perusal of the impugned order passed by the High Court would reveal that respondent Nos. 2-4, who are accused Nos. 4, 11 and 1 respectively did not question the charge on other counts but limited their challenge to the framing of the charge under Section 307 IPC. It was argued by the counsel for these respondents-accused persons that medical evidence available on record does not support the charge under Section 307 IPC and at the most, charge would be made only under Section 326 IPC. This statement was made on the ground that intention to kill was conspicuously missing which is *sine qua non* of charge under Section 307 IPC. It is this contention which is accepted by the High Court, i.e., intention or knowledge on the part of respondent Nos. 2-4 to kill was conspicuously missing.

7. After hearing learned counsel for the parties and going through the records, we are of the view that the aforesaid approach of the High Court is clearly unsustainable. In the first instance, we may record that in the *challan* filed by the police under Section 173 Cr.P.C. after investigating into the incident, it is categorically recorded on the basis of the statement of the complainant that 10-12 persons suddenly attacked the victims and they were armed with swords, baseball, etc. These victims were in a car. The assailants smashed front, backside and driving side glass of the car and the manner in which blows were given to these victims is described as under:

“On raising lalkara by Mr. Rataul, Gocha Pehalwan, Raju, Tarsem armed with daatar alongwith 8-9 other persons, armed with

A swords, base ball etc., attacked on us and smashed front, backside
 and driving side glass of our car and gave blow of daatar on me,
 while I was sitting inside the car, on which, I bent towards backside
 and saved myself. Meanwhile, my brother Vineet Mahajan opened
 B the door of car and tried to come out, on which, Gocha Pehalwan
 gave blow of his daatar on head of my brother. On this, my
 brother put both his hands on head in order to save himself, resulting
 which, fingers of both his hands sliced. My brother tried to skip
 away and save his life, on which Mr. Rataul, Councilor raised
 C lalkara and Tarsem, armed with daatar and his associates chased
 my brother and inflicted injuries on his person. When I came out
 of the car, Raju and Gocha gave blows of their dasti daatars on
 my right arm, as I had put my arm on head in order to save me.
 Other accused also caused grievous injuries on my person. We
 raised alarm, on which, people gathered at the spot, resulting which,
 D accused alongwith their respective weapons skipped away from
 the spot on their cars. My brother Vineet Mahajan himself drove
 the car in injured condition and got me and himself admitted in
 Hargun Hospital, Amritsar, where we are under treatment.”

Along with the *challan*, chart regarding various injuries was
 annexed as Annexure A-IV, stating that the medical examination revealed
 E that injury No. 1 in MLR of Vineet Mahajan was grievous in nature and
 inflicted with sharp-edged weapon while other injuries were simple in
 nature. Similarly, injury No. 1 in MLR of Avnish Mahajan was grievous
 in nature and inflicted with sharp-edged weapon.

8. It is clear from the above that as per the allegations of the
 F prosecution, assailants had attacked on the head of the victims and just
 to save themselves they put their hands on the head, as a result whereof,
 injuries came to be inflicted on their hands.

9. Having regard to the aforesaid statement of the persons recorded
 under Section 161 Cr.P.C. and the medical report, we fail to understand
 as to how the High Court could come to the conclusion, at the stage of
 G framing of the charge itself, that guilty intention of the accused persons
 was conspicuously missing. This Court in '*Anjani Kumar Chaudhary
 v. State of Bihar and Another*' [2014 (12) SCC 286] has categorically
 held that in order to attract the provisions of Section 307 IPC, injury
 need not be on fatal part of the body. It is further held that when several
 H persons attacked unarmed persons with deadly weapons, it is reasonable

to presume that they had knowledge or intention that such attack would result in death. A

10. Further the question as to whether there was an intention to kill or knowledge that death will be caused is a question of fact and would depend on the facts of a given case which has to be attributed on evidence by the Trial Court. We would like to reproduce paragraphs 15 and 16 of the judgment incorporating the aforesaid principles: B

“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 Buchchu Sahni after variously armed with farsa, talwar, iron rod, lathi, paipa (small size of lathi) came there and Sunil Sahni soon after his arrival told “*aaj wakilwa ko sabak sikha dena hai*’ (today we have to teach a lesson to the advocate) “*sala paisa nahi diya hai*” stating this he having armed with farsa, gave farsa-blow with 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 in injury over his throat and the informant fell down and even then Deepak Sahni having iron rod in his hand assaulted the informant with iron rod which inflicted injury over the left wrist of the informant and the other accused persons Ramesh Sahni, Dinesh Sahni and Shunbhu Sahni assaulted with lathi, feet, slaps in the meantime. 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.” C D E F

16. The statements of the witnesses Baiju and Manoj Chaudhary are also in the same lines. What is discernible from the above statements is that the first accused and others, while committing the alleged offence, had exhorted that they would kill the appellants if the money was not paid. Open announcement by the accused and others that the appellants would not be alive to practise in the High Court, would prima facie indicate that the intention of the accused was, what he had spoken, followed by the infliction of G H

A 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, etc., and when we look at the nature of the 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, 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*, the question as to whether there was an intention to kill or knowledge that death will be caused is a question of fact and would depend on the facts of a given case which has to be attributed on evidence by the trial court. The above facts would indicate that the ingredients of Section 307 IPC are made out.”

D 11. Resultantly, this appeal is allowed and the order of the High Court is hereby quashed and set aside. As a consequence, the accused persons shall also be tried for the offence under Section 307 IPC.