CASE NO.:
Appeal (crl.) 348 of 2004

PETITIONER:
Hari Mohan Mandal

RESPONDENT:
State of Jharkhand

DATE OF JUDGMENT: 18/03/2004

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT

JUDGMENT:
J U D G M E N T

(Arising out of S.L.P. (Crl.) No. 3784/2003

ARIJIT PASAYAT,J

Leave granted.

Appellant along with four others faced trial for alleged commission of offence punishable under Section 302, 302 read with Section 120B, 307, 302 read with Section 109 of the Indian Penal Code, 1860 (for short the 'IPC'). The Trial Court found the appellant Hari Mohan Mandal and two other accused persons Chandra Mohan and Vijay to be guilty. Two others, namely, Gajadhar Mandal and Rameswar Mahto were acquitted. While Chandra Mohan was found guilty of offence punishable under Section 302 IPC, accused-appellant Hari Mohan Mandal and Vijay Mandal were found guilty of the offence punishable under Section 307 IPC. Each was sentenced to undergo imprisonment for life.

In appeal, a Division Bench of the Jharkhand High Court dismissed the appeal so far as the accused Chandra Mohan and present appellant are concerned, but directed acquittal of the accused Vijay Mandal. The sentence as imposed by the Trial Court was maintained so far as the accused appellant is concerned.

Prosecution version as unfolded during trial in a nutshell is as follows:

At about 6.30 a.m. on the date of occurrence i.e. 12.2.1994, the informant along with his uncles, Narayan Mandal (hereinafter described as 'the deceased') and Janardhan Mandal (PW-1) had gone for husking the paddy in the pounding mill of Sikandar Mahto, situated at Godda Pirpaiti Pitch Road. After their arrival, the three accused persons Chandra Mohan Mandal, Hari Mohan Mandal and Vijay Mandal also went there. They had kept their paddy bag at the Mill on the previous day. Both the parties entered into an altercation regarding the husking of their paddy first. The appellant, Hari Mohan Mandal forcibly put his paddy into the hauler. When deceased Narayan Mandal objected, all the accused persons abused him and the accused Chandra Mohan Mandal brought out a knife from his waist and gave 3-4 knife

blows on his abdomen. On being injured deceased Naryana Mandal fell down. When Janardhan Mandal (PW-1) went to rescue him, then the accused Hari Mohan Mandal took the knife from Chandra Mohan Mandal and stabbed on his head and eye. He also fell down on being injured. Accused Vijay Mandal assaulted by throwing bricks hitting eye of Janardhan Mandal (PW-1). The bricks thrown at the informant Guddu Kumar (PW-5) by accused Vijay Mandal did not hit him. Thereafter, all the accused person fled away. Narayan Mandal died at the spot. The injured, Janardhan Mandal (PW-1) was sent to Sadar Hospital for treatment on a rickshaw. Rameshwar Mahto, father of mill owner, Sikandar Mahto and Joginder Mahto (PW-9) saw the alleged occurrence. On alarm, the villagers assembled there. The informant (PW-5) put the dead body of Narayan Mandal on a trolley with the help of others. Fard beyan (Ext. 4) of the informant Guddu Kumar Mandal (PW-5) was recorded by S.I., R.K. Bharamchari (PW-11) Officer-in-charge, Godda P.S. on 12.2.1994 at 9.20 a.m. at the P.O. Village Punasia, P.S. Godda Town. After investigation charge-sheet under Sections 302, 307 IPC was submitted. Supplementary charge-sheet under Sections 302, 307, 109/34 IPC was submitted against Gajadhar Mandal and Rameshwar Mahto, who were acquitted by the Trial Court.

In order to bring home the accusations 13 witnesses were examined by the prosecution. The Trial Court found the evidence of injured A-1 and the informant Guddu Kumar (PW-5) to be cogent and credible. Placing reliance on their evidence, the Trial Court found 3 accused persons guilty but found that the prosecution has not established its case so far as the co-accused Gajadhar Mandal and Rameshwar Mahto are concerned and accordingly directed their acquittal.

During trial and in appeal, the evidence of the eyewitnesses were questioned on the ground of witnesses being partisan and the alleged suppression of the genesis of the dispute. The Trial Court and the High Court did not accept the stand and found the evidence to be cogent. Strong reliance was placed on the evidence of injured witness PW-1 and also other eyewitness PW-5. The High Court found that the prosecution has established its case, so far as accused-appellant is concerned and co-accused Chander Mohan Mandal is concerned. But found evidence to be insufficient in respect of accused Vijay Mandal.

In support of the appeal, learned counsel for the appellant submitted that both the Trial Court and the High Court have not analysed the evidence in the proper perspective. The so-called eyewitnesses were not reliable and their version was not believable. Furthermore, the occurrence allegedly took place regarding husking of paddy and without any pre-mediation the alleged attacks were made. In any event, the offence under Section 307 is not made out, so far as the appellant is concerned taking into account the injuries sustained by PW-1, and the life imprisonment as awarded is harsh.

In response, learned counsel for the State supported judgments of the Trial Court and the High Court and further submitted that in view of the

analysis made and the nature of the injuries proved to have been inflicted no interference is called for.

We find no scope for any deficiency in the evidence of PWs 1 and 5 to warrant rejection. The plea of the appellant that the same is full of blemishes has not been substantiated. On the contrary, the same has a ring of truth.

In the factual scenario noted above, it has to be seen whether Section 307 IPC has application. Said provision 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. If the injury inflicted has been with the avowed object or intention to cause death, the ritual nature, extent or character of the injury or whether such injury is sufficient to actually causing death are really factors which are wholly irrelevant for adjudging the culpability under Section 307 IPC. 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 R. Prakash v. State of Karnataka (2004 (2) Supreme 78)

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 circumstance 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 injuries noticed on PW-1 by the doctor PW-6 are as follows:

(a) One incised wound over left supra orbital area obliquely placed in oozing condition. Dimension 8 cm x 2 cm x 2.5 cm.
(b) One incised wound over left molar area of the face 6 cm x 2 cm x 2.5 cm in oozing condition.
(c) One abrasion over the left patellar area 6 cm x 4.5 cm.
(d) One bruise over both eye lids on left side 5 cm x 3 cm and 4.5 cm x 2.5 cm.
(e) Illegible at multiple site.
(f) the whole left eye was reddened due to extensive conjunctival hemorrhage.

The first injury was said to be grievous and the opinion so far injury no. 6 is concerned, was kept reserved.

The first injury was certainly on a vital part and taking into account the injuries on the various parts of the body, Section 307 IPC has been rightly invoked. The accused has been rightly convicted for offences punishable under Section 307 IPC. However, taking into account the fact that the altercations took place at the time of husking paddy and there was no pre-meditation or planning of the attack, custodial sentence of five years would meet the ends of justice. It is to be noted that scope for consideration in the appeal was limited to the nature of offence and consequently the sentence.

The appeal stands dismissed so far as conviction is concerned, but is partly allowed to the extent of sentence as indicated above.