

HIGH COURT OF MADHYA PRADESH ; JABALPUR**Cr.A No. 21 of 2004**

Sushila Bai
Vs.
State of Madhya Pradesh

For the Appellant : None present
For the Respondent : Shri Akshay Namdeo, GA.

J U D G M E N T**(26 /03 /2015)****Hon. S.K.Gangele J.**

This Appeal is preferred by the accused/appellant being aggrieved by the judgment dated 5.12.2003 passed by the ASJ, Lakhnadon, District Seoni in S.T.No.61/2002. By the impugned judgment, the trial judge convicted the appellant for commission of offence under section 307 of the IPC with direction to undergo RI 5 years with fine of Rs.500/-.

2. The prosecution story in brief is that on 20.3.2002, the husband of the appellant was resting in his house. Suddenly, appellant came there, caught-hold him by his vest and asked why he had taken her to Banjari. Thereafter, due to fear, husband of the appellant went to the house of his elder brother. The appellant reached to the house of her mother-in-law Sukmani Bai and inflicted sickle injuries to her. Appellant also received some injuries. The report of the incident was

lodged on 20.3.02 at 11.45 at P.S Lakhnadon, district Seoni. The police registered an offence for commission of an offence and conducted the investigation. After investigation, the charge sheet was filed before the court. Appellant abjured the guilt. After trial, learned trial judge found the charge proved against the appellant and awarded the sentence as mentioned above.

3. In support of the case, prosecution examined 12 witnesses whereas the appellant examined herself as (D.W.1) and Dr.Dipak Narayan Pandey (DW 2) as defense witness in her support.

4. Padam Singh (P.W.1), husband of the appellant, in his evidence, deposed that on the date of the incident appellant lost her mental balance and she tried to beat me. I ran away from the house and went to the house of my mother and brother. Appellant came behind. At that time my mother had been cutting vegetables by sickle. Appellant snatched the sickle from my mother's hand and inflicted injuries to my mother. In his cross-examination, he admitted that appellant was insane at the relevant time.

5. Kher Singh (P.W.2), in his evidence, deposed that appellant is wife of my younger brother. I was sitting in the courtyard of my house. I heard the cry of Sukmani Bai and went to see her. I found that appellant had been inflicting injuries to Sukmani Bai by sickle. I tried to rescue the injured.

6. Ravi Prasad (P.W.3), in his evidence, deposed that appellant is wife of his younger brother. At around 9.30, he received the information from Ramesh that appellant had inflicted injuries to his mother Sukmani Bai. Thereafter, I came to the house and found that my mother was lying in injured condition. I went to the police station to lodge the report. My mother was taken to Lakhnadon hospital. Thereafter she was shifted to Seoni hospital. She was admitted there for eight days. A sickle was seized by the police before me vide seizure memo Ex.P/1. I signed the same. The spot-map was also prepared by Patwari which is Ex.P/3.

7. Sukmani Bai (P.W.4), the injured, in her evidence, deposed that at around 9 O' clock in the morning, she was sitting in the courtyard of her house and cutting the vegetables. Suddenly, appellant came there and inflicted injuries on her person by sickle. On hearing my cry, Kher Singh came and pacified the quarrel. Thereafter, police came and I was sent to the hospital. Police had seized my Blouse and Sari. In her cross-examination she said that there is no enmity between her and the appellant. However, appellant received attacks of hysteria upto some time. She denied the fact that appellant Sushila Bai received any injury.

8. Ramesh (P.W.5) turned hostile. Moolchand (P.W.6), in his evidence, deposed that police seized the sickle before me and I signed

the seizure memo which is Ex.P/1. Sari and Blouse of victim Sukmani Bai were also seized by the police which is Ex.P/2.

9. Tularam (P.W.7) is the child witness. In his evidence he deposed that when he had reached the house he found that appellant had been inflicting injuries to his Dadi (grand mother) by a sickle.

10. Daduram (P.W.8) is also the child witness. In his evidence, he deposed that he had heard the cry of her grand mother and when he reached the house, he saw that appellant had been inflicting sickle blows to my grand mother.

