

Orissa High Court

Gangadhar Behidar vs State Of Orissa on 21 November, 1994

Equivalent citations: 1995 CriLJ 2441

Author: R Patra

Bench: S Mohanty, R Patra

JUDGMENT R.K. Patra, J.

1. The petitioner and two of his associates were tried on charges under Sections 149/307, 149/323 and 380/34 of Indian Penal Code (for short, 'IPC'), in Court of the Assistant Sessions Judge, Sambalpur. The learned Trial Judge acquitted petitioner's associates under Section 232, Cr. P.C. He did not find the petitioner guilty of the offences under Sections 149/323 and 380/34 of IPC. The petitioner was, however, found guilty under Section 307 of IPC and convicted thereunder. He was sentenced to undergo rigorous imprisonment for three years. Against the said conviction and sentence, the petitioner preferred appeal before the learned Sessions Judge, Sambalpur which ended in dismissal. Hence this revision.

2. While admitting, this revision, this Court by order dated 20-7-1987 issued notice to the petitioner calling upon him to show cause as to why the sentence shall not be enhanced.

"1. One lacerated injury scalp.	1-3" margins irregular & gaping.	On vertex of head	Simple May have b caused by some ha blunt object
2. One incised wound	1-3/4" margins clean cut without bruising. Tails off anteriorly	On left side of chest in 4th intercostal space on anterior axillary line.	Simple May have b caused by some cu instrument."

3. Briefly stated, the prosecution case is that on 4-12-1982 at about 5 p.m. a Matador F.C. vehicle came from Sambalpur side and stopped on the main road of village Thalkuli. About 20 to 25 persons between the age group of 20 to 30 years including the petitioner got down from the vehicle. They were armed with deadly weapons like knives, iron rods and thengas. They first surrounded Bhagirathi (P.W. 1), Arjun (P.W. 3), Sudhansu (P.W. 4), Bharat (P.W. 5), Nirakar (P.W. 10) and some others who were standing near a hotel and started assaulting them. Out of fear of life, the victims ran helter-skelter. In that process P.Ws. 1 and 4 entered inside a nearby grocery shop. Some of the culprits forcibly entered inside the shop and pulled out P.Ws. 1 and 4. It is the allegation of the prosecution that the petitioner by means of a knife held by him dealt a blow on the left side chest of P.W. 1. Another culprit assaulted P.W. 4 by means of iron rod. As a result of such assault, both P.Ws. 1 and 4 fell down. The culprits thereafter left the place of occurrence. P.W. 4 lodged FIR at Jharsuguda police station at about 5-45 p.m. on the same day.

4. The plea of the petitioner was one of denial.

5. The conviction of the petitioner is based on the evidence of the injured (P.W. 1) and P.W. 3 (eyewitness) and the evidence of the doctor, P.W. 7.

6. Learned counsel for the petitioner first contended that the conviction under Section 307 of IPC cannot be sustained in view of the discrepancy in the evidence. P.W. 7 is the doctor who examined P.W. 1 on police requisition on the date of occurrence at about 7-15 p.m. Ext. 5 is the injury report. We may at this stage note the perfunctory manner in which the learned Assistant Sessions Judge recorded the evidence of the doctor. By merely marking the injury report as Ext. 5 he remained satisfied without eliciting evidence from the doctor in respect of the injury. The contents of Ext. 5 should have been put through the mouth of the doctor P.W. 7 which the learned Assistant Sessions Judge has failed to do. The injury report Ext. 5 shows that P.W. 1 had sustained the following injuries on his person.

P. W. 1 has testified that on the date of occurrence between 4 to 5 p.m. he along with P.W. 4, P.W.5 and others took tea in a hotel at Thalkuli bus stand crossing. After taking tea some of his friends left the hotel whereas he was sitting in a nearby cloth store. At that time he noticed, a Matador came from Sambalpur side and went towards Jharsagudia. After a few minutes that vehicle came back and halted near the bus stand crossing. About 20 to 25 persons armed with iron rods, lathis, thujalis and knives got down from the vehicle and rushed towards him for attack. One of them assaulted him with a long spoon taking that from the hotel. Out of fear he entered inside the adjoining grocery shop. Some of the culprits including the petitioner entered inside the grocery shop. Thereafter, the petitioner stabbed on his left side chest with a knife causing profuse bleeding. After the assault they all left the place of occurrence. P.W. 1 was subjected to thorough cross-examination but nothing has been brought out to discredit his testimony. P.W. 3 along with P.W. 1 had entered into the grocery shop where the assault took place. He (P.W. 3) has also stated that it was the petitioner who assaulted on the chest of P.W. 1 with a knife. In the FIR. P.W. 4 had mentioned that the brother of one Kanhu Kishore Bohidar assaulted on the left side of chest of P.W. 1 by means of a knife. On the basis of the aforesaid evidence, we are satisfied that it was the petitioner who assaulted P.W. 1 with the knife held by him causing a simple injury on the left side of his chest.

