

IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA

Cr. Appeal No. 11 of 2013.

Judgment reserved on 29th August, 2013.

Date of Decision: 30th August, 2013.

Sameer Beg @ Sem.Appellant.

Versus

State of Himachal Pradesh. ..Respondent.

Coram
Hon’ble Mr. Justice Surinder Singh, J.

Whether approved for reporting¹?Yes.

For the appellant : Mr. Vivek Singh Thakur, Advocate.

For the respondent: Mr. H.K.S.Thakur, Addl. Advocate General.

SURINDER SINGH, J.

Appellant feels aggrieved by his conviction passed by the learned trial Court in Sessions Trial No.14-7 of 2011, decided on 5.9.2012, whereby he has been sentenced as under:

| Offence Under Section | Sentence |
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| 307 IPC | Rigorous Imprisonment for a period of <u>four years</u> and to pay a fine of ₹.7,000/-. In default of payment of fine, rigorous imprisonment for a period of <u>six months</u> . |
| 324 IPC | Rigorous Imprisonment for a period of <u>Two years</u> and to pay a fine of ₹.4,000/-. In default of payment of fine, rigorous imprisonment for a period of <u>two months</u> . |
| 341 IPC | Rigorous Imprisonment for a period of <u>one month</u> and to pay a fine of ₹.500/-. In default of payment of fine, |

¹Whether reporters of the Local papers are allowed to see the judgment? Yes.

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| | rigorous imprisonment for a period of <u>15</u> days. |
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It was further ordered that out of recovered fine amount, a sum of ₹.10,000/- shall be paid to (PW3) injured Jaswant Singh as compensation.

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| -A- Prosecution case. |
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2. The prosecution story, as emerges from the evidence on record, can be stated thus. PW3 Jaswant Singh was a registered contractor with PWD and having three taxis. On 25.10.2010 at about 8.40 a.m., he was present at taxi stand, Bilaspur. He took tea in the tea-stall of PW13 Suraj Prakash, while on his way towards his taxis and on reaching the road he was confronted by the appellant, hereinafter to be referred as 'the accused', who took out Grip Ext.P-4 from his pocket and dealt a blow on his head. It caused bleeding injury. Suraj, Sanju and Babal, taxi drivers were present nearby. They saved him from the clutches of the accused, who after inflicting the injury escaped from the scene of occurrence in his vehicle.

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| -B- Investigation Report. |
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3. Complainant went to Police Station, lodged FIR Ext.PW3/A. Police got him medically examined from PW8 Dr. Superiya Atwal. At the time of medical examination, he gave the history of being hit by the accused with a Grip. He was conscious, but his clothes were smeared with blood. Doctor noticed four lacerations measuring 1x 0.5 x 0.5 cm on left cheek just lateral to lateral canthus of left eye, below lateral canthus of left eye, frontal region and fronto parietal region of left. The injury was bleeding profusely and was tender on touch. Edema was present on the left side of the forehead.
4. Doctor advised X-ray of the skull and left maxilla. The X-ray films are Exts.PW9/A to 9/C, but there was no fracture. The probable duration of the injury was less than six hours from the time of examination of the injured. In the opinion of the Doctor, the injury was dangerous to life. The doctor issued Medico Legal Certificate Ext.PW8/B. She also opined that the injury was very close to the vital structure of the brain and eye. Though, the injury was simple in nature, but was dangerous to life.

5. The injured (PW3) aforesaid was taken to CMC, Ludhiana by his brother, where he was admitted on 1.11.2010 and was operated-upon on 3.11.2010 by PW18 Dr. Pranashu Bhargawa and Dr. S.S. Grewal. He was discharged on 11.11.2010.
6. To prove the treatment and discharge summary, the prosecution examined PW16 Dr. Raghav Kumar, Neurosurgeon, CMC, Ludhiana. According to him, though he did not operate and treat the complainant, but the injury was dangerous to life. PW18 Dr. Pranshu Bhargawa was the member of the team, who conducted the surgery upon Jaswant Singh, injured. He also stated the injury mentioned in the discharge summary was dangerous to life.
7. On completing Challan, it was presented in the Court for the trial of the accused for the offences aforesaid. He was accordingly charge-sheeted. He pleaded not guilty and claimed trial.

