



“बेटी बचाओ, बेटी पढ़ाओ”

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Section 307 INDIAN PENAL CODE

Introduction

Every criminal offence is composed of two essential elements predominantly, i.e. mens rea and actus reus. The former is the mental element that poses the intention to commit a crime and the latter is the actual physical act which is an offence. If a person is ever caught committing an offence, the very first concern that will be raised is “was his act of committing the offence accompanied by mala fide (bad faith) intention?”. Generally, the intention of committing an offence is determined once it has been committed, but it is noteworthy that the intention plays a very crucial role throughout the series of acts that ultimately results in the commission of the offence.

Explanation to Section 307 of IPC

Murder is one of the gravest offences and that's why even an attempt to cause murder is considered to be as serious as the actual offence of committing murder. Section 307 of IPC defines the offence of attempt to murder. It states that whoever does any act with the intention or knowledge, that such act would cause the death of any person, he would be guilty of murder, and shall be punished with imprisonment for a term up to ten years, and shall also be liable to fine. In

addition, this Section states that if hurt is caused to any person by such an act, the offender shall be liable either to imprisonment for life or to the punishment mentioned above.

Section 307 further states the penal provision for the offence of attempt to murder committed by the life-convicts. A life-convict is a person who is already undergoing the sentence of imprisonment for life in some other case. And if such a person commits an offence under Section 307 of IPC and causes hurt, he 'may' be punished with death, as prescribed under the Section.

In simpler words, the offence of attempt to murder is a failed attempt of committing an offence under Section 302 of IPC. Under Section 302, the offender intentionally accomplishes the task of causing the death of any person whereas, under Section 307, the offender fails at causing the death of any person and it becomes merely a failed attempt of murder, provided that the offender possesses the intention to kill or knowledge that the act might cause death.

Ingredients of Section 307 IPC

A person is said to commit an offence under this Section if his act fulfils the conditions constituting essential ingredients for the said offence. The ingredients of Section 307 are listed hereunder as:

Intention or knowledge to commit the offence

The foremost ingredient of Section 307 is the intention to kill. The doctrine of mens rea has its significant application to decide whether a person is guilty under this Section or not. As we know an attempt to murder does not result in the death of any person but there is an intention of killing the person in the first place. Also, the knowledge possessed by the offender at the time of committing the offence that his act or use of the weapon in such a way might kill the other person forms the major ingredient under this Section. Therefore, it is necessary for the Court to determine the intention or knowledge of the offender to hold him guilty under this Section.

Nature of the act

The nature of the act should be such that, if it went as planned by the offender and did not get hindered due to any interruption, it would have caused the death of the person targeted by the offender. In fact, often it becomes a deciding factor of determining the intention. The question of intention can be decided by looking upon the nature of the act, which weapon was used to kill, or how grave was it overall in those circumstances.

Execution of the act

As mentioned before, an offence under Section 307 is just a failed attempt of committing murder. This means that the performance or execution of the act of killing takes place but it does not succeed. The initial two stages are of forming intention and preparation of offence but the third stage is of execution which is punishable as it is a full-fledged attempt.

The act by the offender would cause death in its ordinary course

The act must be done with the knowledge that it is likely to cause the death of a person or the intention should be such that it would cause such a serious bodily injury that will inevitably lead to the death of a person.

Let us go through a few illustrations and apply the above-mentioned ingredients to understand the offence of attempt to murder more exhaustively.

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Nature of Section 307 IPC

The nature of the offence under this Section is similar to that of murder. A criminal offence is either cognizable or non-cognizable in nature. The offence under Section 307 of IPC is of cognizable nature. The police are bound by law to register and investigate an offence cognizable in nature. The offence of attempt to murder is a non-bailable crime which means that in a complaint filed under Section 307, the judge is empowered to refuse bail and remand a person to judicial or police custody. Also, an attempt to murder is a non-compoundable offence and the case cannot be withdrawn by the petitioner at his/her will.

Theories of attempt

In the given context, an attempt basically means an actual try to commit an offence that ultimately does not result in the accomplishment, as originally intended. The offence of attempt is nowhere defined but is classified in the category of inchoate crimes under the Indian Penal Code. An inchoate crime is the one that has no effect of attracting the guilt of a full-fledged crime but is an incomplete offence. If a person is attempting to commit any offence, the moment he attempts it, he becomes guilty of the inchoate offence i.e. attempt. It begins with a guilty intention but it is left unsuccessful in the end.

Section 511 of IPC deals with the punishment for attempting an offence. The punishment provided under section 511 is also half of the punishment awarded because the attempt is not as injurious as it had been after it would have been committed.

