

CASE NO.:
Appeal (crl.) 522 of 1997

PETITIONER:
Vasant Vithu Jadhav

RESPONDENT:
State of Maharashtra

DATE OF JUDGMENT: 09/03/2004

BENCH:
Y.K. SABHARWAL & ARIJIT PASAYAT

JUDGMENT:
J U D G M E N T

ARIJIT PASAYAT, J.

When member of a disciplined force like police force is accused of having shot his colleague with a gun, it naturally raises eyebrows and the case at hand is one such case. The victim Vilas (PW-2) was a relative of the accused.

According to the prosecution, over a petty family matter, accused took exception and on 18.7.1983 fired a gun from a very close range aiming at the victim lying on a cot. Luckily, the shot did not hit the victim, it hit springs of the cot, the bullet broke into pieces and the splinters entered into his leg. Information was lodged with the police, investigation was undertaken and charge sheet was filed for alleged commission of offence punishable under Section 307 of the Indian Penal Code, 1860 (for short 'the IPC') and Section 27 of the Arms Act, 1959 (for short 'the Arms Act').

The Trial Court placing reliance on the evidence of the witnesses including victim found the accused guilty of the offence punishable under Section 324 IPC and sentenced him to undergo RI for one year. Similar sentence was imposed for the offence under the Arms Act. It was held that the factual background did not warrant conviction under Section 307 IPC. The State of Maharashtra filed an appeal questioning acquittal of charge under Section 307 IPC, while the accused questioned the conviction. Both the appeals were heard together by the Division Bench which by the impugned judgment held that case under Section 307 was clearly made out, and the Trial Court was not justified in holding that the accused was guilty of offence punishable under Section 324 IPC. Taking into account the fact that the accused was supposed to be a guardian of law on the date of the occurrence and at a public place i.e. the guard room in the District Head Police headquarters, he took law in his hands, custodial sentence of 10 years RI was imposed. The sentence under the Arms Act was maintained. The appeal filed by the accused was dismissed.

In support of the appeal, learned counsel for the accused appellant submitted that both the Trial Court and

the High Court have fallen into grave error by holding that the prosecution evidence established commission of an offence and consequently holding accused appellant guilty. Material evidence which would have shown that the appellant could not have committed the crime was suppressed. It was further submitted that even if the prosecution version is accepted in toto, offence under Section 307 IPC is not made out, as was rightly held by the Trial Court. Strong Reliance was placed on few decisions of this Court. Ram Prasad and Anr. v. State of Uttar Pradesh (1982 (2) SCC 149) and Kundan Singh v. State of Punjab (1982 (3) SCC 213). In any event, sentence imposed is harsh.

Learned counsel for the respondent-State supported the judgment of the High Court stating that well reasoned judgment of the High Court needs no interference.

Before dealing with the rival stands, it would be necessary to take note of the few factual aspects highlighted.

On 2.7.1983, victim Vilas's brother Bhagwan was married. In the said marriage, family members of the accused were not invited. It appears that they took exception to this. It is said that about 2-1/2 months prior to the incident, father of the accused had given a feast in the name of a deity, wherein despite being invited Vilas's family members did not join. This appears to have further soured the relationship. On 16.7.1983, when Vilas and his relative Shankar Kikade (PW-9) were returning from roll call to their rooms, the accused came from behind on a cycle and sought an explanation from Vilas for not calling him to his brother's marriage and for not attending the feast which, he (accused) had given in honour of the deity. He threatened to kill Vilas in two days. Thereafter, he went away on a bicycle.

The evidence is that Vilas (PW-2) was residing in room no.19 with his family members in Sangli Police Headquarters. In the same premises, the accused was also residing. In the police Headquarters, there is a guard room and a magazine Room which are practically adjoining. On the date of incident, i.e. 18.7.1983, at different times, Vilas and the accused were on guard room duty and magazine Room duty respectively. The victim Vilas was on guard Room duty from 12 midnight to 2 a.m. and the accused was on magazine Room duty from 2 a.m. to 4 a.m. It is not in dispute that the guard room and the magazine room were more or less contiguous. After 2 a.m. the victim Vilas and Head Constable Pundalik Jadhav (PW-1) were sleeping on two separate cots in the guard room. Some tubelights were lighting outside the guard room and the same resulted in visibility therein. At about 3.30 a.m., the accused came to the band room where constable Vishnu Bansode was sleeping; woke him up; and enquired from him where his bullets were. He told him that he had returned them to Pundalik Jadhav (PW-1). The accused went away. After about 25 minutes i.e. at 3.55 a.m. Vishnu and Pundalik heard sound of firing and when they got up, they discovered that the accused was standing near Vilas's cot in the guard room with a 303 rifle. Seeing them, he threw the rifle and ran away. The rifle which the accused had used was of police constable Bansode (PW-3). Constable Jagannath Whaval (PW-4) Police Jamadar Madhukar Jadhav (PW-6), Police Naik Rajan Kamble (PW-7) and Police constable Kisan Mali (PW-8) who were

sleeping in the immediate proximity of the victim Vilas saw the accused coming out from the guard room and running towards east. The victim Vilas discovered that he was precariously injured. Pundalik Jadhav who was sleeping in the same room, Madhukar Jadhav (PW-6) and some others reached the guard room. PW-6 gave a phone call to Dy. S.P. Malsure. He thereafter, took the victim to the Civil Hospital, Sangli.

In the aforesaid factual scenario it has to be seen whether Section 307 has application. Section 307, IPC 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."

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 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.

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 circumstances mentioned in the Section. Therefore, it is not correct to acquit an accused of the charge under Section 307 IPC merely because the injuries inflicted on the victim were in the nature of a simple hurt.

This position was highlighted in *State of Maharashtra v. Balram Bama Patil and Ors.* (1983 (2) SCC 28) and in Criminal Appeal No. 1034 of 1997 decided on 4.2.2004, and in Criminal Appeal No. 1179 of 1997 decided on 11.2.2004.

In *Sarju Prasad v. State of Bihar* (AIR 1965 SC 843) it was observed in para 6 that 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.

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.

In the case at hand the accused fired gun from a very close range of about 6-8 feet aiming at the victim when he was sleeping. The bullet broke into pieces and three such pieces struck the accused. Both intention and knowledge in terms of Section 307 can be attributed to the accused. Therefore, the High Court was justified in recording conviction of the accused-appellant under Section 307 IPC.

The residual question is whether the sentence is harsh. It is true as noted by the High Court, a guardian of law took law into his own hands and in a public place fired a shot. Unless severe punishment is imposed it may provide impetus to indisciplined persons in disciplined forces. However, taking into account the peculiar circumstances of the case and the background facts highlighted above, we feel custodial sentence of 5 years would have necessarily chastening and deterrent effect on the accused. We do not find infirmity in the conviction under Section 27 of the Arms Act.

The appeal is allowed only in respect of sentence imposed relating to Section 307 IPC, and for all other aspects it stands dismissed.