11. Hariom Rajput (P.W.9) is the Patwari who prepared the spot-map which is Ex.P/4.

12. Dr. Dipak Pandey (P.W.10) in his evidence deposed that he was posted as Asst. Surgeon at Community Health Center, Lakhnadon on 20.3.2002. He had performed the medical examination of the injured Sukmani Bai. On examination, he found the following injuries on the person of victim Sukmani Bai :-

- “1. एक कटा हुआ घाव डेढ bap_{x3/4} इंच क्वेरी डेपथ (गहराई का पता नहीं) लेफ्ट इलियक पोसा बांयी जांघ के उपर जहां पेट में हड्डी जुड़ती है पेट में नीचे की ओर बांयी तरफ।
2. एक खरमेंच आकार एक इंच X आधा इंच माथे पर बांयी ओर।
3. एक फआ हुआ घाव सूजन के साथ आकार 2xआधा इंच और 2x3 इंच रंग लाल था बांयी भुजा पर।
4. एक खरोंच 2x1@10 इंच बांयी भुजा में मध्य मे थी।
5. एक फआ हुआ घाव 1/1/2 x1@4 इंच आकार का

बांये अगूटे के उपर कलाई पर।

6. एक कटा हुआ घाव जिसका आकार $1@2\text{bap} \times 1/8 \times 1@8$ इंच आकार का बांये हाथ की अंगूठे से लगी अनामिका उंगली पर सेकेन्ट एवं थर्ड सेरिंग के बीच में।
7. कटा हुआ घाव $1@2\text{इंच} \times 1/4 \times 1/4\text{इंच}$ आकार का चोट कं-6 के पास।
8. कटा हुआ घाव एक $\text{इंच} \times 1@4$ $\text{इंच} \times 1@4$ इंच आकार का बांये हाथ की बीच वाली उंगुली के नीचे मेटाकार्पल पर।
9. एक कटा हुआ घाव डेढ़ इंच $1/3 \times 1/4$ इंच आकार का सिर पर बायीं पेराईटों टेम्पोरल बोन के पास में।
10. दो खरोंच दाहिने कान के पिन्ना पर प्रत्येक $1/4 \times 1@4$ इंच आकार की।
11. एक कटा हुआ घाव गले में दाहिनी ओर $1\text{इंच} \times 1@2$ इंच आकार की चमड़ी लटकी हुई।
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In para-2 of his deposition, he deposed that except injury No.1, all other injuries were simple in nature. The injury No.1,6,7,8,9 and 11 were caused by hard and sharp edged weapon and injuries No.2,4,10,12 were caused by hard and blunt object. He opined that incised injuries can be caused by a sickle.

13. P.L.Choudhary (P.W.11) is the Investigating Officer. He deposed that on 20.3.2002 he was posted at P.S Lakhnadon. A report was lodged by Padam Singh at the police station at around 11.45 which is Ex.P/8. Thereafter, the spot-map of the incident was prepared which is Ex.P/9. A sickle was also seized and seizure memo was prepared. Blood stained earth was also seized. Injured Sukmani Bai was sent to Govt. Hospital Lakhnadon. A Sari and a Blouse of the injured was also

seized which is Ex.P/2. I requested the SDM to record the statement of injured Sukmani Bai. The medical examination of injured Sukmani Bai was also held. He admitted the fact that appellant Sushila Bai had also received some injuries.

14. H.D.Baghel (P.W.12) is the Naib Tehsildar who recorded the statement of injured Sukmani Bai.

15. In the defense, appellant Sushila Bai examined herself as (D.W.1). She deposed that she had gone to the house of her brother-in-law Ravi and thereafter she returned back. She further deposed that she had gone along with her husband to the house of her Jeth (brother-in-law) and at the house her mother-in-law Sukmani Bai and other family members were present. My Jeth had beaten me by Sabbal. I received injuries on my leg and head. Thereafter my husband had taken me to the hospital. In her cross-examination, she admitted that she had beaten her mother-in-law but she had no intention to kill her.

16. Dr. Deep Narayan Pandey (D.W.2) deposed that on 20.3.2002 he was posted as Asstt. Surgeon at Community Health Center, Lakhnadon. He had examined Sushila Bai and found some injuries on her person. Except injury No.5 and 9, all the injuries were caused by hard and blunt object. He further deposed that x-ray of Sushila Bai was taken out in which fracture of left fibula bone was found.

17. From the evidence of the prosecution witnesses, it is clear that

the appellant had inflicted injuries to her mother-in-law. Appellant has also admitted this fact in her deposition. From the evidence of Dr. Deep Narayan Pandey (D.W.2), it is clear that appellant had also received some injuries. These injuries were not explained by the prosecution. There was a fracture of left fibula bone to the appellant. Dr. Deep Narayan Pandey (P.W.10) also examined the victim Sukmani Bai and deposed that except injury No.1, all other injuries were simple in nature. Injury No.1 was above left thigh and below the stomach. It is a fact that the appellant also received the injuries. The question is whether, the injury No.1 caused to the victim was sufficient to cause death or not. The doctor has opined that if proper treatment had not been given to the victim then her death was possible.

