



**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 476 OF 2015

STATE OF HIMACHAL PRADESH

...APPELLANT(S)

VERSUS

SHAMSHER SINGH

...RESPONDENT(S)

J U D G M E N T

PANKAJ MITHAL, J.

1. Heard Shri Raj Kumar, learned counsel for the appellant and Ms. Asha Gopalan Nair, learned counsel for the respondent.
2. Under challenge in this criminal appeal preferred by the State of Himachal Pradesh is the judgment and order dated 14.07.2014 of the High Court whereby it has reversed the judgment and order of conviction passed by the trial court and had acquitted the accused-respondent from the offence under Section 307 of the India Penal Code¹ read with Section 27 of

¹ In short 'IPC'

the Arms Act, 1959 but has convicted him for commission of offence under Section 326 IPC. The consequential order dated 28.07.2014, imposing punishment of the term already undergone by the accused-respondent, is also under challenge.

- 3.** The accused-respondent is the sole accused who was found guilty for an offence under Section 307 IPC and Section 27 of the Arms Act, 1959. He was sentenced to undergo seven years of rigorous imprisonment under Section 307 with fine of Rs.20,000/-. In default of payment of fine, he was ordered to undergo simple imprisonment of one year. He was also punished for an offence under Section 27 of the Arms Act, 1959 with rigorous imprisonment of two years and a fine of Rs.5,000/- and in default of payment of fine to undergo simple imprisonment of three months. Both the sentences were ordered to run concurrently.
- 4.** On an appeal preferred by the accused-respondent, the aforesaid conviction has been set aside and he has been acquitted for the offence under Section 307 IPC and Section 27 of the Arms Act, 1959 but has been convicted for the offence

under Section 326 IPC and sentenced with imprisonment already undergone.

- 5.** The High Court in acquitting the accused-respondent held that for an offence under Section 307 IPC, the court was obliged to see if the act was done with the intention or knowledge so as to cause death and since the facts do not prove such intention or knowledge on part of the accused-respondent, there cannot be an offence for attempt to murder under Section 307 IPC. It also observed that the intention has to be gathered from the entire circumstances of the case such as nature of the weapon used, the manner in which it was used, severity of the blow or hurt, the part of the body where the injury was inflicted and so on and not merely from the end result.
- 6.** On the date of the incident i.e. 05.11.2010 which happened to be a day of Diwali festival, the accused-respondent was posted as Guard at Company Headquarter 2nd Indian Reserve Battalion in District Chamba, Himachal Pradesh. It appears that he was not satisfied with the quality of food served at the mess and, therefore, he had raised an objection regarding it, whereupon his colleagues advised him to wait for some time

since the incharge of the mess was out of station. However, the accused-respondent was in an aggressive mood and decided to settle scores with regard to the quality of food then and there. He finished his duties at about 9 p.m. and opened fire with his AK-47 rifle upon other constables. In the incident, Sanjeet Kumar (PW-2), Head Constable, suffered injuries in both his upper thighs. In that connection FIR No. 107 dated 06.11.2010 was lodged by him before the Police Station, Tissa, District Chamba, Himachal Pradesh. The injured Head Constable who had suffered bullet injuries was admitted in the hospital for treatment and remained there till 08.12.2010.

7. Upon completion of the investigation, a final report was submitted charging the accused-respondent for the offence under Section 307 IPC and Section 27 of the Arms Act, 1959. During the trial, prosecution examined as many as sixteen witnesses to prove the charges against the accused-respondent. The statement of the accused-respondent under Section 313 Code of Criminal Procedure² was also recorded wherein he stated that he has been falsely implicated.

² In short 'CrPC'

8. Admittedly, the accused-respondent on 05.11.2010 had performed his duty as a guard at the Company Headquarter, Tarela between 6 p.m. to 9 p.m. He was replaced by the Constable Ajeeb Kumar (PW-9) to perform duties from 9 p.m. to 12 midnight. At that time, the accused-respondent raised objection with regard to the quality of food served in the mess. Constable Sanjeet Kumar (PW-2) who was present with Head Constable Sarwan Kumar (PW-3) and Head Constable Satpal (PW-4) tried to pacify him but the accused-respondent was very annoyed and announced to settle things then and there. Since it was a Diwali day, some of the colleagues namely Constables Ashok Kumar and Vivek Garg (PW-7) were bursting crackers. The accused-respondent got further agitated with the bursting of the crackers. He asked them to stop and threatened that if they do not stop, he will fire. Constable Sanjeet Kumar (PW-2) after having dinner along with his colleagues went to urinate in the open, getting down from the stairs. On return, the accused-respondent followed them while climbing the stairs and abruptly opened fire with his AK-47 rifle. In the incident, Constable Sanjeet Kumar (PW-2) was hit and had sustained

injuries in his upper thighs. He was then taken to the dormitory. The accused-respondent, despite this, opened fire again but fortunately no one was hit the second time. He entered the dormitory with his AK-47 rifle but was overpowered by Head Constable Kulwant Kumar and Constable Ashok Kumar with the help of Constable Sunil Kumar and Constable Vivek Garg. He was nabbed and his AK-47 rifle was snatched.

