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CRR-2597-2025

IN THE HIGH COURT OF MADHYA
PRADESH
AT INDORE

BEFORE
HON'BLE SHRI JUSTICE GAJENDRA SINGH
ON THE 23rd OF JULY, 2025

CRIMINAL REVISION No. 2597 of 2025

MANISH KERVAR AND OTHERS

Versus

THE STATE OF MADHYA PRADESH

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Appearance:

Shri Manish Manana - Advocate for the petitioners.

Shri S.S Thakur -G.A for the respondent/State.

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Reserved on 16.07.2025

Pronounced on 23.07.2025

ORDER

This criminal revision under section 438 of the BNSS, 2023 is preferred being aggrieved by the order dated 03.06.2025 in S.C.No.777/2025 by A.S.J, Nagda, district Ujjain whereby charges under sections 296, 109 r/w section 3(5), 115 (2) r/w section 3(5), 132, 351 (3) of the BNS, 2023 have been framed against the revision petitioner no.2 Om Prakash Kervar and charges under sections 296, 109, 132, 351(3) of BNS, 2023 have been framed against revision petitioner no.1 Manish Kervar in a case arising out of first



information report registered as crime no.71/2025 registered at police station Birla Gram, Nagda, Ujjain.

2. The charges have been framed for attempting to murder of Rakesh Kalyane and Shahzad, who were employed in Nagar Palika, Nagda and were engaged in the work of cleaning roads and on the date of incident i.e. 19.02.2025 were also supervising the work of cleaning roads. They enquired about the garbage that was littered on the road and due to this they were assaulted by the revision petitioners and Manish Kervar caused the injuries to Shahzad and Rakesh Kalyane.

3. This revision petition is preferred on the ground that the ingredients of section 109 or 132 of the BNS, 2023 are lacking in the entire prosecution story. There is no material to establish that the so called injuries sustained by the complainants are dangerous to life. The intention of committing any offence was totally lacking in the entire prosecution story. There is nothing to establish intimidation, insult or annoyance of any person nor there was any disturbance to the possession of any such person. There is nothing to establish that petitioners ever conspired to commit any criminal act in furtherance of common intention. The existence of intention or knowledge has to be culled out from various circumstances in which an upon whom the alleged offence have been committed. The petitioners were not



at all in the possession of any deadly weapon. The medical expert gave the opinion that the injuries of both the complainants Shahzad and Rakesh are simple in nature. The allegations are totally baseless and are without foundation. The complainants are not public servants.

4. Heard.

5. Govt. Advocate opposed the petition.

6. Perused the record.

7. In Tillu @ Manish Vs. State of M.P. (Cr. A No. 2768/2021 judgment dated 22-08-2022) co-ordinate Bench of this Court at Gwalior has discussed the position regarding nature of injuries in determining the commission of offence under Section 307 of IPC in paragraphs- 58 to 66. Those are being reproduced hereunder :-

"58. It is well established principle of law that nature of injuries are not decisive factor to find out as to whether the accused has committed an offence under Section 307 of IPC or not?

59. Section 307 of IPC reads as under :



307. Attempt to murder.—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 extend 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 herein before mentioned. Attempts by life convicts.—When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death.

60. From the plain reading of Section 307 of IPC, it is clear that presence of injury is not sine qua non for making out an offence under Section 307 of IPC. If any act is done with an intention or knowledge that, if assailant by that act causes death, then the assailant would be guilty of murder, then such act would certainly be punishable under Section 307 of IPC.

61. Thus, the following two ingredients are



necessary to make out an offence under Section 307 of IPC :

(a) Knowledge or intention that by his act, if murder is caused then he would be guilty of murder ;

(b) Does any act towards commission of that offence.

62. The first part of Section 307 of IPC deals with a situation, where no injury is caused and second part of Section 307 of IPC deals with a 22 situation where hurt is caused. “Hurt” is defined in Section 319 of IPC which reads as under :

319. Hurt.—Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.

63. Thus, the nature of injuries is not a decisive factor to determine as to whether the act of the assailant would be an act punishable under Section 307 of IPC or not. In order to gather intention or knowledge, the weapon used, part of the body on which injury was caused as well as number of injuries are some of the important aspects.



64. The Supreme Court in the case of State of M.P. Vs. Harjeet Singh reported in (2019) 20 SCC 524 has held as under :

5.6.1. If a person causes hurt with the intention or knowledge that he may cause death, it would attract Section 307.

5.6.2. This Court in R. Prakash v. State of Karnataka, held that:

“8. ... The first blow was on a vital part, that is, on the temporal region. Even though other blows were on non vital parts, that does not take away the rigour of Section 307 IPC. ...

9. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. 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 the act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section.”

5.6.3. If the assailant acts with the intention or knowledge that such action might cause death, and hurt is caused, then the provisions of Section 307 IPC would be applicable. There is no requirement for the injury to be on a “vital part” of the body, merely causing “hurt” is sufficient to attract Section 307 IPC.

5.6.4. This Court in *Jage Ram v. State of Haryana* (AIR 1971 SC 1033) held that:

“12. For the purpose of conviction under Section 307IPC, 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.”

65. The Supreme Court in the case of State of M.P. Vs. Kanha reported in (2019) 3 SCC 605 has held as under :

13. The above judgments of this Court lead us to the conclusion that proof of grievous or life-threatening hurt is not a sine qua non for the offence under Section 307 of the Penal Code. The intention



of the accused can be ascertained from the actual injury, if any, as well as from surrounding circumstances. Among other things, the nature of the weapon used and the severity of the blows inflicted can be considered to infer intent.

66. The Supreme Court in the case of State of M.P. Vs. Saleem reported in (2005) 5 SCC 554 has held as under :

12. 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



believable 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 the 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.

8. Now come to the facts of this case. Both the victims viz. Rakesh and Shahzad have stated in their statement recorded under section 180 of the BNS, 2023 that injuries were caused to them with intention to kill and for that purpose the spade was used as weapon of offence and part of body selected for assault was head which is vital organ.

9. When we examine the nature of instrument used as weapon of offence the description of which is mentioned in Annexure P/6 as 4 ft. 3 inch long containing a blade of 9 inch long and 11 inch width made of iron viz. spade and the fact that both the victims were targeted on the same place and part of body i.e. head



and in the left side just below the ear., then the trial court was right in framing the charges under sections 296, 109 r/w section 3(5), 115 (2) r/w section 3(5), 132, 351 (3) of the BNS, 2023 against the revision petitioner no.2 Om Prakash Kervar and charges under sections 296, 109, 132, 351(3) of BNS, 2023 against revision petitioner no.1 Manish Kervar.

10. Accordingly, in the light of above, this revision petition being devoid of merit is hereby dismissed.

(GAJENDRA SINGH)
JUDGE

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