

CASE NO.:
Appeal (crl.) 798 of 2004

PETITIONER:
Bappa alias Bapu

RESPONDENT:
The State of Maharashtra & Anr.

DATE OF JUDGMENT: 05/08/2004

BENCH:
ARIJIT PASAYAT & C.K. THAKKER

JUDGMENT:
J U D G M E N T

(Arising out of SLP(CRL) No. 5006/2003)

ARIJIT PASAYAT, J

Leave granted.

The appellant was convicted for offence punishable under Section 307 of the Indian Penal Code, 1860 (in short the 'IPC') and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.5,000/- with default stipulation. It was further directed that in case the fine was deposited, an amount of Rs. 2,000/- was to be paid to the injured person as compensation. One Rao Saheb Nagorao Khose also faced trial under Section 307 read with Section 109 IPC. He was acquitted by the Trial Court. But appellant's appeal before the Bombay High Court, Aurangabad Bench did not bring any relief to the appellant.

Prosecution version as unfolded during trial is as follows:

Accused Bappa alias Bapu (A-1) alongwith Bibhishan (PW-10) had gone to cinema to witness a movie and were coming back by bicycle. Suddenly the appellant got down from the bicycle and stabbed Bibhishan on his stomach and back and started to press his neck. Hearing his cries for help some villagers came running. The accused tried to run away from the spot but was caught by the villagers and handed over to the police. Victim was taken to the hospital. Two other persons, one of whom, namely, Rajabhai, as noted above, was charged for commission of offence punishable under Section 307 read with Section 109 IPC. On the basis of the first information report lodged, investigation was undertaken and charge-sheet was placed. On consideration of the evidence on record, more particularly that of the victim, learned Assistant Sessions Judge found the appellant guilty of offence punishable under Section 307 IPC, and sentenced him to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.5,000/- with default stipulation. The accused preferred an appeal before the Bombay High Court, Aurangabad Bench. The same was dismissed by the impugned judgment.

According to the learned counsel for the appellant, keeping in view the nature of the injuries sustained, the offence cannot be said to be one covered by Section 307 IPC but one relatable to Section 324 or Section 326 IPC. Alternatively it was submitted that the custodial sentence of 10 years as has been imposed is harsh.

Learned counsel for the State on the other hand submitted that the trial Court and the High Court have analysed the factual position in detail, and the accused has been rightly convicted for offence punishable under Section 307 IPC. Keeping in view the nature of the injuries sustained, it cannot be said that the

sentence is excessive.

Section 307 IPC reads:

"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 overtact 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).

In view of the aforesaid analysis the accused appellant has been rightly convicted for offence punishable under Section 307 IPC.

The residual question is whether a sentence of 10 years rigorous imprisonment is justified. No doubt, as noticed by the trial court and the High Court, injuries inflicted on the victim were of serious nature. But considering the background facts and peculiar features of the case, custodial sentence of 5 years rigorous imprisonment would meet the ends of justice.

Appeal is partly allowed to the extent as noted above.