CHHANGA @ MANOJ

v.

STATE OF M. P.

(Criminal Appeal No. 898 of 2005)

FEBRUARY 28, 2017

[R. F. NARIMAN AND MOHAN M. SHANTANAGOUDAR, JJ.]

Penal Code, 1860 :

s. 307 r/w. s. 34 – Prosecution under – For attempt to murder – By appellant-accused alongwith three other accused – Allegation that one of the co-accused hurled two bombs at the exhortation of the appellant-accused – Courts below convicted all the accused – On appeal by appellant-accused plea that in view of simple nature of injuries and in view of his role, offence u/s. 307 not made out – Held: In order to make out charge u/s. 307 an intention coupled with some common act in execution thereof is enough – It is not essential that bodily injury capable of causing death should have been inflicted – In the present case, in view of nature of weapons, it can be inferred that the intention was to cause death – Exhortation by the appellant-accused attracted the charge u/s. 307 r/w. s. 34 – Conviction affirmed.

Sentence/Sentencing:

Conviction u/s. 307 r/w s. 34 IPC – Sentenced to three years imprisonment – Plea to reduce the sentence to the period already undergone i.e. about 2 years – Held: The accused got away very lightly – Undue sympathy leading to inadequate sentence would do more harm to the justice system and would undermine public confidence in the efficacy of law – Sentence upheld.

Dismissing the appeal, the Court

HELD: 1.1 It is not essential that bodily injury capable of causing death should have been inflicted in order that the charge under Section 307 IPC be made out. It is enough if there is an intention coupled with some common act in execution thereof. [Para 7] [30-E]

A **1.2 In the present case, the nature of the weapon used predominates. Two bombs were hurled, which are lethal weapons, from which it can safely be inferred that the intention was to cause death. Also, the words uttered by appellant-accused, namely, that the complainant ought to be killed, lend further credence to this** B **view. The motive of the accused has also been made out, namely, that the intention was to kill the person in the shop as he was an informer. True, the nature of the injuries in the present case was stated to be simple, but this is only because of the fortuitous circumstance that the bomb exploded at a distance far from PW 1. Therefore, it is clear that Accused No.4 (appellant) in coming** C **together with the other three accused and going together with them, and in shouting the words "kill him" certainly attracted the charge under Section 307 read with Section 34 IPC. The concurrent judgments of the Courts below do not need to be disturbed. [Para 8] [31-B-E]**

D *State of M.P. v. Kashiram and Others* **(2009) 4 SCC 26 : [2009] 1 SCR 806;** *Jage Ram and Others v. State of Haryana* **(2015) 11 SCC 366 : [2015] 11 SCR 1004;** *Sevaka Perumal and Anr. v. State of Tamil Nadu* **(1991) 3 SCC 471 : [1991] 2 SCR 711 – relied on.**

E **2. Undue sympathy leading to imposition of inadequate sentence would do more harm to the justice system and would undermine public confidence in the efficacy of law. The appellant appears to have got away lightly. Therefore, there is no reason to interfere, in the concurrent Judgments, under Article 136 of the Constitution of India. [Paras 10, 11, 12] [31-G-H; 32-A]**

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Case Law Reference

[2009] 1 SCR 806	relied on	Para 7
[2015] 11 SCR 1004	relied on	Para 7
[1991] 2 SCR 711	relied on	Para 11

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 898 of 2005.

From the Judgment and Order dated 17.12.2004/29.04.2005 of the High Court of M. P. at Jabalpur in Criminal Appeal No. 37 of 1990 H and MCR. Case No. 3142 of 2005.

Dinesh Kumar Garg, Abhishek Garg, Dhananjay Garg, Deepak Mishra, Advs. for the Appellant. A

Ms. Bansuri Swaraj, Ms. Shreya Bhatnagar, C. D. Singh, Advs. for the Respondent.

The Judgment of the Court was delivered by B

R. F. NARIMAN, J. 1. This is an appeal filed by Accused No.4 – appellant herein who was convicted under Section 307 read with Section 34 of the Indian Penal Code along with the other accused and sentenced to imprisonment for a period of three years by the learned Additional Sessions Judge vide Judgment dated 8th January, 1990. In an appeal preferred to the High Court of Madhya Pradesh at Jabalpur, the said Court concurred with the findings of the learned Additional Sessions Judge and dismissed the appeal of the appellant – herein. C

2. Apparently, the accused were inimical to one Gyan Singh, who was the younger brother of the informant. PW 1, the informant, Man Singh was sitting in a Bettle Shop, and the appellant came there with three other persons, one of whom, Rakesh, threw a bomb at him with intent to kill him. The bomb exploded dashing the back portion of the bettle shop, which caused injury to PW 1's left thigh, after which the said Rakesh also threw another bomb which dashed against the window of the said shop and exploded. The role of the present appellant before us is succinctly stated by the learned Additional Sessions Judge, who said that the accused – Chhanga @ Manoj – the present appellant specifically stated "kill him, he should not be spared, he habitually reports". All four accused persons came together and ran away together from the spot of the incident. D E