There are certain tests that the courts have used at times in order to determine when the attempt begins and till when the act remains at the stage of preparation. These are termed as the theories of attempt. Let us understand the theories of attempt briefly.

Factual impossibility test

According to the theory of the factual impossibility test, the offender will not get the defence of impossibility of accomplishing the offence by the means which he used to effectuate the crime. For example, if Mr. X intended to murder Mr. Y and he served a soup to person Mr. Y, which was poisoned with a substance that could not cause the death of Y due to its incapability, Mr. X will not be acquitted only by the reason that it was impractical to kill Mr. Y with that particular poison. This is because the intention to kill stands intact, no matter which means did Mr. X used to kill Mr. Y.

Theory of repentance test

Under this theory, the question of whether the stage of attempt took place or not is decided. The circumstances show that whether the acts of the accused would be completely harmless if he abandoned or changed his mind at the moment before attempting or if he has time to repent and whatever he has done till that particular time is not a criminal act. For example, if person A intends to kill a child who is walking on a deserted street, and person A drives his car towards speeding up the accelerator, but within a few seconds, he changes his mind and avoids hitting the child by tilting the steering away from the child to the other direction. This is the abandonment of the criminal act that he was going to commit.

The overt act or acts which have already been done by a person are completely harmless. It would only amount to preparation but if the overt act is such that if it went uninterrupted then it was only because of circumstances that disabled it to commence into the commission of the offence. It would amount to an attempt under the test of repentance.

Social danger test

As the name itself suggests, the social danger test is the only case of punishing for an attempt when no harm is done. When an offender has attempted an offence that has endangered the entire society as a whole, it is construed that the offender's moral guilt is the same as if he were successful in accomplishing the offence. The general apprehension in the mind of society is taken into consideration so as to evaluate whether an act would be classified as an attempt or not, and any act which may lead to social repercussion can be best looked at through the lens of the social danger test.

Equivocality test

This test emphasises mainly the intention of committing an offence. In order to prove a person guilty of an attempt, his clear and unequivocal intention must be determined. If a person performs any act by virtue of which a criminal offence would have been effectuated, the intention of such person has to be checked first and if it is found that intention was there to commit such an offence, only then the person will be held guilty for its attempt.

Difference between Section 307 IPC and Section 308 IPC

In Section 307, we have seen that the offence of attempt to murder has been addressed with its punishment. The subsequent Section that follows in the code is Section 308 and it deals with the offence of attempt to culpable homicide. According to Section 308, if a person does an act with the intention or knowledge and in those circumstances, if he caused the death of the other person, he would be guilty of culpable homicide.

For example, X shoots Y because he got provoked by the words of Z. If Y dies, then X will be held for culpable homicide. And If Y does not die then X will be held guilty for an attempt to commit culpable homicide under this Section.

Section 308 states the punishment for the said offence under which the offender is sentenced to imprisonment for a term of three years or fine or with both. Further, If the person has been injured in the attempt to commit culpable homicide, then the offender will be sentenced to imprisonment for a term up to seven years, or fine, or with both.

The gravity of committing the offence under Section 307 is more than that under Section 308 because under 307 the intention or knowledge is intensified to a greater extent coupled with the execution of the act of committing murder. But under Section 308, though the ingredients of intention or knowledge exist, it includes the element that such an act would likely to cause the death of any person, making the accused guilty of culpable homicide not amounting to murder.

Procedure for the trial of a case filed under Section 307 IPC

If an offence has been committed under Section 307, the procedure for its trial is not different from any other criminal offence listed in the IPC. Beginning right from filing an FIR under Section 307 to the final verdict of the Court, there are several stages of the procedure for the trial of an offence committed under this Section. Let us understand through the steps discussed below with respect to how a case filed under this Section proceeds in the Court.

First Information Report (FIR)

First Information Report (FIR) brings a criminal case into motion as it is the first step to initiate the proceeding of the trial. According to Section 154 of the Criminal Procedure Code (CrPC), an FIR can be registered in cognizable cases only. As we have seen that the attempt to murder is an offence of cognizable nature, its FIR has to be filed. Once the police arrest the accused, an FIR is supposed to be registered and the accused person is made to be produced before the Court of Magistrate within 24 hours of the arrest.

Investigation and the final report by police

Under Section 173 of the CrPC, the police is bound to file a final report in the concerned Court after completing the investigation of the case. This report is considered to be the final submission of the investigation undertaken by the police or investigation agency. If any case is filed under Section 307 of IPC, all the relevant evidence collected by the police will be included in the final report that substantially helps the Court to determine whether the ingredients of the offence have been fulfilled or not.

