

Anjani Kumar Chaudhary

v.

State of Bihar & Another

(Supreme Court Of India)

HON'BLE MR. JUSTICE K.S. RADHAKRISHNAN HON'BLE MR. JUSTICE
VIKRAMAJIT SEN

Criminal Appeal No. 926 Of 2014 (Arising Out Of Special Leave Petition (Cri.)
No. 4747 Of 2012 | 23-04-2014

K.S. Radhakrishnan, J.

1. Leave granted.

2. Appellant, a practicing advocate in the Patna High Court, had gone to his village at Nehra, in the district of Darbhanga for celebrating Holi festival. On 15-3-2006 at about 10.00 PM while he was sitting in the house of one Ranjit Chaudhary along with Gautam Chaudhary and others, few persons by name Ramesh Sahni, Dinesh Sahni and others, came there and demanded Rs.1,000/- as Rangdari for meeting Holi expenses. Appellant gave Rs.200/- but wanted the money to be returned which was not to the likings of the persons who came there. Twenty minutes thereafter, 2nd Respondent (1st accused) Sunil Sahni along with about 12 other persons came with Lathi, iron rod, Fursha, Talbar etc. and abused the appellant and dragged him out of the house and brutally assaulted him with the weapons and left the place after inflicting several injuries on the appellant.

3. The appellant was later admitted to the hospital at Sakri and his statement was recorded and a criminal case No. 46 of 2006 was registered under Ss. 147, 148, 504, 323, 384, 324, 307 and 341 I.P.C. against seven named persons and 10-15 unknown persons, vide FIR dated 16-3-2006. The police started investigation and, after completing the investigation, the police submitted its final report under S.173 Cr.P.C. and the accused persons were sent for trial.

4. The trial Court took cognizance of the offences on 9-10-2007 and the case was committed to the Sessions Court.

5. 1st accused then filed an application for quashing the charge-sheet vide Criminal Misc. No. 13987 of 2007 before the Patna High Court. Later, that application was withdrawn seeking liberty to agitate the grievances before the trial Court at the time of framing of charges, which was allowed by the High Court by its order dated 5-11-2007. 1st accused also filed an application under Ss. 227/228 Cr.P.C. on 15-1-2008 before the Additional Sessions Judge, Darbhanga stating that no offence under S.307 or 386 I.P.C. was made out and hence prayed for the discharge and that the case be returned to the Chief Judicial Magistrate after framing charge under rest of the provisions.

6. The Sessions Court, after hearing both the parties, came to the conclusion that no charge can be framed under Ss. 307, 386 I.P.C. against the accused, except the rest of the charges levelled against him. The Sessions Court vide its order dated 27-5-2008 transferred the case to the Chief Judicial Magistrate for trial. Aggrieved by the said order, the appellant herein preferred Criminal Revision No. 676 of 2008 before the High Court, which was dismissed on 23-2-2012, against which this appeal by special leave has been preferred.

7. Shri Santosh Kumar, learned counsel appearing for the appellant, submitted that the Courts below were not justified in holding that no offence under Ss. 307/308 I.P.C. was made out. Learned counsel pointed out that the Courts below have failed to appreciate the statement of the witnesses at paragraphs 5, 6, 17 and 19 of the case diary, which would clearly indicate that the 1st accused along with other accused persons inflicted blows by sharp weapons and had thus acted with the intention and knowledge that the same would cause the death of the appellant. Learned counsel also pointed out that the Courts below have failed to appreciate that when about 10-15 persons attacked an unarmed person with sharp weapons, one has to presume that the intention was to cause death and the injuries sustained by the appellant would also indicate that his life was in danger. Learned counsel submitted that, in order to sustain a charge under S.307 I.P.C., it is not essential that bodily injury capable of causing death should have been inflicted and what the Court has to consider is whether the act, irrespective of the result, was done with the intention or knowledge that death would be caused. In support of his contention, learned counsel placed reliance

on the judgment of this Court in State of Madhya Pradesh v. Mohan and Others (2013) 14 SCC 116 : (2013 AIR SCW 5150).

8. Shri A. K. Yadav, learned counsel appearing for the 2nd respondent (1st accused), submitted that there is no reason to interfere with the order of the Sessions Judge, which is affirmed by the High Court. Learned counsel pointed out that the complainant has not brought on record sufficient materials for framing charge under S.307 I.P.C. against the 1st accused and neither the informant, nor any of the witnesses have stated that the 1st accused had assaulted the appellant with an intention or knowledge to commit the murder, or had he given any blow on his person.