3. The deposition of injured eye-witness PW 1 was believed by both the Courts below. He was fully corroborated by PW 6, who was the father of the injured eye-witness, and PW 7, who was a third independent eye-witness. PWs 4, 5 and 9 were declared hostile, and in paragraph 11 of the Judgment of the learned Additional Sessions Judge, the statements of these witnesses were taken into account and were condemned. F G

4. The learned Additional Sessions Judge held that the common intention under Section 34 was proved not only by the fact that the four accused came together and left together but that the present accused shouted the words that have been stated hereinbefore. From this, it was H

held that the charge under Section 307 read with Section 34 of the I.P.C. was made out against all the accused, and they were sentenced to three years imprisonment.

5. Shri Dinesh Kumar Garg, learned counsel appearing for the appellant, has raised two points in appeal before us. First of all, according to him, the injuries were simple in nature and, therefore, it should be inferred that the idea was not to kill, and the charge therefor of Section 307 has not been made out on facts. Further, since the role of the present accused was not an active one, inasmuch as he only shouted what he has supposed to have said, he should in any case, even if conviction be sustained, be sentenced to the period already undergone, which we are informed is roughly almost two years in jail.

6. Ms. Bansuri Swaraj, learned counsel appearing on behalf of the respondent – State of M.P. has, on the other hand, stated that the concurrent findings on common intention as well as the evidence, particularly of the injured eye-witness, as corroborated by the other witnesses, has made it clear that both the Judgments are correct. Indeed, the appellant appears to have got away lightly.

7. Neither of the points raised by Shri Garg appeal to us. First and foremost, it is not essential that bodily injury capable of causing death should have been inflicted in order that the charge under Section 307 be made out. It is enough if there is an intention coupled with some common act in execution thereof. This position has been repeatedly laid down by this Court in "State of M.P. vs. Kashiram and Others" (2009) 4 SCC 26 at paragraphs 12 to 16. In addition, in a recent Judgment in 'Jage Ram and Others vs. State of Haryana' (2015) 11 SCC 366, the law has been laid down as follows :-

> "For the purpose of conviction under Section 307 IPC, the prosecution has to establish (i) the intention to commit murder; and (ii) the act done by the accused. The burden is on the prosecution that the accused had attempted to commit the murder of the prosecution witness. Whether the accused person intended to commit murder of another person would depend upon the facts and circumstances of each case. To justify a conviction under Section 307 IPC, it is not essential that fatal injury capable of causing death should have been caused. Although the nature of injury actually caused may be of assistance in coming to a finding as to the intention of the accused, such intention may also be

adduced from other circumstances. The intention of the accused is to be gathered from the circumstances like the nature of the weapon used, words used by the accused at the time of the incident, motive of the accused, parts of the body where the injury was caused and the nature of injury and severity of the blows given, etc." A B

8. On the facts, in the present case, the nature of the weapon used pre-dominates. Two bombs were hurled, which are lethal weapons, from which it can safely be inferred that the intention was to cause death. Also, the words uttered by Accused No.4, namely, that the complainant ought to be killed, also lend further credence to this view. The motive of the accused has also been made out, namely, that the intention was to kill the person in the shop as he was an informer. True, the nature of the injuries in the present case was stated to be simple, but this is only because of the fortuitous circumstance that the bomb exploded at a distance far from PW 1. In our opinion, therefore, it is clear that Accused No.4 in coming together with the other three accused and going together with them, and in shouting the words "kill him" certainly attracted the charge under Section 307 read with Section 34 of the Code. The concurrent Judgments of the Courts below do not need to be disturbed. C D

9. Shri Garg also exhorted us to allow the present appeal to conclude with the sentence already undergone. According to him, the appellant is on bail since 2006, and at this distance of time, there is no point in sending him back for incarceration for a period of one year and a little over. E

10. We are unable to agree with this argument. The crime committed is heinous in nature, and we agree with the learned counsel for the respondent – State that the appellant – herein appears to have got away lightly. F

11. We also advert to a Judgment in 'Sevaka Perumal and Anr. vs. State of Tamil Nadu' (1991) 3 SCC 471, in paragraph 10 of which it has been highlighted that undue sympathy leading to imposition of inadequate sentence would do more harm to the justice system and would undermine public confidence in the efficacy of law. G

12. Having regard to the above, and further taking into consideration the fact that the appellant appears to have got off lightly, H

A we see no reason to interfere in the concurrent Judgments under Article 136 of the Constitution of India.

13. The appeal stands dismissed.

14. Needless to say the appellant who was granted bail pursuant to Order dated 20-3-2006 of this Court, stands cancelled and he is directed B to surrender within a period of two weeks from today to serve out the remaining period of sentence.

Kalpana K. Tripathy Appeal dismissed.