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RATAN SINGH

v.

STATE OF M.P. & ANR.

(Criminal Appeal No. 825 of 2009)

B

APRIL 24, 2009

**[DR. ARIJIT PASAYAT AND ASOK KUMAR  
GANGULY, JJ.]**

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*Code of Criminal Procedure, 1973 -- s. 482 -- Petition questioning framing of charges u/ss. 323/149, 307/149, 341 and 294 IPC -- Proceedings quashed on the ground that since the injuries on the victims were simple in nature, framing of charges u/s. 307/149 was abuse of process of court -- On appeal, held : Nature of injuries by itself will not rule out applicability of s. 307 -- Applicability to be determined in view of intention or knowledge -- Determination thereof is question of fact -- Interference u/s. 482 not called for -- Penal Code, 1860 -- ss. 307/149, 323/149, 341 and 294.*

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*Penal Code, 1860 -- s. 307 -- Applicability -- Scope and ambit of -- Discussed.*

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**Charges were framed against respondent No. 2 u/ss. 307/149, 323/149, 341 and 294 IPC. His petition u/s. 482 Cr.P.C. seeking quashing of the same, was allowed by High Court. Hence the present appeal.**

**Allowing the appeal, the Court**

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**HELD: 1. The scope of interference u/s. 482 Cr.P.C. at the present juncture, as was done by the High Court is clearly unsustainable. Whether there was 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. The circumstances that the injury inflicted by the accused**

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was simple or minor, will not by itself rule out application of Section 307 IPC. The determinative question is intention or knowledge, as the case may be, and not nature of the injury. [Paras 9 and 11] [981-A-B-F] A

2. To justify a conviction u/s. 307 IPC, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deducted from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The Section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this Section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. 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 the Section. An attempt in order to be criminal, need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof. The Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the Section. Therefore, an accused charged u/s. 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt. [Paras 5 and 6] [979-F-H; 980-A-C] B C D E F G

*Sarju Prasad v. State of Bihar*, AIR 1965 SC 843, relied on

- A *State of Maharashtra v. Balram Bama Patil and Ors.* 1983  
 (2) SCC 28; *Girija Shanker v. State of Uttar Pradesh*, 2004  
 (3) SCC 793; *R. Prakash v. State of Karnataka*, JT 2004 (2)  
 SC 348; *State of M.P. v. Saleem @ Chamaru and Anr.* 2005  
 (5) SCC 554 and *State of Madhya Pradesh v. Imrat and Anr.*  
 B 2008 (11) SCC, referred to.

2005 (5) SCC 554 referred to Para 7

2008 (11) SCC 523 referred to Para 7

- C AIR 1965 SC 843 relied on Para 8

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal  
 No. 825 of 2009.

- D From the Judgment & Order dated 09.04.2007 of the High  
 Court Madhya Pradesh, Jabalpur Bench at Gwalior in Misc.  
 Criminal Case No. 833 of 2007.

Ashok Kumar Sharma for the Appellant.

- E C.D. Singh, Sunny Chowdhary, Vairagya Vardhan Dubey,  
 Aditya Singh, Upasana Nath, Sanjay Misra and Raj Singh Rana  
 for the Respondent.

The Judgment of the Court was delivered by

- F DR. ARIJIT PASAYAT, J. 1. Leave granted.

- G 2. Challenge in this appeal is to the order passed by a  
 learned Single Judge of the Madhya Pradesh High Court  
 allowing the petition filed by respondent no.2. The High Court  
 by the impugned order accepted the petition filed under Section  
 482 of the Code of Criminal Procedure, 1973 (in short the  
 'Code'). Respondent no.2 had filed the petition questioning  
 framing of charges against him along with co-accused for  
 offence punishable under Sections 307, 148, 323 read with  
 Section 149, 307 read with Section 149, 341 and 294 of the

Indian Penal Code, 1860 (in short the 'IPC'). The petition was filed primarily on two grounds. One was that the present respondent no.2 had suffered injuries in the incident which admittedly had happened at two different places at a distance of 7 kms. from each other and, therefore, the case was falsely foisted. The other was that injuries were simple in nature and no injury was found on the vital part of the body and, therefore, Section 307 read with Section 149 IPC has no application. The High Court accepted the latter submissions and held that framing of charge for offence punishable under Section 302 or 307 read with Section 149 IPC is an abuse of process of court.

3. Learned counsel for the appellant submitted that the scope and ambit of Section 307 has not been kept in view. The stand was supported by learned counsel for the State. Learned counsel for the respondent no.2, on the other hand, supported the judgment.

4. It is to be noted that the alleged offences are of very serious nature. Section 307 relates to attempt to murder. It reads as follows:

"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."

5. To justify a conviction under this Section, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual

- A wounds. The Section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this Section. It is not necessary that the injury actually
- B caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. 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 the Section.
- C An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.

D 6. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. The Section makes a distinction between the act of the accused and its result, if any. The Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under

E circumstances mentioned in the Section. Therefore, an accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt.

F 7. This position was highlighted in *State of Maharashtra v. Balram Bama Patil and Ors.* (1983 (2) SCC 28), *Girija Shanker v. State of Uttar Pradesh* (2004 (3) SCC 793), *R. Parkash v. State of Karnataka* (JT 2004 (2) SC 348) and *State of M.P. v. Saleem @ Chamaru and Anr.* (2005 (5) SCC 554) and, *State of Madhya Pradesh v. Imrat and Anr.* 2008 (11) SCC 523.

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H 8. In *Sarju Prasad v. State of Bihar* (AIR 1965 SC 843) it was observed in para 6 that the mere fact that the injury actually inflicted by the accused did not cut any vital organ of the victim, is not by itself sufficient to take the act out of the purview of

Section 307.

9. Whether there was 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. The circumstances that the injury inflicted by the accused was simple or minor will not by itself rule out application of Section 307 IPC. The determinative question is intention or knowledge, as the case may be, and not nature of the injury. The basic differences between Sections 333 and 325 IPC are that Section 325 gets attracted where grievous hurt is caused whereas Section 333 gets attracted if such hurt is caused to a public servant.

10. Section 307 deals with two situations so far as the sentence is concerned. Firstly, 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 secondly 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 indicated in the first part i.e. 10 years. The maximum punishment provided for Section 333 is imprisonment of either description for a term which may extend to 10 years with a liability to pay fine.

11. In view of what has been stated above, the impugned order of the High Court is clearly unsustainable. The scope of interference under Section 482 of the Code at the present juncture as was done by the High Court is clearly unsustainable. The appeal is accordingly allowed. It is made clear that we have not expressed any opinion on merits of the case and this appeal is being decided keeping in view the parameters relating to exercise of power under Section 482 of the Code.

K.K.T.

Appeal allowed.