9. The Sessions Court as well as the High Court, after perusing the statement of the witnesses and the first information report, took the view that what emerges from the statement of witnesses was that, initially, the intention was to teach a lesson for non-payment of Rs.1000/- and whatever followed by way of subsequent action, could not be held to be an act done with the intention to kill. Further, the Courts below have taken the view that there could not be an intention to kill in the background of the incident, since the appellant did not pay the amount demanded on the occasion of Holi festival.

10. We can, at this stage, proceed only on the basis of the statement recorded in the FIR as well as on the statements of the witnesses recorded in the case diary to find out whether they satisfy the ingredients of S.307 I.P.C.. The scope of S. 307 I.P.C. has elaborately been dealt with by this Court in Mohan's case (AIR 2013 C 3521) : (2013 AIR SCW 5150) (supra), wherein this Court has taken the view that if anybody does any act with intention or knowledge that by his act he might cause death and hurt is caused, that is sufficient to attract S. 307 I.P.C.. Further, this Court has also taken the view that, in order to attract S. 307 I.P.C., the injury need not be on the vital part of the body.

11. We notice from the FIR and the statements given by various witnesses that, on the eve of Holi, the appellant was sitting at the residence of one Ranjit Chaudhary and, at that time, few persons came and demanded Rs.1,000/- for meeting Holi expenses but the appellant gave only Rs.200/-. Following that, about 12 persons, including the 1st accused, came there armed with Lathi, iron

rod, Farsa, Talwar etc. and attacked the appellant and dragged him out of the house and gave blows and he fell down and sustained injuries. The relevant portion of the FIR reads as follows:

“Along with 10 to 12 unknown persons after having armed with Lathi, Iron rod, fursha and Talbar (both Sharp cutting weapon) came there and soon after arrival they told Advocate SHALA we shall force you to leave your profession of Advocacy and they dragged me out from house and brutally assaulted with Lathi, rod and fursha and gave farsa blow over my head but I could be saved anyhow and got injury over right ear and over backside of throat and over the left hand as result of which I sustained injury on my person and fell down. Even then they continued assaulting me and threatened you did not pay today Rs.1,000/- as demanded by us you will be killed. Sunil Sahni told neither you will be alive nor will go to High Court for practicing there. Sometime after some villagers and my associates namely Anil Choudhary s/o Late Narendra Choudhary, Baiju Kant Choudhary s/o Hira Kant Choudhary, Mithilesh Choudhary s/o Satish Kumar Choudhary and several others came there and saved me. They surrounded my house. Thereafter, my associates got me admitted at Sakari Hospital.”

(Emphasis added)

12. The nature of injuries noticed on the body of the appellant are as follows:

“1. Incised wound over Rt temporal region of scalp just at the base of Rt ear (1½” x ½” x ¼”)

2. Incised wound over Rt side of occipital region of scalp (1¼” x ½” x 1/6”)

3. Incised wound over Lt side of occipital region of scalp (2” x ½” x ¼”)

4. Pain, swelling, scattered abrasions and scattered lacerated wounds over Lt. forearm on dorsal side (4” x 2”).

Nature of injury: Inj. No. (1), (2) & (3) simple in nature caused by sharp cutting weapon Inj. No. (4) simple in nature caused by hard blunt substance.

Age of injury: Within 24 ms

M.I. An old healed wound scar mark over upper part of chest is middle.”

13. The recorded statement of Ranjeet Choudhary reads as follows:

“..... Ramesh Sahni and Dinesh Sahni came there and asked the interment that Sunil Sahni has demanded Rs.1000/- (one thousand) as Rangdari for meeting Holi expenses Wakil Saheb (the informant) after making them convinced gave Rs.200/- and got them return but while returning they started whispering Wakil Saheb this is not proper way you ought to have been given entire amount and soon after twenty minutes accused Sunil Sahni along with Ramesh Sahni, Dinesh Sahni, Deepak Sahni, Mohan Sahni, Buchchu Sahni after having variously armed with Farsa, rod, Talwar and lathi came there and just after their arrival Sunil Sahni ordered his associates “AJ WAKILWA KO WAKALAT CHHURADO” saying this Sunil Sahni gave Farsa blow over the head of the interment with killing intention which inflicted near the rig hear of the informant and Mohan Sahni with intent to kill him gave Talwar blow over the throat of the informant but the informant could be saved and how and proceeded ahead but got injury over throat and started bleeding. Deepak Sahni having armed iron road assaulted the informant with rod which inflicted injury over the left wrist of the informant and other accused person namely, Ramesh Sahni, Dinesh Sahni, Buchi Sahni assaulted with lathi, feets and slaps other accused person not named in FIR, namely, Asharni Sahni, Lakshmi Sahni, Santosh Sahni insulted and abused the informant with intent to provoke breach of the peace and in the mean time persons residing in the vicinity came there and seeing them accused persons fled away.”

