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## CASE COMMENTARY ON AHSAN V. STATE OF UP (2018) 13 SCC 420

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### Introduction

This case is about various offences concerning **sections 34, 307, 316, 452 and 504** of the Indian Penal Code, 1860.

**Section 34**<sup>1228</sup> of the IPC describes acts done by several persons in furtherance of a common intention. Wherein when either of the persons who does the act in furtherance of a common intention would still be held liable, even if he/she was not the one who did it.

**Section 307**<sup>1229</sup> of the Indian Penal Code, 1860 describes the offence of attempt to murder. For an act to constitute an attempt to murder it needs to be backed by such intention and knowledge on the part of the offender such that his/her act would result in death or cause hurt to a person.

It is further mentioned that if, such an act results in the death of a person, then he/she is sentenced to a term of either description of 10 years or a fine. Whereas, in case of hurt caused the offender shall be liable for life imprisonment.

Moreover, if the offender is sentenced to life imprisonment, then he/she is to be sentenced to death penalty.

Further **section 316**<sup>1230</sup> of the Indian Penal Code, 1860 provides punishment for the offence of causing the death of an unborn child. According to the provision, if a person causes death, he/she would be guilty of culpable homicide and if he/she cause the death of any unborn child then that person shall be sentenced to imprisonment of 10 years and also a fine.

**Section 452**<sup>1231</sup> of the Indian Penal Code, states that any person committing house-trespass with the intention of causing hurt to any person or assaulting a person or wrongfully restraining any person or putting a person in fear of hurt, or assault, or wrongful restraint would be sentenced to a term of imprisonment of either description which may extend to 7 years and also a fine.

Lastly, **Section 504**<sup>1232</sup> of the IPC, describes the intentional act of a person, which includes insulting and giving provocation to that person, knowing it to result in breach of public peace, or to commit any other offence. Such a person shall be punishable with imprisonment of either description for a term which may extend to 2 years or with fine, or with both.

<sup>1228</sup> Pen. Code § 34

<sup>1229</sup> Pen. Code § 307

<sup>1230</sup> Pen. Code § 316

<sup>1231</sup> Pen.Code § 452

<sup>1232</sup> Pen.Code § 504

## Background

At around 7:30 p.m. Illiyas, after having a meal reached near his paternal uncle's house, Nassem. It is then that Illiyas heard noise coming out from the house. When he entered, he found Manshad, Kamil and Ahsan (the appellant), all from the same locality, armed with country-made pistols in their hands abusing his cousin Istekhar, Shahzad (son-in-law), and Ruksana his niece with filthy language and they fired using their pistols with the intention of killing them. The bullet which was fired by Manshad injured Istekhar. Whereas, Ruksana who was pregnant, was injured on her abdomen as a bullet hit her, due to the pistol fired by Kamil. Lastly the bullet fired by the appellant- Ahsan injured Shahzad in his head. All injured were in a critical state. Various spectators including Shamshad, Ikram, Illiyas and many more had filed a written report at the police station.

Based on the written report submitted by Illiyas at 8:45 p.m., the FIR was registered under **sections 307, 452 and 504 of the IPC** at Shamili Police Station, Muzaffarnagar. Accordingly, a cite plan was prepared and the statement of the witnesses was recorded under **section 160**<sup>1233</sup> of the Code of Criminal Procedure, 1973. The chargesheet was filed against Manshad and Ahsan for offences **under sections 452, 307, 316 and 504 of the IPC**.

However, during the trial proceedings, Kamil died and Manshad was declared as a 'juvenile' who was to be tried separately. And Ahsan was charged for offences under **section 452, 34, 307, 504, and 316 of the IPC**. The trial convicted the appellant under **section 452**<sup>1234</sup> according to which he has sentenced to 5 years of rigorous imprisonment and a fine of Rs 5000; in case of default of payment of fine, to further undergo imprisonment for 3 years. Moreover, under **section 307**<sup>1235</sup>, he was sentenced for life

imprisonment with a fine of Rs 10,000. And in case of any default in payment of fine, he had to further undergo simple imprisonment for 6 months. Additionally, as per **section 316**<sup>1236</sup> of the IPC, the appellant was sentenced to 10 years of rigorous imprisonment with a fine of Rs 5000 and in case of default in payment of the fine, then he had to further undergo simple imprisonment for 3 months. He was also sentenced to undergo 2 years of rigorous imprisonment with a fine of Rs 1000, and in case of default of payment of fine, then to further undergo simple imprisonment for one month. Moreover, the accused was also convicted under **section 34**<sup>1237</sup> of the IPC for committing the act as a result of their common intention (intention common to the 3 accused persons). He was also convicted for usage of filthy language which amounts to insult under **section 504**<sup>1238</sup> of IPC.