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| -C- Trial Court's findings. |
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8. On the strength of the above evidence, after full trial, the accused was convicted and sentenced as aforesaid, when defence as propounded in the

cross-examination and also stated by DW1 Jai Pal that the injured came running and fell down in a "Nali" and sustained injury against the angle-iron, was disbelieved.

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| -D- Submissions before this Court. |
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9. Shri Vivek Singh Thakur, vehemently argued that the alleged eye witnesses did not support the case of the prosecution, as such they were declared hostile, whereas the case propounded by the defence stands probablised in the statements of injured as well as PW13 Suraj Prakash coupled with the medical evidence. It is further argued that from the evidence on record in any case it is not a case of attempted murder.
10. On the other hand, Shri H.K.S. Thakur, learned Additional Advocate General supported the impugned judgment of conviction and sentence.
11. To appreciate the rival contentions of the parties, I have gone through the record and the case law cited by the learned Counsel for the accused, which shall be referred at the relevant stage.

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| -E- Discussion & Findings by this Court. |
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12. PW3 Jaswant Singh categorically stated that after taking tea in the tea-stall of PW13 Suraj Parkash which was located near the taxi-stand, he was on his way going towards his taxis, when he reached on the road, the accused appeared, took-out a Grip Ext.P-4 from his pocket and dealt a blow with it on his head which resulted into bleeding injury. His clothes were smeared with blood. At that time Suraj, Sanju and Babal (PW4) were also present. After inflicting injury, the accused fled away from the spot. In cross-examination, he testified that he knew the accused for the last 5-6 years, who was a driver. He was inimically disposed of towards him, as he intended to kidnap his daughter, but denied that his daughter and the accused had developed friendship and she also resided with the accused, which was not liked by him. He also denied that when he took tea in the shop of PW13 Suraj Parkash, accused was standing across the road near taxi-stand and on seeing the accused, he started abusing him. He further denied the defence raised that when he had rushed

towards the accused, in that process his foot got entangled with the iron-gate and fell down and got the injury aforesaid.

13. PW13 Suraj Parkash lent strength to his version. He stated that Jaswant Singh (PW3) was present in his tea-stall around 8.30 a.m. to whom he served tea alongwith five persons accompanying him. Thereafter in the process of proceeding towards the taxi-stand, Jaswant Singh was confronted with the accused. They exchanged wordly-duel and started quarrelling. He rushed to the spot to separate them, which was about 100 meters away from the spot. On reaching there he noticed that Jaswant Singh was having bleeding injury on his forehead. Thereafter he became unconscious. According to him, perhaps the accused dealt a blow with sharp-edged weapon. At that time, Sanjeev, Shakti, Bablu and Bablu Bhatia were present there, who had saved the injured. Thereafter, the accused fled away from the spot in his car. The injured, thereafter was taken to Police-Post City. The blood-stained clothes were taken into possession in his presence by the police vide memo Ext.PW3-B, which were sealed. The

learned Public Prosecutor was allowed to cross-examine this witness, as he appeared to have omitted some portion of his statement and admitted that the complainant was wrongly restrained by the accused near water-drainage and started abusing him and also that the accused had administered beatings to him, but he did not know that whether the accused was having Grip Ext.P-4 in his hand. In cross-examination, he denied the defence that the injured while rushing towards the accused got struck against the iron-mesh or fell down in the drainage which caused injury on his forehead. Even in this behalf the statement of PW14 Sanjay Kumar though declared hostile, is relevant. He stated that the accused came from the taxi-stand and the complainant and the accused started abusing each other outside the tea-stall and at that time the accused dealt a blow with key of the vehicle on the head of Jaswant Singh and he fell down over an iron-mesh, but he could not say whether he had sustained the injury with the key of the vehicle or fist blow.