14. The relative portion of the statement of FIR witness Ranjit Chaudhary reads as follows:

“.....Ramesh Sahni and Dinesh Sahni came there and asked the interment that Sunil Sahni has demanded Rs.1000/- (one thousand) as Rangdari for meeting Holi expenses. Wakil Saheb (the informant) after making them convinced gave Rs.200/- and got them return but while returning they started whispering Wakil Saheb this is not proper way you ought to have been given entire amount and soon after twenty minutes accused Sunil Sahni along with Ramesh Sahni, Dinesh Sahni, Deepak Sahni, Mohan Sahni, Buchchu Sahni after having variously armed with farsa, rod, Talwar and lathi came there and just after their arrival Sunil Sahni ordered his associates “AJ AAKILWA KO WAKALAT CHHURADO” saying this Sunil Sahni gave Farsa blow over the head of the interment with killing intention which inflicted near the rig hear of the informant and Mohan Sahni with intent to kill him gave Talwar blow over the throat of the informant but the informant could be saved any how and proceeded ahead but got injury over throat and started bleeding. Deepak Sahni having armed with iron rod assaulted the informant with rod which inflicted injury over the left wrist of the informant and other accused person namely Ramesh Sahni, Dinesh Sahni, Buchi Sahni assaulted with lathi, feets and slaps other accused person not named in F.I.R. namely Asharni Sahni, Lakshmi Sahni, Santosh Sahni insulted and abused the informant with intent to provoke breach of the peace and in the mean time persons residing in the vicinity came there and seeing them accused persons fled away.”

15. The relative portion of the statement of FIR witness Gautam Chaudhary reads as follows:

“.....Soon after, Sunil Sahni along with Ramesh Sahni, Deepak Sahni, Mohan Sahni and Bachu Sahni after variously armed with farsa, Talwar, Iron road, Lathi, paipa (small size of Lathi) came there and Sunil Sahni soon after his arrival told “AAJ WAKILVA KO SABAK SIKHA DENA HAI” (today we have to teach lesson to the Advocate) “SHALA PAISA NAHI DIYA HAI” stating this he having armed farsa, gave farsa blow intent to kill him over his head to which the informant wanted to save him but the said farsa blow inflicted near his right ear and Mohan Sahni gave Talwar blow over the throat of the informant which resulted injury over his throat and the informant fell down and even then Deepak Sahni having Iron road in his hand assaulted the informant

with Iron rod which inflicted injury over the left wrist of the informant and other accused persons Ramesh Sahni, Dinesh Sahni and Shunbhu Sahni assaulted with Lathi, feet and slaps in the mean time. Asharn Sahni, Laxmi Sahni, Santosh Sahni, Jagdish Sahni and four to five unknown persons came there and abused the informant with intent to provoke breach of the peace and they stated to teach lessons to the Advocate who is Partaking much.”

16. Statements of the witnesses Baiju and Manoj Chaudhary are also in the same lines. What is discernible from the above statements is that 1st accused and others, while committing the alleged offence, had exhorted that they would kill the appellant if the money was not paid. Open announcement by the accused and others that the appellant would not be alive to practice in the High Court, would prima facie indicate that the intention of the accused was, what he had spoken, followed by the infliction of injuries. Further, when several persons attack an unarmed person with deadly weapons, it is reasonable to presume that they had knowledge or intention that such an attack would result in death. In the instant case, as per the statements, the weapons used were Lathi, rod, Farsa, Talwar etc. and when we look at the nature of injuries, it is clear that the injuries were caused by using sharp cutting weapons and also with hard blunt substance. Injuries were inflicted on the right temporal region of scalp at the base of the right ear, right side of occipital region of scalp, left side of occipital region of scalp etc. Open declaration by the accused that a person would be killed, indicates his intention and, as held by this Court in *Vasant Vithu Jadhav v. State of Maharashtra* (2004) 9 SCC 31 : (AIR 2004 SC 267) : (2004 AIR SCW 1523), the question as to whether there was intention to kill or knowledge that death will be caused is a question of fact and would depend on the facts of a given case which has to be attributed on evidence by the trial court. Above facts would indicate that the ingredients of S. 307 I.P.C. are made out.

17. We make it clear that this is only a prima facie view to decide as to whether the FIR and the statements of witnesses contain averments so as to charge-sheet the accused under S. 307 I.P.C. and ultimately it is for the trial court to decide whether the offence under S. 307 I.P.C. has been made during trial, which ought to be ultimately decided on the basis of evidence tendered before the criminal Court.

18. In such circumstances of the case, we are inclined to allow the appeal and set aside the judgment of the Sessions Court, which was affirmed by the High Court. Ordered accordingly.

19. Ordered accordingly.