7. Shri Panda, learned counsel for the petitioner, relying on the judgment of the Supreme Court in *Rekha Mandal v. State of Bihar*, 1988 SCD 808 next submitted that as the petitioner has caused simple injury on P.W. 1 with a knife, the offence would fall under Section 324 of IPC and not under Section 307 of IPC. Shri P.C. Rout, learned Additional Standing Counsel, submitted that merely because the injury caused by the petitioner was found to be simple in nature, the offence cannot be taken out of the purview of Section 397 of IPC. In this connection, he placed reliance on the judgment of the Supreme Court in *State of Maharashtra v. Balram Bewa Patil*, .

8. Section 307 of IPC reads as follows :--

"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 hereinbefore mentioned.

Attempts by life convicts...."

9. Reading of the aforesaid would show that the second limb of the section refers to causing of hurt whereas the first part does not refer to hurt as such. It means that an 'act' may amount to an attempt to murder even if the 'act' causes no hurt to any one and if hurt is caused, the assailant is liable to a heavier punishment as provided in the section. If an accused without causing any bodily injury attempts to commit murder by administering poison as illustrated in (d) of Section 307, IPC, the same would be a case coming under the first limb of the section.

10. The scope of Section 307, IPC and its applicability came up for consideration in *Om Parkash v. State of Punjab*, . After taking note of apparent divergent views expressed by the Bombay High Court in the matter, the Supreme Court in paragraph 9 of the judgment observed as follows:

"...On a parity of reasoning, a person commits an offence under Section 307 when he has an intention to commit murder and, in pursuance of that intention, does an act towards its commission irrespective of the fact whether that act is the penultimate act or not. It is to be clearly understood, however, that the intention to commit the offence of murder means that the person concerned has the intention to do certain act with the necessary intention or knowledge mentioned in Section 100. The intention to commit an offence is different from the intention or knowledge requisite for constituting the act as that offence. The expression 'whoever attempts to commit an offence' in Section 511, can only mean 'whoever intends to do a certain act with the intent or knowledge necessary for the commission of that offence'. The same is meant by the expression 'whoever does an act with such intention or knowledge and under such circumstances that if he by that act caused death, he would be guilty of murder' in Section 307. This simply means that the act must be done with the intent or knowledge requisite for the commission of the offence of murder. The expression 'by that act' does not mean that the immediate effect of the act committed must be death. Such a result must be the result of that act whether immediately or after a lapse of time."

In that case the accused starved his wife and denied food to her for days together and did not allow her to leave his house. On account of the maltreatment and under-nourishment her health deteriorated to a great extent, She, however, managed to escape from the house to reach the hospital. The Supreme Court held that the course of conduct adopted by the accused in regularly starving his wife in order to accelerate her death case within the purview of Section 307, IPC though it was not the last act which if effective would cause the death. *Om Prakash* (1961 (2) Cri LJ 848) (supra) was a case in which the accused was found guilty under Section 207 of IPC although he did not cause any bodily hurt to the victim.

In *Sarju Prasad v. State of Bihar*, , a Three-Judge Bench of the Supreme Court relying on the ratio of *Om Parkash* (supra) held that the mere fact that the injury inflicted by the assailant did not cut any vital organ of the injured is not by itself sufficient to take the act out of the purview of Section 307, IPC. Their Lordships hastened to observe that the burden is still upon the prosecution to establish that the intention or knowledge of the assailant in causing the particular injury to the injured was of

any of the three kinds referred to in Section 300, IPC. For, unless the prosecution discharges the burden, the offence under Section 307, IPC cannot possibly be brought home to the assailant. The State of assailant's mind has to be deduced from the surrounding circumstances and the existence of motive to cause the death may be a relevant circumstance.

In *State of Maharashtra v. Balram Bama Patil* (1983 Cri LJ 331) (supra) it has been held that the charge under Section 307, IPC does not fail merely because the injuries inflicted on the victim are in the nature of simple hurt. The High Court had acquitted the accused of the charge under Section 307, IPC solely because the injuries inflicted on the victim were in the nature of simple hurt. In reversing the said finding, the Supreme Court in paragraph 9 of the judgment has observed as follows:

"...To justify a conviction under this Section 307, IPC it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often be 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 be liable 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 this 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."