Aggrieved by the Judgement, the appellant filed for an appeal in High Court, however even the High Court upheld the judgement of conviction and sentence passed by the Trial Court.

Against the appeal, the appellant filed a Special Leave Petition in the Supreme Court. However, the Supreme Court dismissed the appeal.

## Analysis

As far as the decision of the Hon'ble Supreme Court is concerned, the Court has relied upon three different classes/ parts of the offence described under **Section 307**<sup>1239</sup> of the Indian Penal Code, 1860.

The first class of the offence prescribes punishment for a term of 10 years and a fine. The second class of the offence prescribes either imprisonment for life or punishment provided in the first part/class. The third class prescribes death penalty to a person who has already been sentenced to life imprisonment.

Moreover, in terms of the first part of **Section 307** of the IPC the punishment is prescribed to a

<sup>1233</sup> CrPc § 160

<sup>1234</sup> Supra at 5

<sup>1235</sup> Supra at 3

<sup>1236</sup> Supra at 4

<sup>1237</sup> Supra at 2

<sup>1238</sup> Supra at 6

<sup>1239</sup> Supra at 3

person who does the act with the required intention and knowledge in any circumstance and that act had resulted in death of a person.

However, the court was concerned with the first and second parts of the Section, and the Supreme Court stated that there was no error on the part of both the lower courts i.e., (the Trial court and High Court), in deciding the matter.

It is also to be considered that the facts of this case, fall under the second part of this Section as the gunshot injury inflicted on Shahjad was grievous in nature as the injury was caused in the head, which is a vital part of the body.

Additionally, the facts of the case also satisfied the first part of **Section 307**<sup>1240</sup> along with **section 34**<sup>1241</sup> which describes common intention of all the three accused namely Manshad, Kamil and Ahsan in attempting to murder the members of the family as each accused had targeted each member of the family in order to fulfil their common intention, as their act resulted in death of the unborn child of Ruksana and caused grievous injury to other two members of the family, even though they survived. Thereby the accused is rightly held guilty under **section 316**<sup>1242</sup>, even if he was not the one who directly committed the offence, i.e., would be held guilty in accordance with common intention established under **section 34**<sup>1243</sup> of the IPC. The accused is also rightly convicted under **section 307**<sup>1244</sup> for attempt of murder of the other two members as they had suffered grievous injury, one of them was injured in his head – a vital part of body.

The Supreme Court had relied on the case of **Sanjay v. State of U.P.**<sup>1245</sup> wherein the bench in this case had altered the conviction from the offence under **section 302**<sup>1246</sup> to **section 304 Part-I**<sup>1247</sup> of the IPC. Section 302 prescribes punishment for the offence of murder, where

the person who commits murder, is punished with death penalty, or life imprisonment or with fine. Whereas section 304 Part-I prescribes punishment for an act which is '*culpable homicide not amounting to murder*'. In accordance with the provision the person who commits such an act is liable for life imprisonment or a term of up to 10 years in jail, as well as a fine.

The court had relied upon the above case, to establish the fact that, the subject matter of the present case was very different from that of the cited case and thereby similar alteration of the conviction would not be applicable.

### **Conclusion**

A Special Leave Petition was filed in the Supreme Court, against the decision of the High Court. Prior to this an appeal was filed before the High Court at Allahabad by the appellant, aggrieved by the decisions of the trial court as the appellant was the sole accused, as one of the accused (Kamil) had died during the course of the trial court proceedings and the other accused (Manshad) was declared to be a juvenile, who was to be tried separately. It was submitted by the appellant that since he was the only remaining accused, he would not be guilty of such various offences, wherein though he had directly not committed the same he would still be guilty of common intention read with **sections 307, 316 and 452** of the IPC. The appellant had also challenged the quantum of punishment.

It can be concluded that in relation to the provisions under which the accused has been convicted by the trial court and High court was upheld by the Supreme Court. In accordance with the analysis of the aforementioned provisions, the Supreme Court and the other lower courts have not been erred in their judgement/decision. The Court is correct in holding the accused guilty of common intention, attempt to murder and attempt to cause death of the unborn child. However, he would not be guilty of provoking as there was no such provocation involved on the part of the

