

Criminal Appeal

Present: **The Hon'ble Mr. Justice Ashim Kumar Banerjee**
And
The Hon'ble Mr. Justice Kishore Kumar Prasad

C.R.A. No.282 of 2003
Judgment on: April 12, 2010.

Dharam Chand Rajbhar @ Lalu
-VS-
State of West Bengal

POINTS:

REDUCTION OF SENTENCE: Accused found guilty and convicted by the learned Trial Court- Accused was aged about twenty one years at the time of incident and he was prosecuted for the offence after a period of about ten years –Whether his sentence can be reduced-Indian Penal Code, 1860 S.307.

FACTS:

The victim lodged a complaint with the police that he was inside working in his hotel when the appellant suddenly came to his hotel and shot him in the abdomen with a fire arm. He intimated the police about the threat made by the accused. The assailant fired from a close range. The Investigating Officer, carried out the investigation, arrested the accused and issued charge sheet. Learned Assistant Sessions Judge, held the accused guilty of the offence under Section 307 of the Indian Penal Code. Being aggrieved by the judgment and order of the Assistant Sessions Judge, the appellant filed the instant appeal.

HELD:

The appellant with intention to cause the death of PW-1 fired upon him and he committed offence punishable under Section 307 of Indian Penal Code and he was rightly found guilty and convicted by the learned Trial Court. Having regard to the facts and circumstances of the case as also the

facts that the appellant was aged about twenty one years at the time of incident and he was prosecuted for the offence after a period of about ten years, the Court thinks that it would meet the ends of justice if the substantive sentence is reduced to five years' rigorous imprisonment.

Paras-16 & 17

CASES CITED:

- 1) Merambhai Punjabhai Khachar & Ors Vs. State of Gujarat, 1997 Supreme Court Cases (Criminal) Page-1078
- 2) Ved Pal Vs. State of U.P, 1988 Supreme Court Cases (Criminal) Page-131.

For the Appellant : Mr. Kaushik Chatterjee

For the State : Mr. Amajit De

THE COURT:

1) One Suresh Prasad Mahato lodged a complaint with the police on April 20, 2000 to the effect that at about 9.15 a.m on the said date when he was running his hotel the appellant suddenly came to his hotel and shot his abdomen with a fire arm. Such incident was witnessed by Gopinath, his hotel staff and other neighbouring people, who chased the miscreant. Later on, he was taken to S.S.K.M Hospital for treatment. As per the written complaint, Lalu, the appellant used to visit his shop along with his companions to threaten him for last few days. Even on the night prior to the date of the incident Lalu threatened him that he would shoot him and finish him off. In the morning he opened his hotel at 8.00 a.m. At about 9.05 a.m he found two friends of Lalu roaming in front of his shop. The incident happened after about ten minutes.

2) Altogether 7 witnesses were examined including two Doctors who treated the victim. P.W 1, the victim himself, almost corroborated what he had stated in his complaint. He identified the accused

person on the dock. He was taken to Calcutta Hospital and thereafter shifted to S.S.K.M Hospital (P.G Hospital). According to him, "*less quantity of blood*" came out from the place of injury. He did not hand over the wearing apparels to the police. His shop was a small one having 4 ft. X 4 and ½ ft having a cabinet of 2 and ½ ft. According to him, on April 09, 2000 he intimated the police about the threat made by Lalu. He was inside the shop when he sustained the bullet injury. The assailant fired from a close range. He denied having stated to the Doctor that while walking he had sustained bullet injury.

3) P.W 2, Tarun Kumar Mahato, was an eyewitness. According to him, Lalu fired with a pistol from a close range and thereafter left the place leaving his slipper. He could not be apprehended despite a chase being made by the witness and others. He also deposed that there was no profuse bleeding. According to him, it was "**oozing**". Suresh was initially taken to Calcutta Hospital and thereafter shifted to P.G Hospital.

4) P.W 3, Gopinath Samanta, also corroborated Suresh and Tarun.

5) P.W 4, the Doctor operated Suresh. According to him, the injury was life threaten injury. The Doctor, however, opined that the bullet could not be extracted from the body. According to him, the nature of injury generally would cause profuse bleeding.

6) P.W 5, Taraknath Yadav, was a post occurrence witness.

7) P.W 6, Dr. Chinta Haran Sikdar, was an Emergency Medical Officer, who initially treated Suresh. He also deposed that Suresh had disclosed the name of the assailant as would be appearing from the bed head ticket prepared by him.

8) P.W 7, the Investigating Officer, carried out the investigation, arrested the accused and issued chargesheet.

9) Learned Assistant Sessions Judge, Alipur, on examination of the evidence on record held the accused guilty of the offence under Section 307 of the Indian Penal Code and sentenced him for ten years coupled with a fine of Rs. 1,000/- and in default, to suffer further rigorous imprisonment for one year.

