IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

ITANAGAR PERMANENT BENCH
(NAHARLAGUN)

Crl. Appeal (J) 02 (AP)/2018

Shri Padmeswar Sonowal, S/o Late Bapi Ram Sonowal, Permanent resident of Vill.-Tari Majgaon, P/o & P/s- Jonai, District- Dhemaji (Assam), presently lodging at District Jail, Tezu, Lohit District (Arunachal Pradesh).

…APPELLANT

-versus-

The State of Arunachal Pradesh, represented by the Public Prosecutor.

… RESPONDENT

Advocates for the petitioners : Shri R. Saikia, learned Amicus Curiae.

Advocates for the respondents: Shri J. Tsering, learned Public Prosecutor, A.P.

:::BEFORE:::
HON'BLE MR. JUSTICE KALYAN RAI SURANA
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Date of hearing : 24.09.2019
Date of Judgment & Order : 24.09.2019

JUDGMENT AND ORDER(CAV)

(S. K. Medhi, J.)

1. The present appeal has been preferred from Jail against the judgment and order dated 17.06.2016, passed by the learned District & Sessions Judge, East Sessions Division, Tezu in Sessions Case No. 13 (LDV)/2014. By the impugned judgment, the accused appellant has been convicted under Sections 326/307 of the Indian Penal Code and sentenced to undergo R.I. for 5 (five)

years with a fine of Rs. 5,000/- (Rupees five thousand) only for the offence under Section 326 of the Indian Penal Code and R.I. for 7 (seven) years with a fine of Rs. 10,000/- (Rupees ten thousand) only for the offence under Section 307 of the Indian Penal Code.

2. Before coming to the impugned judgment, it would be convenient to state the facts of the case in brief.

3. An Ejahar was lodged by one Shri Deep Gurung (P.W.2) before the Roing Police Station on 02.06.2013 stating, *inter alia*, that on the same day, at about 9.00 p.m., the accused appellant, who was a casual labour of the P.H.E. Department, had come drunk and started throwing stones on the tin roof of the house, for which, the informant had come out and scolded him. After sometime, while the informant was sitting in the house of Shri Prakash Das (P.W.1), the accused appellant had suddenly attacked him with a *dao* inflicting severe injuries with the intention to kill, but somehow, the neighbours came and saved him. On the basis of the written Ejahar, Roing P.S. Case No. 43/2013 under Sections 307/326 of the Indian Penal Code was registered and the investigation had started. After completion of the investigation, the Charge-Sheet was submitted against the accused appellant and on denial of the charge, the trial begun.

4. Shri Prakash Das, in whose house the incident had happened, had deposed as P.W. 1. He categorically stated that he was all along present during the incident and saw the accused appellant hitting the victim with a *dao* twice, first at his right cheek and second on the left shoulder. He further deposed that the people who had gathered had caught the accused appellant with *dao* and taken to the Roing Police Station while the injured was taken to the hospital. Interestingly, no cross-examination was done to the said witness.

5. The injured, Shri Deep Gurung, had deposed as P.W.2. His version is consistent with the FIR which he had lodged and had categorically stated about the assault with *dao* by the accused appellant. The said P.W.2 was also not cross-examined.

6. P.W.3, Shri Rinku Thapa, was also present at the place of occurrence and was an eye witness to the incident. He had deposed of witnessing the assault on the victim by the accused appellant with a *dao* and this witness was also not cross-examined.

7. Smt. Indra Maya Gurung, wife of the injured, had deposed as P.W.4. The said P.W.4 was also an eye witness and saw the assault made to her husband. As in case of the other P.Ws, P.W.4 was also not cross-examined.

8. The Doctor, who attended the informant, was examined as P.W.5, who deposed of finding 4 (four) cut injuries on the body including on the left cheek and left shoulder. He opined that the injury on the left cheek was grievous and the rest were simple which might have been caused by sharp cutting weapon like *dao*. In cross-examination, the Doctor, however, deposed that he had not seen the weapon of offence. He further denied the suggestion that the injuries will not cause the immediate death of the victim.

9. P.W.6, Shri Sanu Sarki, is also an eye witness, who was present in the place of occurrence as he was repairing an electric light in the house of Shri Prakash Das (P.W.1).

10. P.W.7 is the Investigating Officer who had conducted the investigation. He gave all details of the investigation done and the FIR, Charge-Sheet, Sketch Map, Seizure List etc. were duly proved by him.

