

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

**561-A Cr.P.C No. 108/2011
Cr.M.P. Nos.172/2011 & 110/2011**

Date of Decision: 28.10.2011

Chaman Lal vs. **Sanjay Kumar**

Coram:

Mr. Justice J.P.Singh.

Appearing Counsel:

For the Petitioner(s) : Mr. Rahul Pant with Raman Chalotra,
Advocate.

For the Respondent(s) : Mr. Rakesh Sharma, Advocate.

- i) Whether approved for reporting in Press/Journal/Media : Yes/No

ii) Whether to be reported in Digest/Journal : Yes/No

The petitioner-Chaman Lal was attacked in his fields by the respondent-Sanjay Kumar on 10.12.2008. Though the respondent had aimed petitioner's head for attack yet saving his head, the petitioner took the attack on his arms, which in the process received simple and grievous injuries with the '*drath*', which was used by the respondent in the attack.

Finding no *prima facie* case under Section 307 RPC to have been made out, learned Sessions Judge, Samba directed the respondent's trial on Charge under Sections 325 and 323 RPC.

The petitioner has approached this Court seeking setting aside of learned Sessions Judge's order urging that the respondent was erroneously discharged under

Section 307 RPC by the learned Sessions Judge, when there was sufficient evidence on records justifying Charge under Section 307 RPC.

Considered the submissions of learned counsel for the parties, in the light of the case law cited at the Bar.

Learned Sessions Judge has omitted to frame Charge under Section 307 RPC proceeding on the premise that the injuries on right arm and left forearm of the petitioner, being not on vital parts of the body, were not likely to cause death, so the trial of the accused for offence punishable under Section 307 RPC may not be warranted.

Learned Sessions Judge has proceeded on an erroneous premise in discharging the respondent, in that, it is not the seat or nature of injuries that determine the intention or knowledge requisite for ascertaining as to whether or not the act of the accused would hold him guilty of Murder, if the death of the person injured had taken place by the act of the accused.

The physical condition of the accused, the facts and circumstances of the case, besides various other factors may be relevant to determine as to whether or not the accused could be said to have been involved in commission of offence punishable under Section 307 RPC.

Perusal of the Statement of the petitioner recorded under Section 164-A Cr.P.C and the conclusion reached at by the Investigating Police Officer on the basis of the

evidence collected during investigation of the case indicates that after entering the petitioner's land on the day of occurrence, the accused abused him and thereafter aimed injury by 'drath' at the head of the petitioner, a seventy years old person, who, in order to save his head, took the injuries on his arms, which received simple and grievous injury.

According to the statements of the witnesses, had they not reached on spot, the respondent would have killed the petitioner with whom he was in litigation.

Accepting, on their face value, the statements of the witnesses recorded during investigation of the case to determine the offence for which the accused could be charged for trial, it may be *prima facie* presumed that in aiming his attack on the head of an old person of seventy years, with a 'drath', a sharp edged lethal weapon, the respondent did have, if not the intention, the knowledge that his act of causing injuries with a lethal weapon was likely to result in death of the injured.

The facts of the case, therefore, demonstrate that the accused had inflicted injuries on the petitioner with the intention and knowledge that the injuries were likely to result in death of the injured and in the event of such death, he would be guilty of Murder.

I am supported in taking the above view by *State of Maharashtra vs. Balram Bama Patil and others*, reported as 1983 SCC (Criminal) 320, where while dealing with the

question, their lordships of Hon'ble Supreme Court of India observed as follows:-

"..9. Shri Rana appearing for the State strenuously contended that the High Court has committed a grave error in holding that the offence under Section 307, IPC was not made out merely because the injuries inflicted on the witnesses were in the nature of a simple hurt and in these circumstances it is not possible to hold any of the accused persons guilty in respect of that offence. We find considerable force in this contention. A bare perusal of Section 307, IPC would show that the reasons given by the High Court for acquitting the accused of the offence under Section 307 were not tenable. Section 307, IPC reads:

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 extent 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 this 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.

For all what has been said above, respondent's discharge under Section 307 RPC is found unjustified.

Order dated 18.10.2010 of the learned Sessions Judge is, therefore, quashed and the case remanded to

him for consideration afresh and framing requisite Charge, as warranted under law, for trial of the respondent.

(J. P. Singh)
Judge

JAMMU:
28.10.2011
Tilak, Secy.