<sup>1240</sup> Supra at 3

<sup>1241</sup> Supra at 2

<sup>1242</sup> Supra at 4

<sup>1243</sup> Supra at 2

<sup>1244</sup> Supra at 3

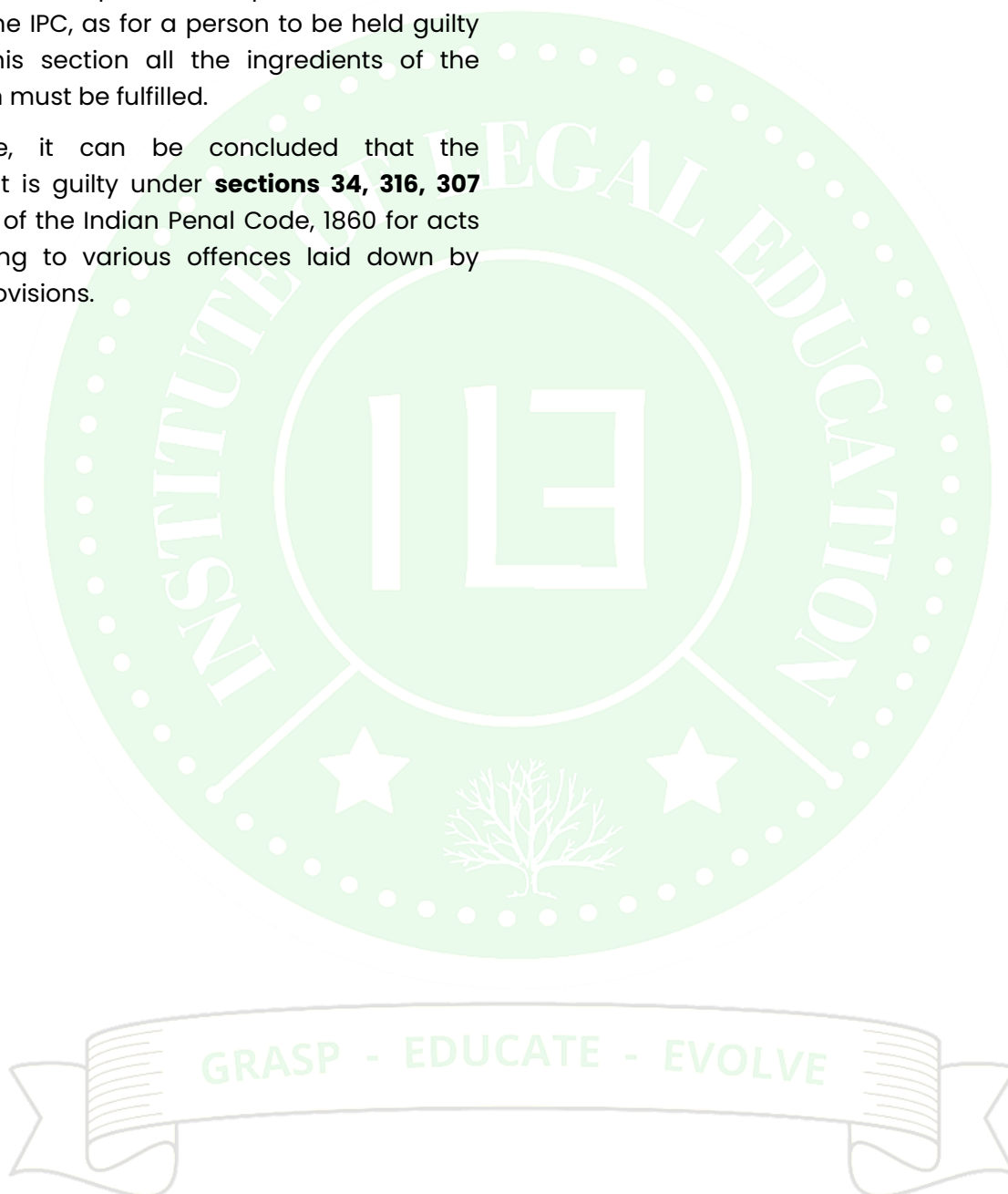
<sup>1245</sup> Sanjay v. State of U.P., 3 (2016) 3 SCC 62

<sup>1246</sup> Pen. Code § 302

<sup>1247</sup> Pen. Code § 304

accused, only filthy language was used by the accused towards the members of the family, which though amounts to insult, which is only one of the ingredients to constitute an offence under **section 504**<sup>1248</sup>. It is nowhere in relation to any breach of public peace, thereby the accused should be guilty of offences mentioned under all other provisions apart from **section 504** of the IPC, as for a person to be held guilty under this section all the ingredients of the provision must be fulfilled.

Therefore, it can be concluded that the appellant is guilty under **sections 34, 316, 307 and 452** of the Indian Penal Code, 1860 for acts amounting to various offences laid down by these provisions.



<sup>1248</sup> Supra at 6