On the basis of the evidence collected by the investigation agency, the police file a charge sheet and produce it before the Judge, containing all the criminal charges framed against the accused.

Arguments before the court

On the date of hearing, the Judge hears the arguments put forth by both the parties. After analysing the arguments based on the charges framed by the parties, the court finally frames the charges to proceed with the trial under Section 307.

Plea of guilt

Section 241 of CrPC contains the provision of the plea of guilt. As per this provision, after framing the charges, the accused is given an opportunity to plead guilty, and the responsibility lies with the judge to ensure that the plea of guilt was voluntarily made by the accused and not under any external influence, pressure or force. If the accused pleads his guilt and admits that he had the intention to kill the victim, the judge may convict the accused.

Evidence by prosecution

After the charges are framed and the accused pleading 'not guilty', the evidence is first given by the prosecution, upon whom the burden of proof lies at the initial stage. Both oral and documentary evidence can be produced in court. The judge has the power to issue summons to any person as a witness or order him to produce any document.

Cross-examination of witnesses by both the parties

The prosecution produces its witnesses in court against the accused. The prosecution produces its witnesses before the court and it follows the cross-examination exercise conducted by the accused or his counsel. Sometimes, there are cases in which the accused also has some evidence against the prosecution and in order to strengthen his case, that evidence can be presented by the accused before the court at this stage. This opportunity is given to the accused to make his/her side in the case stronger.

The burden of proof lies with the prosecution but if any witness is available with the accused, it can be produced in the Court to strengthen its case. The witness produced by the defence can be cross-examined by the prosecution.

Final arguments

Section 314 of CrPC states that after the close of the evidence, any party in a proceeding may address concise and crisp oral arguments and before he concludes the stated arguments, he may submit a memorandum to the Court that would clearly under distinct headings mention the arguments in support of his case and every such memorandum shall be considered to the part of the record. A copy of the same shall be furnished to the opposite party with immediate effect.

Judgement

After analysing the arguments advanced by both the parties, the judge decides the case and passes the decree of conviction or acquittal, depending upon the case. In the case of Section 307, if the judge feels that the accused intended to kill the victim following a strong motive or circumstantially the intention appears on the face of it by the use of weapon or force, the judge may hold the person guilty under Section 307 and pass the conviction order in the judgement.

Quantum of sentence

If the judge holds the accused guilty under this Section and passes the conviction order in the judgement, a hearing will take place to decide the quantum or extent of the sentence or jail time. The sentence can be reduced by the judge in accordance with the punishment prescribed under the Section, if he feels appropriate to do so by looking into the circumstances of the case and the background of the convict.

Relevant case laws with respect to Section 307 IPC

Liyakat Mian and Others v. State of Bihar (1973)

In *Liyakat Mian and Others v. State of Bihar, 1973*, there were four appellants who were held guilty of committing dacoity under Section 395 of the IPC by the Sessions Court. Therefore, he was charged under Section 307. While the appellants were committing dacoity, appellant No. 2 fired a gun at Burhan Mahton (victim) which injured him gravely.

It was held by the Sessions Court that the death of Burhan Mahton was caused due to the injuries inflicted upon him by the accused No. 2 and thus, he would be held guilty of attempt to murder under Section 307. The Trial Court convicted the accused under Section 395 for the offence of dacoity and under Section 307. He punished all the accused of dacoity and punished them with imprisonment for a term of nine years. The accused charged under Section 307 was sentenced to nine years of rigorous imprisonment. It was held that accused no. 2 will serve both the punishments parallel to each other.

The four convicts filed an appeal before the High Court. The High Court dismissed the appeal and upheld the decision of the Trial Court and rejected their plea. The Apex Court also considered all the evidence and dismissed their appeals.

Jai Narain Mishra v. State of Bihar, 1971

In *Jai Narain Mishra v. State of Bihar (1971)*, Suraj (the appellant), according to the evidence, had forcefully rammed a spear into the chest of Shyamdutt and he had fallen as a result of the blow given by Mandeo with the Farsa on his head. The patient developed surgical emphysema on the right side of the chest, as reported by the doctor. It turned out to be a wound of grievous nature. According to the Medical Officer, the condition of the patient at the time of the admission

was serious. Out of a total of four injuries received, this injury was of a grievous nature while the other three injuries were simple. Where four or five persons attack a man with deadly weapons it may be well understood from the scenario that the intention to cause death prevails. In the present case, though, three injuries are simple in nature, deadly weapons were used and the fourth injury that was caused by Suraj is endangering life, but it could not be deemed to be an injury that would have necessarily caused the death.