14. On the critical examination of the aforesaid evidence, it is made out that the accused was present on the spot and injured Jaswant Singh after taking tea while proceeding towards his taxis, was confronted with the accused and some wordly-duel took place and the accused gave a blow on the head of complainant Jaswant Singh with a Grip Ext.P.-4. This version given by the injured regarding the weapon of offence finds mentioned in the FIR as well as in the MLC Ext.PW-8/B. The Grip Ext.P-4 was taken into possession from the accused in the presence of PW1 Sabir Mohammad, which was identified by the injured during the trial. Though Jabir Mohammad had turned hostile, but he has not denied his signatures on the recovery memo Ext.PW-3/C, the contents whereof have been proved by the injured himself during the trial and the Investigating Officer is categoric about the recovery of the Grip from the accused.

15. The nature of injury sustained by the injured fully synchronize with the edges of the Grip Ext.P-4 and according to PW8 Dr. Superiya Atwal, the Grip which was shown to her during the trial could cause the

injury in question. The theory of falling down over the iron-mesh and sustaining injury by sharp-edged object as projected by the defence, stands totally falsified and also not probablised. Therefore, it is proved and held that it is the accused, who had inflicted the injury in question with a Grip Ext.P-4 on the person of PW3 Jaswant Singh.

16. The next question which arises for determination is, what offence has been committed by the accused, in the facts and circumstances of the case? For that medical opinion and relevant provisions of law require reference.
17. In order to bring the case within the ambit of Section 307 of the Indian Penal Code it must be shown that the accused acted with such intention or knowledge and under such circumstances that if he by that act caused death, he would be guilty of murder. To justify a conviction under this provision an intention or knowledge to constitute murder must exist. It is a different matter that the act fell short of that offence.
18. An offence under Section 307 of the Indian Penal Code is a very serious offence and it requires

the same very factors to be proved as are needed to prove an offence under Section 302 of the Penal Code except that in this case the act falls short of the death of deceased, which is necessary under Section 302 of the Penal Code. Sometimes, it becomes very difficult to differentiate between an offence under Section 307 of the Penal Code and others like under Sections 324, 325, 326 etc. In both the cases, injury may be there. There may be existence of motive or intention or knowledge on the part of the wrong doer. Care has, therefore, to be taken that, in such cases, there may not be wrong application of the evidence looking to the serious consequences following from such an error; as the penalty prescribed under them vary to a great extent.

19. As already stated above, the doctors had opined the injury in question to be simple in nature, but dangerous to life. While scrutinizing the evidence in the case in hand, I find that there is only a single injury with iron Grip Ext.P-4 on the left side of the forehead of the injured. The doctor did not make even a fleeting reference that the said injury was

imminently danger to life. The injured remained hospitalized only for a period of eleven days. Further if there has been edema, but it was then necessary to hold whether its discontinuance presence could cause death of the injured. Even none of the vital parts of the body was effected by the assault bringing the case clearly within the zone entailing in imminent danger to life of the injured. Thus, Section 307 of the Indian Penal Code is not attracted and therefore, there cannot be any conviction under this provision. [Please see **Madan Lal v. State of Himachal Pradesh, 1990 CRI.L.J. 310** and **Meghanath alias Meghanand Pradhan and others v. State, 1995 CRI.L.J. 3934.**]

20. On scrutiny of evidence, the proved facts establish that there has been a wordly duel. But the intention or knowledge relating to commission of offence of attempted murder is lacking. Therefore, in my opinion, the conviction and sentence of the accused under Section 307 of the Indian Penal Code is unsustainable, hence set aside, but however, his conviction and sentence under

Sections 324 and 341 of the Indian Penal Code is hereby affirmed.

21. For the reasons aforesaid, the appeal is partly allowed. The amended warrants be accordingly issued. The fine amount under Section 307 of the Indian Penal Code, if already deposited, be refunded to the accused and from then fine amount imposed under Sections 324 and 341 of the Indian Penal Code, an amount of ₹.3,000/- be released to injured PW3 Jaswant Singh for the injury caused to him.

22. The appeal stands disposed of.

August 30, 2013.
(rc)

(Surinder Singh),
Judge.