- 9.** Seven empty cartridges were recovered lying at different places on the spot and were taken into possession. Dr. Ashish Kumar (PW-1) who had examined the injuries of Constable Sanjeet Kumar (PW-2) stated that he had suffered four injury wounds, two each on the right and left thighs. The injuries were grievous in nature but were not dangerous to life of the patient/injured. All the witnesses deposed against the accused-respondent and corroborated the incident and the involvement of the accused-respondent in the incident of firing resulting in gun shot injuries to the Constable Sanjeet Kumar (PW-2).
- 10.** The facts and circumstances reveal that the accused-respondent in rage had fired indiscriminately with his service weapon AK-47 knowing fully well that the bullets may cause

bodily injury to any of his colleagues, which further may in all probability cause death. The incident of firing appears to have been done with the intention of causing bodily injury to the colleagues, fully knowing that such injury would likely to cause death of the person to whom it may hit.

11. In a recent case of ***The State of Madhya Pradesh vs. Kanha @ Omprakash***³ before this Court, the facts were quite similar to the present case. In the said case, there was an altercation between the two parties and the accused with a firearm caused bleeding injuries on the right thigh of the injured. The accused was found guilty for the offence under Section 307 read with Section 324 of the IPC and was sentenced to undergo rigorous imprisonment of three years along with fine of Rs.1,000/-. The other co-accused persons were acquitted of all the charges levelled against them. However, in appeal, the High Court set aside the conviction and acquitted him under Section 307 but sentenced him to imprisonment of forty days already undergone for the offence under Section 324 IPC along with fine of Rs.3,000/-. The court relying upon the observation

³ (2019) 3 SCC 605

made in ***State of M.P. vs. Saleem***⁴, that the court in such cases has to see whether the act, irrespective of the result, was done with the intention or knowledge to cause death, held that the accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt. Section 307 uses the word 'hurt' and not grievous hurt or hurt of the nature which is dangerous or life threatening. Since the evidence establishes that the injuries were caused by firearm and the multiplicity of the wounds indicate that the accused fired more than once coupled with the fact that the hurt has been caused by the accused stands proved, the mere fact that the hurt, though, grievous but not dangerous to life, cannot be the basis to hold that Section 307 IPC is inapplicable.

- 12.** It may be emphasized that to attract Section 307 IPC, it is not necessary that the hurt should be grievous or of any particular degree. If hurt of any nature is caused and it is proved that there was intention or knowledge to cause death, Section 307 IPC would stand attracted.

⁴ (2005) 5 SCC 554

- 13.** In the case at hand, the accused-respondent fired from his service weapon AK-47 and since he was a constable in the army, he was well aware that gunshot from such a weapon, if hits anyone will certainly result in causing death. There is no denial of the fact that the injured had sustained four injuries, two each on both the upper thighs and they were of grievous nature. The injuries may not be life threatening, but it leaves no doubt that there was intention to cause death.
- 14.** The judgment of the High Court overlooks these crucial aspects in acquitting the accused-respondent from the offence under Section 307 IPC and Section 27 of the Arms Act, 1959.
- 15.** In our opinion, the judgment and orders of the High Court dated 14.07.2014 and 28.07.2014 cannot be sustained and are accordingly set aside, restoring the judgment and order of the Trial Court dated 20.03.2013. However, as no minimum sentence is prescribed under Section 307 Indian Penal Code, taking into consideration the fact that the accused respondent was in discipline force, the incident is of 2010 and that it had happened in a rage of anger, but with predetermined mind, in the interest of justice we reduce the punishment to that of

already undergone (about 1 year 5 months) in place of 7 years rigorous imprisonment.

16. The Criminal Appeal is allowed in part accordingly.

..... **J.**
(PANKAJ MITHAL)

..... **J.**
(S.V.N. BHATTI)

NEW DELHI;
APRIL 17, 2025.