
(2006) 08 P&H CK 0548

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Revision No. 1038 of 2006

Jasbir Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: Aug. 18, 2006

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 401
- Penal Code, 1860 (IPC) - Section 452

Citation: (2006) 4 RCR(Criminal) 902

Hon'ble Judges: Rajive Bhalla, J

Bench: Single Bench

Advocate: Gurcharan Dass, for the Appellant; B.S. Baath, A.A.G., for the Respondent

Final Decision: Dismissed

Judgement

Rajive Bhalla, J.

Prayer in this petition filed u/s 401 of the Cr.P.C. is for setting aside the order dated 14.3.2006 passed by the Additional Sessions Judge, Ludhiana, framing charges against the petitioner under Sections 452, 307, 34, 467 of the IPC.

2. Counsel for the petitioner contends that the learned trial Court erred in framing charges u/s 307 of the IPC. A perusal of the evidence collected by the prosecution and the allegations levelled in the FIR do not disclose the commission of an offence punishable u/s 307 of the IPC. It is further contended that as no injury was inflicted, no offence u/s 307 of the IPC was made out. It is further argued that in the absence of an injury suffered by the complainant the petitioner's act would be a mere attempt to commit an offence therefore, the learned trial Court erred in framing charges u/s 307 of the IPC against the petitioner. Reliance is placed upon a judgment titled as Sagayam v. State of Karnataka, 2000(2) RCR (Cri) 840.

3. Counsel for the State of Punjab, on the other hand, submits that the existence of an injury is not necessary for the commission of offence u/s 307 of the IPC. The nature of the offence u/s 307 of the IPC is governed not by the injury alone but by the intention of the assailant. The nature of the injury or the absence thereof is only a circumstance, for or against the commission of an offence u/s 307 of the IPC. The absence of an injury, cannot by itself be the sole circumstance, to hold that petitioner could not be charged for the commission of an offence u/s 307 of the IPC.

4. I have heard learned counsel for the parties and perused the paper book.

5. As per the evidence, collected by the prosecution, the petitioner picked up a sword and attempted to inflict a blow upon the complainant's head. At the opportune moment, the complainant bent down and the sword hit the ground. On the basis of the evidence collected by the prosecution, the learned trial Court held that there was sufficient material on record to frame charges against the petitioner u/s 307 of the IPC.

6. I express my inability to accept the contentions raised by counsel for the petitioner. The absence of an injury cannot be the sole circumstance to conclude that charges cannot be framed u/s 307 of the IPC.

7. Section 307 of the IPC titled as "Attempt to murder" reads as follows :-

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.

Illustration (d) to Section 307 reads thus :-

(d) A, intending to murder Z, by poison, purchases poison and mixes the same with food which remains in A's keeping. A has not yet committed the offence defined in this section. A places the food on Z's table or delivers it to Z's servants to place it on Z's table. A has committed the offence defined in this section.

7. Section 307 of IPC, requires the commission of an overt act with intention or knowledge that if his act had caused death it would amount to murder. The second part of Section 307 of IPC prescribes punishment, if hurt is caused.

8. Para 6 of the judgment relied upon by counsel for the petitioner namely *Sagayam v. State of Karnataka*, 2000 (2) RCR (Cri) 840, reads as follows :-

To justify conviction under this Section 307 IPC, it is not essential that bodily injury capable of causing death should have been inflicted. An attempt in order to be criminal need not be the penultimate act foreboding death. It is sufficient in law if there is present an intent coupled with some overt act in execution thereof, such act

being proximate to the crime intended and if the attempt has gone so far that it would have been complete but for the extraneous intervention which frustrated its consummation. There are different stages in a crime. First intention to commit it; second preparation to commit it; third, an attempt to commit it. If at the third stage, the attempt fails, the crime is not complete but law punishes for attempting the same. An attempt to commit crime must be distinguished from an intent to commit to or preparation of its commission.

9. Thus a bare reading of Section 307 of the IPC, leads to a singular conclusion namely that absence of an injury would not necessarily exonerate an accused of an offence u/s 307 of the IPC. This conclusion is further fortified by illustration (d) appended to Section 307 of the IPC and the relevant extract of the judgment namely *Sagayam v. State of Karnataka* (supra) reproduced hereinabove. The nature of the injury or the absence thereof is a mere circumstance for or against the commission of offence u/s 307 of the IPC. The absence of an injury, cannot by itself be the sole circumstance to hold that the petitioner could not be charged for the commission of an offence u/s 307 of the IPC. The nature of the offence u/s 307 of the IPC is governed not by the injury alone but by the intention of the assailant.

10. In view of what has been stated hereinabove, the impugned order does not suffer from any error of jurisdiction.

11. Consequently, the present petition is dismissed.

12. Nothing, stated herein, shall be construed to be an expression of opinion on the merits of the case.