11. In view of our finding that it was the petitioner who assaulted P.W. 1 with the knife causing simple injury on his left side of the chest, it has to be examined as to what offence was committed by the petitioner -- whether it was one under Section 324, IPC or under Section 307, IPC. The charge framed against the petitioner and his associates stated that they along with more than five others were members of an unlawful assembly and in prosecution of the common object of taking revenge by assaulting P.W. 1 and his co-villagers, one of the members, namely, the petitioner committed an act, to wit. stabbed on the chest of P.W. 1 with a knife with such intention or knowledge and under such circumstances that if by that act he had caused the death of P.W. 1, he would have been guilty of murder by that act he caused hurt to P.W. 3 and thereby committed an offence punishable under Sections 149/307, IPC. While affirming the conviction of the petitioner under Section 307, IPC., the learned Sessions Judge in the impugned judgment has observed as follows:

"The left side of the chest is a vital part of the body and to stab a person on that part has to be considered to be dangerous. It is difficult to conclude as to how P.W. 1 escaped without injury to the heart, etc. But so far as the intention of the assailant is concerned, there seems to be little doubt that he intended to do away with P.W. 1...."

12. P.W.4, the informant, in his FIR has narrated the incident in detail. He has stated that on the date of occurrence at about 9 p.m. in the evening when P.W. 1 and others were talking in front of the hotel, a vehicle came and halted. About 30 to 35 young persons in the age group of 20 to 30 came out from the vehicle who were armed with knives, iron rods and other deadly weapons and surrounded and attacked them. They all out of fear ran helter-skelter. P.W. 4, P.W. 1 and one Hari Tripathy entered inside a nearby grocery shop. About 4 to 5 culprits forcibly made entry into the shop and dragged them. One of the culprits was petitioner (although P.W. 4 has not named the petitioner but described him to be the brother of Kanhu). The petitioner declaring that P.W. 1 had become a lender and that he would kill him, assaulted on the left side chest of P.W. 2 with the knife. P.W. 1 (the injured) has given a different story by stating that because Kanhu asked to kill him (P.W. 1) the petitioner came and stabbed on his left side chest with the knife. In view of such inconsistent version as to who had intended to kill P.W. 1 -- whether it was Kanhu or the petitioner -- it cannot be held that the prosecution has been able to establish that the petitioner had intended to kill P.W. 1. can it be next said that the petitioner committed the act' with knowledge that the said 'act' would have amounted to murder. The evidence in the case falls short of this proof also. In order to constitute an offence punishable under Section 307, IPC, prosecution has to establish that the accused did an 'act' with such guilty intention or knowledge and in such circumstances, that but for some intervening reason the 'act' would have amounted to murder. In other words, the intention or knowledge of the accused must be such as is necessary to constitute the murder. In a case dealing with causing of hurt, the intention or knowledge of the accused can be gathered from the nature of the weapon used, the intention expressed by him at the time of the act, the motive for commission of the offence, the nature and the size of injuries, the parts of the body of the victim where injuries were caused, the severity of the blow or blows and other important circumstances. A case cannot be taken out of the purview of Section 307, IPC merely on Use basis that the injuries on the victim are found to be simple in nature. Each case has to be decided on its own facts and circumstances. No two cases can be or are in all respects alike. What is the proper inference to be drawn from proved facts and circumstances is a totally different matter. In the present case as the prosecution has failed to establish the intention or knowledge of the petitioner that by his 'act' an offence of murder of P.W. 1 could have been committed and having regard to the circumstances in which P.W. 1 was assaulted, the injury sustained by him and other circumstances, we extend the benefit of doubt in respect of the offence under Section 307, IPC. Because of our finding that the petitioner had caused simple injury on the chest of P.W.1 with a knife, we hold him guilty under Section 324, IPC.

13. Before parting with the judgment, we may refer to the case of Rekha Mandal (supra). We may state that Supreme Court in Rekha Mandal (supra) has not held that merely because the injuries on the victim were of simple nature, a case would not come under Section 307, IPC. It appears from the said judgment that the injured in that case had eight injuries on his person caused by farsa, three by spears and six by bruises and abrasions presumably caused with lathi. Having regard to the injuries and its location on the person of the injured, the Supreme Court observed :

"...Medical evidence did not disclose that any of the injuries were cumulatively dangerous to life and the question therefore is whether in these circumstances it could be held that the offence disclosed was one under Section 307 of the Indian Penal Code. That section requires that the act must be done with such intention or knowledge or under such circumstances that if death be caused by that act,

the offence of murder will emerge. In the present case on the evidence of the medical expert examined, it cannot be considered that this requirement has been met.... It is also worthy of note that it is not disclosed in the evidence who wielded which weapon...."

(Emphasis supplied) Neither intention nor knowledge necessary for commission of an offence under Section 300, IPC was proved in that case. On the facts and circumstances of that case, the Supreme Court altered the conviction from one under Section 307 to Section 324, IPC.

14. In the result, we hold the petitioner guilty under Section 324 of IPC and convict him thereunder. He is sentenced to undergo rigorous imprisonment for six months.

15. Criminal revision is allowed in part. Rule for enhancement of sentence is discharged.

S.K. Mohanty, J.

16. I agree.