

CASE NO.:
Appeal (crl.) 986 of 2006

PETITIONER:
Bipin Bihari

RESPONDENT:
State of M.P.

DATE OF JUDGMENT: 20/09/2006

BENCH:
ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T
(Arising out of SLP (Crl.) NO. 1028/2006)

ARIJIT PASAYAT, J.

Leave granted.

Challenge in this appeal is to the judgment rendered by a Division Bench of the Madhya Pradesh High Court, Jabalpur Bench confirming the conviction of the appellant in terms of Section 307 of the Indian Penal Code, 1860 (in short the 'IPC') as done by the trial Court. However, the custodial sentence of imprisonment for life imposed was reduced, quantum of fine was increased from Rs.5,000/- to Rs.30,000/- and in default sentence was stipulated. The custodial sentence of two years was imposed. It was held that in case the fine is not paid within four months, the accused shall undergo further rigorous imprisonment for four years. The fine amount on deposit was to be paid as compensation to the victim.

The factual background in a nutshell is as under:

Complainant Mahabali on 18.11.2002 at about 5.00 p.m. was grazing his ox in his field. His sister-in-law Jamuni Bai was cutting the crop. On hearing her cry for help, the complainant rushed towards her and found that the appellant had entered into an altercation with her. He found that the appellant was carrying a gun and was restraining his sister-in-law from cutting the crop. On seeing the complainant, appellant brandished the gun and gave threat of dire consequences. Despite the threat, the complainant caught hold of the gun of appellant as a result of which appellant hurled abuses and threatened to kill him. Thereafter the accused fired the gun and the bullet struck the right calf of the complainant, as a consequence of which the flesh of that region was ripped open. In spite of the aforesaid injury complainant continued to grapple with the appellant, as he wanted to load the gun again. But he failed because complainant was grappling with him. At that juncture, Lav Kush, Ram Kripal and Motilal arrived at the spot. On seeing these persons, the appellant fled away and left the gun at the spot. The incident was witnessed by sister-in-law of complainant, who had testified that the appellant was making threatening utterances.

The incident was reported at the police station by the injured complainant, Mahabali. On the basis of FIR lodged by

the complainant, the criminal law was set in motion. The investigating agency sent the complainant for medical examination; recorded the statements of witnesses; prepared the spot map; seized necessary articles and after completing the investigation submitted the charge-sheet in the concerned court from where it was received by the trial Court for trial.

The learned trial Judge framed charge for commission of offence punishable under Section 307 IPC. The appellant denied the indictment and requested for trial. The prosecution examined 12 witnesses and placed Ex.P-1 to P-19 documents on record. As noted above, the trial Court found the accused guilty, convicted and sentenced him. High Court in appeal, as noted above, maintained the conviction, but modified the sentence.

In support of the appeal, learned counsel for the accused appellant submitted that the High Court was not justified in holding that the conviction has to be made in terms of Section 307 IPC. The fine as imposed is harsh and unreasonable.

In response, learned counsel for the respondent-State submitted that the High Court's judgment does not suffer from any infirmity to warrant interference.

Section 307 IPC reads as follows:

"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."

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. 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 wounds. The Sections 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 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.

In *Sarju Prasad v. State of Bihar* (AIR 1965 SC 843) it was observed that the mere fact that the injury actually inflicted by the accused did not cut any vital organ of the victim, is not itself sufficient to take the act out of the purview of Section 307 IPC.

The above position was highlighted in *State of Maharashtra v. Balram Bama Patil and Ors.* (1983 (2) SCC 28), *Girija Shankar v. State of U.P.* (JT 2004 (2) SC 140) and *Vasant Vithu Jadhav v. State of Maharashtra* (2004 AIR SCW

1523) and Bappa @ Bapu v. State of Maharashtra and Anr. (2004 (6) SCC 485). The conviction as done is in order.

Coming to the custodial sentence imposed, the imprisonment cannot be termed to be in any way harsh considering the nature of the injury inflicted by the accused on the victim. However, the fine appears to be on higher side. The same is reduced to Rs.15,000/- and shall be paid within a period of 6 months. In case it is not paid, default custodial sentence would be one and a half years imprisonment. If the payment is made, an amount of Rs.10,000/- shall be paid to the victim.

The appeal is disposed of accordingly.

JUDIS