2024 INSC 731

**NON-REPORTABLE**

**IN THE SUPREME COURT OF INDIA**
**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 3327 OF 2024**

**SHOYEB RAJA … APPELLANT(S)**

**Versus**

**STATE OF MADHYA PRADESH & ORS. …RESPONDENT(S)**

# J U D G M E N T

**SANJAY KAROL, J.**

1. Assailed before us, at the insistence of the complainant, is a judgment and order dated 23rd November, 2023 of the High Court of Madhya Pradesh (Principal Bench at Jabalpur), passed in Criminal Revision No.3125 of 2021, whereby the judgment/order dated 11th November, 2021 in Sessions Trial No.52/2019 of the learned IV Additional District and Sessions Judge, Seoni, acquitting the accused-

Respondents (Nos.2 to 9) of the charges under Sections 294, 323, 506, 353, 352 read with Section 34 Indian Penal Code[1] was confirmed.

## BACKGROUND FACTS AND PROCEDURAL HISTORY

2. The complainant-appellant was appointed as the Chairman of the District Waqf Board, Seoni, thereby being charged with the supervision of Masjid Committees. As a result of the dispute between the newly appointed committee of which he was the Chairman and the previous committee, the claimant was abused and beaten to the point of unconsciousness.

3. He was taken to the district hospital wherefrom he was referred to the Asian Hospital, Nagpur and upon discharge therefrom, FIR No.133 of 2018 dated 9th March, 2018 under Sections 294, 323, 506 read with 34 IPC came to be lodged.

4. Vide order dated 18th March, 2019 of learned Judicial Magistrate First Class, Seoni, the case was committed to the Court of Additional Sessions Judge, Seoni. In this order, it was noted that the accused were on bail, but they were taken into custody under Section 307 IPC on that date itself.

5. The Additional Sessions Judge, Seoni, framed charges under Sections 294, 332/34 and 307/34 IPC. Such framing of charge by order dated 17th September, 2019 was challenged before the High Court in Criminal Revision No.4805 of

[1] For short, 'IPC'

2019, whereby vide order dated 21st January, 2020 the same was set aside on the ground that the documents made part of the record were not supplied to the accused. The matter was remanded for framing of charge afresh.

6. It is in this backdrop, that the order impugned before the High Court came to be passed. Regarding Section 307, the order records:-

> "In this way in the said medical report, based on the circumstances arising as a result of future aspects, keeping in view, the possibilities, it has been mentioned that if pressure was applied on the scratch marks present in the mouth, nose and throat it could have caused obstruction of the respiratory tract. The said possibility is dependent on that if the accused had committed further acts of the above type, there was a possibility that the windpipe could have been blocked. It has not been said in the report that the injury caused by the accused or the act done by them was likely to result in the death of the complainant. In the above situation, prima facie there is no basis for offence under Section 307 IPC against the accused."

In respect of the other allegations and alleged crimes, it was observed :-

> "As far as the allegations of other crimes against the accused are concerned, the First Information Report has been filed by the complainant to the effect that he was the Chairman of the Waqf Committee in District Seoni, then during his official duty he went to the Mosque to settle the dispute. There, the accused abused and beat him and pressed his mouth, nose and neck. In the above situation, prima facie there are grounds for crime under Sections 294 and 334 read with 34 of the Indian Penal Code against all the accused……"

7. Aggrieved by the said order, the complainant-appellant preferred the instant criminal revision. The impugned order records that the medical officer of the District Hospital, Seoni, gave his opinion about the nature of the injury sustained by the complainant, also observing that the throttling could have

resulted in respiratory arrest. There are observations with respect to bruises and abrasions, however, details as to their size and location were missing. Such assessment was termed as general and superficial.

8. As such, it was held that no case under Section 307 IPC was made out and the Criminal Revision was, thus, dismissed.

## CONSIDERATION BY THIS COURT

9. By way of the special leave petition, it is submitted primarily that :

a) The nature of the injury suffered by the complainant-appellant does not rule out Section 307 IPC at the stage of framing of charge;

b) Given that throttling was suspected, reliance on the medical document to reject the charge was unjustified, since the author of such document could not be examined;

c) The statements of the witnesses under Section 161 Code of Criminal Procedure disclose the respondents' acts of "pressing of mouth, nose and throat" and their intention to kill;

d) Reference stands made to the judgment *in* ***State of Delhi*** v. ***Gyan Devi & Ors.***[2] to state that at the time of framing of charge, the Court is not to undertake a detailed assessment of the material placed on record.

e) The predecessor in office of the Additional Sessions Judge took a contrary view on the same set of facts and circumstances and had framed the charge under the said section.