18. In regard to constituting the offence under section 307 of the IPC, the Supreme Court in the matter of *Parsuram Pandey and others Vs. State of Bihar-(2004) 13 SCC 189*, has held as under :-

“15. To constitute an offence under Section 307 two ingredients of the offence must be present:-

(a) an intention of or knowledge relating to commission of murder ; and

(b) the doing of an act towards it.

For the purpose of Section 307 what is material is the intention or the knowledge and not the consequence of the actual act done for the purpose of carrying out the intention. Section clearly contemplates an act which is done with intention of causing death but which fails to bring about the intended consequence on account of intervening circumstances. The intention or knowledge of the accused must be such as is necessary to constitute murder. In the absence of intention or knowledge which

is the necessary ingredient of Section 307, there can be no offence 'of attempt to murder'. Intent which is a state of mind cannot be proved by precise direct evidence, as a fact it can only be detected or inferred from other factors. Some of the relevant considerations may be the nature of the weapon used, the place where injuries were inflicted, the nature of the injuries and the circumstances in which the incident took place. On the evidence on record, where the prosecution has been able to prove only that the villagers have sustained injuries by indiscriminate firing and it was an open area with none of the injured nearby there is a complete lack of evidence of intention to cause such injuries for which the accused persons Parshuram and Bishram could have been convicted under Section 302 of the IPC. Nature of the injuries sustained by the villagers is simple. None of the witnesses have stated that the fire arm causing injuries was being used by any particular accused for causing injuries to them. In fact the injured have not seen any of the accused persons using fire arms. There is no evidence about the distance from which the said two accused fired. The only evidence led by the prosecution is indiscriminate firing by Parshuram and Bishram which has caused simple injuries to the villagers. Amongst the injured villagers, only PW1 and DW-1 were examined. Thus this evidence does not constitute the intention or knowledge of the accused persons for committing the murder or doing of an act towards it. The evidence only shows that the villagers have sustained simple injuries. In the circumstances, we acquit Parshuram and Bishram under Section 307 of IPC.”

As per the aforesaid judgment of the Supreme Court, for the purpose of commission of an offence under section 307 of the IPC, it is material that there should be an intention or knowledge of the offence and secondly the act done for the purpose of carrying out the intention.

19. The same principle of law had been laid down by the Supreme Court in the matter of *Sumersingh Umedsinh Rajput Vs. State of Gujarat- (2007) 13 SCC 83*. The same reads as under :-

“14. Even assuming that PW-8 received a fire arm

injury which in the facts and circumstances of the case does not appear to be plausible, having regard to the positive evidence of the prosecution as has been stated by PW-4 Neelabhai it seems certain that a scuffle had ensued. A case of Section 307 of the Indian Penal Code, therefore, has not been made out. The ingredients of Section 307 are:

- (i) an intention of or knowledge relating to commission of murder; and
- (ii) the doing of an act towards it. “

20. From the aforesaid judgment also, it is clear that an intention of or knowledge relating to commission of murder and doing of an act towards it are the essential ingredients to constitute an offence under section 307 of the IPC,. In the present case, when the appellant reached the house of her mother-in-law, she was unarmed. She had snatched the sickle from her mother-in-law and inflicted injuries to her. Appellant also received some injuries and a fracture of fibula bone. The examining doctor has deposed that only injury No.1 was grievous in nature which was sustained by a sharp edged weapon. However that injury was not sufficient to cause death. On the basis of aforesaid evidence, in my opinion, it could not be held that the appellant is guilty for commission of the offence under section 307 of the IPC. The trial court has over-looked the aforesaid vital aspect.

21. Looking to the nature of the case and the evidence on record, in my opinion, the appellant is guilty for commission of the offence punishable under section 324 of the IPC. The appellant was in jail since 21.3.2002 to 30.4.2002 (40 days) and from the date of the

impugned judgment 5.12.2003 till suspension of her jail sentence i.e 26.4.04 (142 days). Accordingly she has already suffered the jail sentence of near about six months. Looking to the fact that the appellant has also received injuries on her leg and head. She belongs to a poor family and she has already suffered near about six months of jail sentence, in my opinion, it would be just and proper to award the jail sentence upto to the period already undergone by her.

22. Consequently, the appeal filed by the appellant is partly allowed. Her conviction and sentence awarded by the trial court for commission of the offence under section 307 IPC is set aside. Instead of it, she is convicted for commission of the offence punishable under section 324 of the IPC and punished with the jail sentence already undergone by her that is near about six months. If appellant is on bail, her bail bonds are discharged. If she is in jail, she be set at liberty forthwith if not required in any other case.

(S.K.Gangele)
Judge

MKL