11. After completion of the examination of the P.Ws, the appellant accused was given a scope to explain as prescribed under Section 313 of the Cr.P.C. Interestingly, in reply to question No. 10, he admitted of beating Deep Gurung with the explanation that since he was badly drunked, he had hit the victim thinking the *dao* to be a stick. Further, against question No. 21, the accused appellant had accepted that he had attacked him from the front. Against question No. 27, he reiterated of not attacking from the back and that he had hit him thinking the *dao* to be a stick. However, no defence witness was produced in the trial.

12. The learned Sessions Judge, after consideration of the materials on record came to a conclusion that the accused appellant was guilty of the offence and accordingly, convicted him and imposed the punishment as stated above.

13. We have heard Shri R. Saikia, learned Amicus Curiae for the accused appellant and Shri J. Tsering, learned Additional Public Prosecutor, Arunachal Pradesh, for the State.

14. The records, requisitioned by this Court, have also been carefully perused.

15. Shri Saikia, learned Amicus Curiae, has submitted that there are inconsistencies in the versions given by different witnesses as well as the FIR. While in the FIR, the initial scolding was said to be done by the victim (P.W.2) himself and the same version was represented by the said witness P.W.2, there is a difference in the version of P.W.1, Shri Prakash Das, who said that the scolding was by the wife of the victim. Secondly, it is submitted that in absence of any intention to commit the offence, Section 307 of the IPC could not be attracted. Shri Saikia, learned Amicus Curiae, further submits that though the weapon in this case, which was a *dao*, was recovered and seized, no serological test was done or forensic opinion was taken either for any blood stains of the victim or to connect the accused appellant to the commission of the crime.

16. In support of his submission, the learned Amicus Curiae, has placed reliance upon the following decisions of the Hon'ble Supreme Court.

(i) *Hari Kishan & State of Haryana Vs. Sukhbir Singh,* reported in *AIR 1988 SC 2127.*

(ii) *Jai Narain Vs. State of Bihar,* reported in *AIR 1972 SC 1764.*

17. The relevant extracted of paragraph 7 of the case of *Hari Kishan (supra),* is quoted herein below.

> *"….. The intention or knowledge of the accused must be such as is necessary (to) constitute murder. Without this ingredient being established, there can be no offence of "attempt to murder". Under S. 307 the intention precedes the act attributed to accused. Therefore, the intention is to be gathered from all circumstances, and not merely from the consequences that ensue. The nature of the weapon used, manner in which it is used, motive for the crime, severity of the blow, the part of the body where the injury is inflicted are some of the factors that may be taken into consideration to determine the intention.*
>
> *In this case, two parties in the course of a fight inflicted on each other injuries both serious and minor. The accused though armed with ballam never used the sharp edge of it. They used only the blunt side of it despite they being attacked by the other side. They suffered injuries but were not provoked or tempted to use the cutting edge of the weapon. It is very very significant. It seems to us that they had no intention to commit murder. They had no motive either. The fight as the High Court has observed, might have been a sudden flare up. Where the fight is accidental owing to a sudden*

quarrel, the conviction under S. 307 is generally not called for. We, therefore, see no reason to disturb the acquittal of accused under S. 307, IPC."

18. In paragraph 11 of the case of *Jai Narain (supra),* the Hon'ble Supreme Court has stated as follows.

> *"11. Taking the case of appellant Suraj Mishra, we find that he has been convicted under Section 307 IPC and sentenced to 5 years rigorous imprisonment. According to the evidence Suraj was responsible for the chest injury which is described by Dr. Mishra P.W. 6 as a penetrating wound 11/2" x 1/2 x chest wall deep (wound not probed) on the side of the right side of the chest. Margins were clean out. Suraj, according to the evidence, had thrust a bhala into the chest when Shyamdutt had fallen as a result of the blow given by Mandeo with the Farsa on his head. According to the Doctor the wound in the chest was of a grievous nature as the patient developed surgical emphysema on the right side of the chest. There was profuse bleeding and, according to the Medical Officer the condition of the patient at the time of the admission was low and serious and the injury was dangerous to life. Out of the four injuries which the Medical Officer noted, this injury was of a grievous nature while the other three injuries were simple in nature. Where four or five persons attack a man with deadly weapons it may well be presumed that the intention is to cause death In the present case however, three injuries are of simple nature though deadly weapons were used and the fourth injury caused by Suraj, though endangering life could not be deemed to be an injury which would have necessarily caused death but for timely medical aid. The benefit of doubt must, therefore, be given to Suraj with regard to the injury intended to be caused and, in our opinion, the offence is not one under Section 307 IPC but Section 326 IPC is set aside and we convict him under Section 326-IPC. His sentence of 5 years rigorous imprisonment will have to be reduced accordingly to 3 years rigorous imprisonment."*