[2] (2000) 8 SSCC 239

10. Section 307 IPC is the charge that the Courts below have concurrently, refused to frame. It 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 hereinbefore 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."

11. Let us at this stage, consider the law as laid down by this Court in respect of this section, as also that of Section 34 IPC, given that there are a total of eight respondents (accused) before the court.

11.1 In ***State of Maharashtra*** v. ***Kashirao***[3]***,*** the Court identified the essential ingredients for the applicability of the section. The relevant extract is as below:

> "The essential ingredients required to be proved in the case of an offence under Section 307 are:
>
> (*i*) that the death of a human being was attempted;
>
> (*ii*) that such death was attempted to be caused by, or in consequence of the act of the accused; and
>
> (*iii*) that such act was done with the intention of causing death; or that it was done with the intention of causing such bodily injury as : (*a*) the accused knew to be likely to cause death; or (*b*) was sufficient in the ordinary course of nature to cause death, or that the accused attempted to cause death by doing an act known to him to be so imminently dangerous that it must in all probability cause (*a*) death, or (*b*) such bodily injury as is likely to cause death, the accused having no excuse for incurring the risk of causing such death or injury."

[3] (2003) 10 SCC 434

11.2 This Court in ***Om Prakash*** v. ***State of Punjab***[4], as far back as 1961, observed the constituents of the Section, having referred to various judgments of the Privy Council, as under:

> "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 300. 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."
>
> (Emphasis supplied)

11.3 ***Hari Mohan Mandal*** v. ***State of Jharkhand***[5] holds that the nature or extent of injury suffered, are irrelevant factors for the conviction under this section, so long as the injury is inflicted with animus. It has been held:

> **"10.** …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

[4] 1961 SCC OnLine SC 72
[5] (2004) 12 SCC 220

all to actual wounds. …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.

**11.** 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. If the injury inflicted has been with the avowed object or intention to cause death, the ritual nature, extent or character of the injury or whether such injury is sufficient to actually causing death are really factors which are wholly irrelevant for adjudging the culpability under Section 307 IPC. 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. Therefore, it is not correct to acquit an accused of the charge under Section 307 IPC merely because the injuries inflicted on the victim were in the nature of a simple hurt."

(Emphasis supplied)

11.4 The principle governing the application of Section 34 has been captured thus in ***Chhota Ahirwar*** v. ***State of M.P.***[6]**:**

**"24.** Section 34 is only attracted when a specific criminal act is done by several persons in furtherance of the common intention of all, in which case all the offenders are liable for that criminal act in the same manner as the principal offender as if the act were done by all the offenders. This section does not whittle down the liability of the principal offender committing the principal act but additionally makes all other offenders liable. The essence of liability under Section 34 is simultaneous consensus of the minds of persons participating in the criminal act to bring about a particular result, which consensus can even be developed at the spot as held in *Lallan Rai* v. *State of Bihar* [*Lallan Rai* v. *State of Bihar*, (2003) 1 SCC 268 : 2003 SCC (Cri) 301] . There must be a common intention to commit the particular offence. To constitute common intention, it is absolutely necessary that the intention of each one of the accused should be known to the rest of the accused."

[6] (2020) 4 SCC 126

11.5 Sanjiv Khanna J., writing for the Court in ***Krishnamurthy*** v**.** ***State of Karnataka***, encapsulated, succinctly its field of operation as under:

> "**26.** Section 34IPC makes a co-perpetrator, who had participated in the offence, equally liable on the principle of joint liability. For Section 34 to apply there should be common intention between the co-perpetrators, which means that there should be community of purpose and common design or prearranged plan. However, this does not mean that co-perpetrators should have engaged in any discussion, agreement or valuation. For Section 34 to apply, it is not necessary that the plan should be prearranged or hatched for a considerable time before the criminal act is performed. Common intention can be formed just a minute before the actual act happens. Common intention is necessarily a psychological fact as it requires prior meeting of minds. In such cases, direct evidence normally will not be available and in most cases, whether or not there exists a common intention has to be determined by drawing inference from the facts proved. This requires an inquiry into the antecedents, conduct of the co-participants or perpetrators at the time and after the occurrence. The manner in which the accused arrived, mounted the attack, nature and type of injuries inflicted, the weapon used, conduct or acts of the co-assailants/perpetrators, object and purpose behind the occurrence or the attack, etc. are all relevant facts from which inference has to be drawn to arrive at a conclusion whether or not the ingredients of Section 34IPC are satisfied. We must remember that Section 34IPC comes into operation against the co-perpetrators because they have not committed the principal or main act, which is undertaken/performed or is attributed to the main culprit or perpetrator…"
>
> (Emphasis supplied)

