

IN THE COURT OF SESSIONS JUDGE, YAVATMAL

Sessions Case No.131/2022
CNR NO.MHYA010021632022

State ..Vs.. Kunal Sharad Sapre

Order Below Exh.12
[Passed on 22nd day of June, 2023]

1. The present application is preferred by accused for discharge from the offence under Section-307 of the Indian Penal Code on the ground that applicant accused not attempted to commit murder of injured Harshwardhan as he sustained injury simple in nature, injured being advocate managed medical report, CT scan report not reflect injury on brain.
2. The prosecution objected application vide say at Exh.13 on the ground that the injury is caused to injured by iron pipe measuring 55 cm. in length, 11 cm. diameter which was recovered from the accused and injury is not necessary for constituting offence under Section-307 of Indian Penal Code.
3. Heard learned advocate Mr P. S. Choube for applicant accused and A.P.P. Mr Anilkumar S. Verma for prosecution at length.
4. On perusal of application, say of prosecution and after considering oral submissions of both side

advocates, the following points arise for consideration on which the court answer thereon with reasons as follows:

Sr. No.	Points	Findings
1.	Whether the applicant proves that the alleged incidence dt/- 14/11/2021 of assault to injured Harshwardhan at the hands of accused does not attract offence of attempt to commit murder punishable u/s.307 of the Indian Penal Code ?	:: Negative
2.	What order ?	:: As per final order.

REASONS

As to point No.1 :-

5. The applicant came with a case in the alleged incidence dated 14/11/2021 Section-307 of the Indian Penal Code is not attracted as the injury caused to the injured does not cause danger to the life of a person as injury is on right eye brow of size 2 x 1 x 0.5 cm. and injured being advocate, managed police, hospital and got applied Section-307 of the Indian Penal Code in the present crime. It is further case of applicant that injured being son of director of Hirachand Munot Hospital also managed opinion of CT scan of brain though there is no bleeding from mouth, nose or ear.

6. It is admitted position the injured sustained injury on right eye brow of size 2 x 1 x 0.5 cm. to injured Harshwardhan in assault dated 14/11/2021. It is also reflected from charge-sheet that the iron pipe alleged weapon of offence recovered by the police from the accused. Therefore, prima facie the alleged act cannot be said as there is no connection of applicant with alleged assault. It is also observed that in order to apply Section-307 of the Indian Penal Code, bodily injury even not required because the Section-307 of the Indian Penal Code having two parts and which is reproduced hereunder for ready reference :

Sec. 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 2[imprisonment for life], or to such punishment as is hereinbefore mentioned.

Attempts by life-convicts.—2[When any person offending under this section is under sentence of 2[imprisonment for life], he may, if hurt is caused, be punished with death.]

7. The first part suggests the punishment in absence of injury caused to the injured then the section is itself clear that injury even need not be cause to the injured

and section can attract on the basis of other facts like nature of weapon, part of body selected for attack. The prosecution relied on the ratio held in the case of ***Jage Ram and others Vs. State of Harayana, 2015 Legal Eagle (S.C.) 50***, wherein it was held by the Hon'ble Apex Court that –

“(B) Indian Penal Code, 1860 – Section 307- Attempt to Murder- Conviction- Justification of – To justify a conviction under Section 307 IPC, it is not essential that fatal injury capable of causing death should have been caused – Although the nature of injury actually caused may be assistance in coming to a finding as to the intention of the accused, such intention may also be adduced from other circumstances – The intention of the accused is to be gathered from the circumstances like the nature of the weapon used, words used by the accused at the time of the incident, motive of the accused, part of the body where the injury was caused and the nature of injury and severity of the blows given etc.”

8. The said ratio is applicable to the present case as intention of accused can be gathered from the weapon i.e. iron pipe and place of attack i.e. head which is vital part of the body.
9. The applicant also came with a case that the injured being advocate managed police and hospital, but the conclusion on these points requires evidence on merit therefore the said stand of accused cannot be considered at this stage.

10. It is well settled principle of law that in order to attract section of offence for framing charge prima facie case required to be made out by the prosecution. In the present case, the injured made allegation that accused attempted to commit his murder by way of assault by iron pipe on his head then the said facts are sufficient to frame the charge under Section 307 of the Indian Penal Code against the accused hence **Court answer point No.1 in negative.**

As to point No.2 :-

11. As the accused failed to prove the case for discharge for the offence punishable under Section-307 of the Indian Penal Code the application deserves for rejection in the interest of justice, hence order :

Order

- (i) The application of accused at Exh.12 for discharge from the offence punishable under Section-307 of the Indian Penal Code is hereby rejected.
- (ii) Accordingly, application is disposed off.

Dated :22/06/2023.

(S.V. Hande)
Sessions Judge, Yavatmal.
JO Code MH02237

