

M.Cr.C. No.3101/2016 (Hitesh Parashar Vs. State of M.P. & Ors.)

1

31.3.2016.

Shri Pramod Pachori, learned counsel for the applicant.

Shri Prabal Solanki, learned Govt. Advocate for respondent No.1.

Shri Akash Sahu, learned counsel for respondents No.2 and 3.

The record of the trial Court has already been received in connected Criminal Appeal No.1135/2014 filed by respondents No.2 and 3 against their conviction under Section 324/34 of IPC, hence, the petition is taken up for consideration.

Heard on the question of admission.

On behalf of the applicant this petition is preferred under Section 378(4) of the Criminal Procedure Code, 1973 for grant of leave to appeal under the proviso to Section 372 of Cr.P.C. against the acquittal of respondents No.2 and 3 from the charges under Sections 307 or 307/34, 294 and 506-B of IPC given by Ist Additional Sessions Judge, Dabra, Distt. Gwalior, in Sessions Trial No.310/12 vide judgment dated 30.10.2014.

It is noted that by extending acquittal to respondents No.2 and 3 from the aforesaid charges, they have been convicted and sentenced under Section 324, 324/34 of IPC by the learned trial Court, against which at the instance of respondents No.2 and 3 an appeal under Section 374 of Cr.P.C. is also pending as Criminal Appeal No. 1135/2014.

Applicant's counsel initially prayed to consider the copy of impugned judgment from the record of Criminal Appeal No.30/15 filed earlier on behalf of the applicant under the

proviso to Section 372 of Cr.P.C. saying that at that time the application for grant of leave to appeal was not necessary, but subsequently in compliance of the direction of the Apex Court given in some decision, the present petition was necessary, hence, the same was filed at subsequent stage.

Considering the aforesaid circumstances, by allowing the prayer of the applicant's counsel, it is observed that copy of the impugned judgment shall be considered from the record of Criminal Appeal No.30/15 as well as from the record of trial Court available in connected criminal appeal.

Applicant's counsel after taking us through the petition as well as the impugned judgment and the record of trial Court by referring the deposition of the victim Hitesh Parashar (PW-1) and the deposition of Dr. Pramod Sharma (PW-5), who medically examined the applicant and prepared his MLC report, and Dr. Sanjay Dudawat (PW-10), the Neurologist who subsequently examined and treated the applicant, said that mere perusal of those depositions, it is apparent that alleged injury was caused by the accused/respondents No.2 and 3 in furtherance of their common intention by means of *Baka* on the head of applicant and it is undisputed that head is a vital part of the body, and therefore, the trial Court ought to have assumed that such blow of *Baka* was given on the head of the applicant with intention to cause his death. In continuation, he said that whenever any act is committed with intention to cause death of a person like applicant, then concerning accused deserves to be convicted and sentenced under Section 307 of IPC for attempt to murder and not under Section 324 of IPC which provides punishment for causing simple hurt by means of

hard and sharp object. He further said that on proper appreciation of evidence, respondents No.2 and 3 ought to have been convicted by the trial Court under Section 307 or 307/34 of IPC, but under the wrong premises, they have been acquitted from such charge and convicted only for a lighter offence i.e. under Section 324/34 of IPC. In continuation, he said that looking to the nature of the evidence adduced by the prosecution as well as by the applicant, the ingredients of other offences made punishable under Sections 294 and 506-B of IPC are also made out but such evidence was also not considered and respondents No.2 and 3 have been wrongly acquitted from such charges. Such approach is also not sustainable and prayed for grant of leave to appeal against the aforesaid acquittal of respondents No.2 and 3 by allowing this petition.

Having heard the counsel on the question of admission, keeping in view his arguments, we have carefully gone through the record of the trial Court as well as the impugned judgment. True it is that alleged injury was caused on the head of present applicant by means of *Baka*, a hard and sharp weapon, by respondents No.2 and 3 in furtherance of their common intention, but mere perusal of the MLC report of the applicant and the deposition of concerning doctors, who initially medically examined the applicant and prepared his MLC and subsequent doctor, the Neurologist named above, it is apparent that none of them has stated that the injury sustained by the applicant on his head was sufficient to cause death in ordinary course of nature or it was grievous in nature, on the contrary, in their deposition, it has come that on carrying out CT scan of the head of the

applicant, no fracture was found in his head caused by such injury and in such premises, we are of the considered view that on assessment, trial Court did not have any other option except to treat such injury as simple caused by hard and sharp object which falls under Section 324 of IPC and as alleged it was caused by respondents No.2 and 3 in furtherance of their common intention, and therefore, they have been convicted and sentenced under Section 324/34 of IPC. So in the available circumstances, without expressing any opinion on the merits of the matter because the appeal of the accused is pending for adjudication before this Court, we are of the considered view that trial Court has not committed any error in appreciation of the evidence to draw the inference regarding nature of injury and in such premises we have not found any illegality, irregularity or anything against the propriety of law in the impugned judgment, and therefore, we are not inclined to grant leave to appeal against the impugned acquittal in respect of Section 307 or 307/34 of IPC. Apart this, we have also not found any material circumstance in which it could be said that finding and the approach of the trial Court extending acquittal to respondents No.2 and 3 from the charges of Sections 294 and 506-B of IPC are contrary to law, so such findings are also not required to be interfered with at this stage. Consequently, this petition is hereby dismissed.

Before parting with the case, we would like to observe that accused of a criminal case is always convicted and sentenced for the act which he actually committed and not for that act which he could have committed, but did not commit and such principle was laid down by the Judicial Council

M.Cr.C. No.3101/2016 (Hitesh Parashar Vs. State of M.P. & Ors.)

5

before Independence of the India in the matter of ***Ghulam Sabir Amir Khan v. Emperor, A.I.R.(29) 1942 Peshawar 21(2)*** holding that the accused is always convicted for the act which he actually committed and not for the act which he might commit, but did not commit.

However, it is further observed that any finding or observation given by this Court in the present order shall not come in the way of respondents No.2 and 3 in defending their connected Criminal Appeal No. 1135/2014 on merits. As such, they shall be at liberty to take all possible defence available under the law in the course of argument in such appeal. Apart the aforesaid, it is further observed that if respondents No.2 and 3 are aggrieved by this order or any part of it even till disposal of their appeal, they shall be at liberty to approach this Court with appropriate proceeding for appropriate modification of this order.

The petition is hereby dismissed as indicated above.

(U.C. Maheshwari)
Judge

(Sushil Kumar Gupta)
Judge

ms/-