

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH
AT JAIPUR

S.B. CRIMINAL APPEAL No.192/1986
(Ram Pal V/s. State of Raj.)

Date of Judgment :: 30.04.2008

Reportable

HON'BLE MR.JUSTICE R.S. CHAUHAN

Mr. Kamlendra Sihag, for the appellant.
Mr. Arun Sharma, PP, for the State.

The appellant has challenged the judgment/order dated 27.03.1986 passed by the Sessions Judge, Jaipur District, Jaipur, whereby the appellant has been convicted for offence under Section 307 and 323 of Indian Penal Code (for short, "IPC"). For offence under Section 307 IPC, the appellant has been sentenced to two years of rigorous imprisonment alongwith a fine of Rs.100/- and he was directed to further undergo one month's rigorous imprisonment in default of payment of fine. For offence under Section 323 IPC, he has been sentenced to three months of rigorous

imprisonment alongwith a fine of Rs.100/- and he was further directed to undergo one month of rigorous imprisonment in default of payment of fine. It has also been directed that both the sentences should run concurrently.

In brief, the facts of the case are that one Mr. Ramphool (P.W.7) had lodged a written report (Ex.P.4) at Police Station, Jamwa Ramgarh (District Jaipur), wherein he claimed that, "Ram Karan is his brother. Fields of Ram Karan and Ram Pal are next to each other. Today he went to Toda and had returned back to his village about 2:30 PM. When he came to his village, he discovered that his brother was lying at a well. Ram Karan was bleeding from his head. He was bleeding because Ram Pal S/o Ladu Gurjar had hit him with Kharwara (an axe like weapon). Ram Pal had also hit Ram Karan's wife, Beela. Ram Karan has sustained a deep injury on his head. There is no possibility of Ram Karan surviving. This incident had occurred because some

cattles beonging to him had entered the fields belonging to Ram Pal. Ram Pal had hit Ram Karan with the intention to kill Ram Karan. This incident has been witnesses by Vijay Lal, Bhonriya and Saisa Gurjar and by other villagers. Ram Karan is unconsciously lying at the well."

On the basis of this report, a formal FIR, FIR No.56/1984 (Ex.P.4A) was chalked out for offenes under Sections 323, 324, 307 of IPC. However, the appellant was charged only for offences under Sections 323 and 307 of IPC. In order to support its case, the prosecution examined eleven witnesses and submitted three documents. In his statement under Section 313, the appellant had claimed that "it is the complainant who had damaged the crop in his field and had assaulted him. When Ram Karan tried to run away, he fell at the well and his head was injured." However, after going through the oral and documentary evidence, the learned trial Court convicted and sentenced the

appellants as aforementioned. Hence, this appeal before this Court.

Mr. Kamlendra Sihag, the learned counsel for the appellant, has pleaded that the occurrence took place at the spur of the moment in a sudden heat. Only because the cattles belonging to the complainant party had entered the appellant's field and had damaged the crop. Secondly, Dr. Ram Lal Solaki (P.W.1) does not state in his testimony that the injury was sufficient in the ordinary course of nature to cause death. Since there was a fracture of the left temporal bone. Thus, the case does not travel beyond Section 308 of IPC. Lastly, the occurrence took place in the year 1984, for the last twenty-four years the appellant has been leading a peaceful life and has been a law-abiding citizen. Therefore, the benefit of probation ought to be granted to the appellant.

On the other hand, Mr. Arun Sharma, the learned Public Prosecutor, has contended that

although the doctor, Mr. Ram Lal Solanki (P.W.1) has not stated that the injury is sufficient in the ordinary course of nature to cause death, but Ram Karan was injured on a vital part of the body with a sharp edged weapon. This clearly shows that the appellant intended to cause the death of Ram Karan. Therefore, the case falls squarely under Section 307 IPC.

In rejoinder, Mr. Kamalendra Sihag, has argued that the appellant, who was armed with an axe like weapon, had intended to cause death, he would have repeated the blows. But he caused only a single injury on the head and that too in a sudden fight. Thus, he can be attributed only with the knowledge that by striking with an axe like weapon on the head, he is likely to cause death. Hence, the case does not travel beyond Section 308 IPC.

Heard the learned counsel for the parties, have perused the impugned judgment and have

examined the material available on record.

It is not only the nature of the injury or the place of injury which is determinative of the fact whether the offence committed is one under Section 307 or Section 308 IPC. The Court has to take a holistic view of the evidence to infer the intention of the accused. After all intention can be inferred only from the totality of the evidence. According to the testimony of Beela (P.W.2), buffalo belonging to complainant party had entered into the fields belonging to the appellant. Because the buffalo was damaging the crop belonging to the appellant, the appellant and his wife, Magli heard verbal abuses at the complainant. There was altercation between the parties. In a huff, the appellant went inside his house and brought Kharwara with him and struck Ram Karan on his head. In her cross-examination, she admits that there was no enmity between the appellant and her family. Similar testimony has also been given by Ram Karan (P.W.3). These two testimonies are further

corroborated by the testimonies of Vijay Lal (P.W.6) and Ram Phool (P.W.7). Thus, a bare perusal of these testimonies reveals that the occurrence had taken place suddenly and after abuses were heard by both the sides, prior to the occurrence. No enmity existed between the complainant party and the appellant. The occurrence had occurred only because the cattles belonging to the complainant party had damaged the crop of appellant. The appellant had caused a single injury on the head of Ram Karan. The medical evidence does not state that the injury was sufficient in the ordinary course of nature to cause Ram Karan's death. Therefore, the offence committed by the appellant does not travel beyond Section 308 IPC, i.e., an attempt to cause culpable homicide not amounting to death. For these reasons, the conviction of the appellant Ram Pal is converted from one under Section 307 IPC to one under Section 308 IPC.

For the reasons stated above, this appeal is partly allowed and the conviction under Section 307 of IPC is converted into conviction under Section 308 IPC. Instead of passing any order for sentence, considering the fact that the occurrence took place in the year 1984 i.e., twenty-four years ago, a fine of Rs.2,000/- is imposed on the appellant and the same shall be paid to the complainant-party. The conviction under Section 323 of IPC is maintained, but the sentence is reduced to as already undergone. The bail bonds shall not be forfeited.

[R.S.CHAUHAN]J

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