12. In the light of the decisions considered *supra*, let us now turn our attention to the facts of the present case. The statement of the doctor, relied upon by the Trial Court to observe that there are minor injuries is placed as Annexure P-5. It is extracted as under:

> "To,
>
> The Town Inspector,
> P.S Kotwali, Seoni

Sub:- Explanation regarding your letter No. 133B/18 dated 13.03.2018

Dear Sir,

Pt. Soyeb Raja was brought to the Hospital around 10 p.m. on 07.03.2018. The injurids are mentioned in the PMLC report.

Though, other injuries were simple but Death of patient might be possible if throttling had been done (as suspected by the bruise marks over upper lip, nose and throat ) which may result in respiratory arrest.

14.03.2018

--sd—

Dr. Praveen Thakur
MBBS
Reg No. MP 10316
Medical Officer
District Hospital Seoni"

13. It is well recognized that intention may not always be proved by hard evidence and instead may be required to be inferred from the facts and circumstances of the case. If the doctor who conducted the examination posits the possibility of throttling, then under what circumstances, without rigorous cross-examination, could it be concluded that the injuries sustained were simple? That apart, even if the injuries were taken as simple, the extent of the injuries, as observed supra in ***Hari Mohan Mondal***, are not relevant, if the intent is present. We are not in agreement with the learned Courts below that intent was absent, as the Doctor's report itself records throttling to be reasonably suspected.

14. The third criterion as in ***Kashirao*** (supra) could also arguably be met. Whether or not it is met, is a matter of determination at trial. The question of intention to kill or the knowledge of death in terms of Section 307, IPC is a question of fact and not one of law.

15. This Court's scope of interference under Article 136 of the Constitution of India is well established. Reference made be made to ***Mathura Prashad*** v. ***State of M.P.***[7]**.** It was held as below:

> "**9.** This Court in *Balak Ram* v. *State of U.P.* [(1975) 3 SCC 219, 227 : 1974 SCC (Cri) 837] held that the powers of the Supreme Court under Article 136 of the Constitution are wide but in criminal appeals, this Court does not interfere with the concurrent findings of fact save in exceptional circumstances. The scope of interference by this Court under Article 136 of the Constitution of India in a case of concurrent findings of fact arose in *Arunachalam* v. *P.S.R. Sadhananthan* [(1979) 2 SCC 297 : 1979 SCC (Cri) 454] wherein this Court has held that:
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> > "Article 136 of the Constitution of India invests the Supreme Court with a plentitude of plenary appellate power over all Courts and Tribunals in India. The power is plenary in the sense that there are no words under Article 136 itself qualifying that power. But, the very nature of the power has led the Court to set limits to itself within which to exercise such power…"

In recognition of these self-imposed, long-standing, and justified limitations, interference is to be made, more so, when a Court, in arriving at its findings has acted perversely or otherwise improperly. [See: ***State of Madras*** v. ***A. Vaidyanatha Iyer***][8]. This has been the consistently adopted position till date. [See: ***Shahaja alias Shahajan Ismail Mohd. Shaikh*** v. ***State of Maharashtra***][9]

16. In view of the above discussion, given that the minor nature of injuries is not sufficient reason to not frame a charge under Section 307 IPC, as per the law laid down by this Court, the judgment impugned, passed in Criminal Revision

[7] 1992 Supp (1) SCC 406
[8] AIR 1958 SC 61
[9] 2022 SCC OnLine SC 883

No. 3125 of 2021 dated 23rd November, 2023, is set aside. Accordingly, the appeal is allowed. The concerned Trial Court is directed to have the Respondents stand trial for all the offences for which charges have been framed, as also Section 307. The trial shall proceed on its own merits, as per law, uninfluenced by the observations hereinabove which were for the limited purpose of testing the propriety of the impugned order. The same shall be expedited.

17. Registry to transmit a copy of this judgment to the Registrar General, High Court of Madhya Pradesh (Principal Bench at Jabalpur) who will then transmit it to the Concerned Court.

Pending application(s), if any, shall stand disposed of.

**…….J.**
**(C.T. RAVIKUMAR)**

**…….J.**
**(SANJAY KAROL)**

**New Delhi;**
**September 25, 2024.**