10) Being aggrieved by the judgment and order of the Assistant Sessions Judge, 6th Court, Alipur on May 28, 2003 the appellant filed the instant appeal.

11) Mr. Kaushik Chatterjee, learned counsel, appearing for the appellant, contended as follows:-

i) The incident occurred during day time on a busy thorough fare. Even then no independent witness was produced to corroborate the complaint of the victim.

ii) The Doctor opined that the like injury would cause profuse bleeding as well as scar mark which was absent in the instant case.

iii) There had been inconsistency on the place of occurrence as the witnesses deposed that the incident occurred in the shop room of Suresh whereas the Doctor, PW-4 deposed that the incident occurred on the public thorough fare as told to him by Suresh.

iv) *The witnesses deposed that there was no profuse bleeding whereas the Investigating Officer stated that the witnesses had told him that the victim sustained severe bleeding injury.*

v) *No sketch map was prepared. No footprint was taken or that the slipper allegedly left by the accused was not seized.*

vi) *The blood stained earth or wearing apparel was not seized.*

vi) *There was no recovery of arm or bullet.*

12) Elaborating his argument, Mr. Chatterjee contended that from the evidence of the Doctor it was clear that had there been bullet injury there would have been profuse bleeding coupled with scar mark on the wound. The bullet could not be recovered. There was no scar mark on the wound. Accused as well as other witnesses consistently deposed that there was no profuse bleeding. Hence, at best, it could be a case of pellet injury and not bullet. Moreover, the prosecution miserably failed to seize and produce the weapon and as such the incident could not be proved beyond doubt. In support of his contention, Mr. Chatterjee relied on two decisions of the Apex Court in the case of *Merambhai Punjabhai Khachar & Ors. Vs. State of Gujarat*, reported in *1997 Supreme Court Cases (Criminal) Page-1078* and in the case of *Ved Pal Vs. State of U.P*, reported in *1988 Supreme Court Cases (Criminal) Page-131*.

13) Opposing the appeal, Mr. Amajit De, learned counsel, for the State, contended that the Doctor specifically mentioned about the bullet injury. Such injury was also proved by the bed head ticket. The motive was proved by the victim himself. Hence learned Judge was right in holding the accused guilty of the offence.

14) In so far as the question of the conviction of appellant is concerned, the point seriously pressed before us is that no offence under Section 307 of Indian Penal Code can be considered on the evidence to have been made out. We find no force in the aforesaid contention of the learned counsel appearing for the appellant.

15) Suresh Prasad Mahato (P.W. 1) was shot by the appellant from fairly close quarters. PW-1 remained hospitalized for the period from April 20, 2000 to June 30, 2000 i.e. more than two months for the injury sustained by him. From the evidence of Doctor M.L. Saha (PW-4) as well as from the medical papers it is evident that there was impaction of bullet inside serum on the left side of the abdomen and despite operation conducted by doctor on two occasions, the said bullet could not be extracted. That apart, according to Doctor M.L. Saha the injury sustained by the victim was life threatened injury.

16) In that view of the matter, we find that the appellant with intention to cause the death of PW-1 fired upon him and he committed offence punishable under Section 307 of Indian Penal Code and he was rightly found guilty and convicted by the learned Trial Court. We therefore, maintain the conviction of the appellant under Section 307 of Indian Penal Code.

17) But so far as the sentence is concerned, we think that having regard to the facts and circumstances of the case as also the facts that the appellant was aged about twenty one years at the time of incident and he was prosecuted for the offence after a period of about ten years, we think that it would meet the ends of justice if the substantive sentence is reduced to five years' rigorous imprisonment.

18) In the result, the appeal is allowed in part. The conviction of the appellant for the offence under Section 307 of Indian Penal Code and consequent sentence of fine with default stipulation as awarded by the learned Trial Court are hereby affirmed.

19) However, the term of consequent substantive sentence of rigorous imprisonment is reduced from ten years to five years.

20) Fine, if realised shall be paid to the injured Suresh Prasad Mahato towards compensation.

21) The appellant is on bail. His bail bond is cancelled. He is directed to surrender before the learned Trial Court forthwith for being committed to the custody for undergoing remaining part of the sentence.

22) Learned Trial Court is directed to issue modified jail warrant.

23) Let the lower Court records along with a copy of the judgment be sent down forthwith to the Court of the learned Trial Judge for information and necessary action.

24) Urgent Xerox certified copy of this judgment, if applied for, may be given to the parties upon compliance of all formalities.

Kishore Kumar Prasad, J:

25) I agree.

[ASHIM KUMAR BANERJEE,J.]

[KISHORE KUMAR PRASAD,J.]