19. Per contra, the learned Additional Public Prosecutor, Arunachal Pradesh, Shri J. Tsering, submits that the contention of the learned Amicus Curiae do not deserve consideration inasmuch as, the present is a case of direct evidence through eye witnesses and not a case of circumstantial evidence. In the instant case, there are 4 (four) numbers of eye witnesses and the star eye witness is the victim himself who was attacked from the front by the accused appellant inside the house that too in a sufficient light. As regards the ground of intention, it is submitted that **knowledge** can be a ground for invoking Section 307 of the IPC. Countering the submission of lack of serological or forensic test, it is submitted that the present being a case of direct evidence, such requirement will not arise in the present case.

20. This Court finds force in the submission made by the learned Additional Public Prosecutor, Arunachal Pradesh, that the present case being a case of

direct evidence, wherein, there are 4 (four) numbers of eye witnesses including the victim, who is a star witness, the requirement of other formalities which would have been there in a case of circumstantial evidence becomes redundant. This Court is also conscious about the medical evidence which is consistent with the ocular evidence. Further, what is of significant importance is that in the statement made under Section 313 of the Cr.P.C., the accused appellant has almost admitted his guilt. Though it is a established law that statements made under Section 313 of the Cr.P.C. cannot be the sole basis of conviction, in the instant case, the materials before the Court are such that the guilt of the accused appellant is fully established.

21. A bare reading of Section 307 of the IPC makes it clear that commission of the offence would be complete if the same is done either with intention or with **knowledge**. For ready reference, Section 307 of the IPC is quoted herein below.

> *"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 1[imprisonment for life], or to such punishment as is hereinbefore mentioned."*

22. The Hon'ble Supreme Court has also laid down the other aspects which are required to be taken into consideration, namely, nature of the weapon used, manner in which it was used, motive, severity of the blow, part of the body where the injury is inflicted. In the instant case, all the aforesaid factors are against the accused appellant and the present is not a case of a single blow.

23. In the case of *Jai Narain (supra),* one of the 4 (four) accused was given the benefit of doubt as in that case out of 4 (four) injuries, only one injury was grievous. Apparently, the facts of the said case are distinguishable from the case at hand.

24. By citing the case of *Raghunath Vs. State of Haryana & Anr.,* reported in *(2003) 1 SCC 398,* the learned Additional Public Prosecutor has contended that the benefit of doubt can be given to an accused appellant only when another reasonable view is possible to be taken from the facts and circumstances of the case which is in favour of the accused appellant which, however, is not available

in the instant case. For ready reference, paragraph 33 of the judgment is quoted herein below.

> *"**33.** In the facts and circumstances recited above, we are clearly of the view, that the prosecution has not come up with the true story. It has suppressed the facts. If that be the case, the whole prosecution story would stand on quicksand. The prosecution has failed to establish its case beyond reasonable doubts. It is now a well-settled principle of law that if two views are possible, the one in favour of the accused and the other adversely against it, the view favouring the accused must be accepted."*

25. In view of the aforesaid facts and circumstances, we are of the opinion that the impugned judgment does not call for any interference at our hands.

26. At this stage, the learned Amicus Curiae, by referring to the provision of Section 307 of the IPC, submits that the accused has been in Jail for the last more than 6 (six) years and taking into consideration is age, the sentence perhaps can be modified.

27. We have considered the aforesaid submission. Since the punishment prescribed is either imprisonment for life or imprisonment which may extend to 10 years, we deem it fit that while sustaining the conviction, the sentence may be confined to the period undergone. In view of the above, the accused appellant shall be released forthwith if not needed in connection with any other case. A copy of the order be communicated to the Superintendent of the concerned Jail for onward communication to the accused appellant and doing the needful in terms of this order.

28. Before parting, we place on record our appreciation for the assistance rendered by Shri R. Saikia, learned Amicus Curiae. He will be entitled to an honorarium of Rs. 7,500/- (Rupees seven thousand five hundred) only to be paid by the State Legal Services Authority within a reasonable time.

29. The appeal is, accordingly, disposed of.

JUDGE **JUDGE**

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