

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision NO. 512 OF 2015**

1. Abdul Salam Rizvi @ Salam, S/o Abdul Hamid, Aged about 52 years, R/o Near Nayapara School, Police Station Gol Bazaar, Raipur (C.G.).
2. Mohd. Aslam @ Aslam, S/o Mohd. Akram, Aged about 31 years, R/o Nayapara, Police Station Gol Bazaar, Raipur (C.G.).

---Applicants**Versus**

State of Chhattisgarh, Through Police Station Gol Bazaar, Raipur (C.G.)

----Non-applicant

For Applicants	:	Mr. Rajeev Shrivastava, Advocate
For Non-applicant	:	Mr. Anupam Dubey, Dy. Govt. Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****02/07/2015**

1. Heard on the question of admission.
2. By this criminal revision applicants assail the order dated 11/05/2015 passed by Fifth Additional Session Judge, Raipur, C.G., framing charge for the offence punishable under Sections 148 read with 149, 294, 506 Part-II, 326 read with 149, 307 read with 149 of the Indian Penal Code (for short 'IPC') and Sections 25 and 27 of the Arms Act.
3. Case of prosecution in nutshell, is that, on 15/07/2012 applicants being members of unlawful assembly along with 12 other co-accused persons with the intention of causing death assaulted the complainant- Sheikh Aliasuddin by hands & fists and knife, by which, he suffered grievous injuries, which was sufficient to cause his death. Thereafter, applicants have been charge sheeted by the Station House Officer, Golbazar, Raipur for the offence

punishable under Sections 148 read with 149, 294, 506 Part-II, 326 read with 149, 307 read with 149 of IPC and Sections 25 and 27 of the Arms Act.

4. Learned Fifth Additional Session Judge, Raipur, by its order dated 11/05/2015 framed charge against the present applicants for commission of aforesaid offences.

5. Mr. Rajeev Shrivastava, learned counsel appearing for the applicants/accused would confine his submission to the order framing charge for offence under Section 307 of IPC only and submit that there was no intention or knowledge on the part of applicants to cause death of complainant as complainant/victim has not sustained any injury, which is grievous/fatal or sufficient to cause his death, therefore, applicants are entitled to be discharged from the commission of offence under Section 307 of IPC.

6. The question in the present case is, as to whether, considering and accepting the entire material available on record a *prima-facie* case for framing charges for alleged commission of offence punishable under Section 307 of IPC is made out against the present applicants or not?

7. To resolve the controversy, it appears necessary first of all to have a look on the provisions of Section 307 of IPC, which reads as under-

“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 imprisonment for life, or to such punishment as is hereinbefore mentioned.”

8. The essential ingredients required to be proved in the case of an

offence under Section 307 of IPC are as under:-

- “(i) that the death of a human being was attempted;
- (ii) that such death was attempted to be caused by, or in consequence of the act of the accused; and
- (iii) that such act was done with the intention of causing death or that it was done with the intention of causing such bodily injury as; (a) the accused knew to be likely to cause death; or (b) was sufficient in the ordinary course of nature to cause death, or that the accused attempted to cause death by doing an act known to him to be so imminently dangerous that it must in all probability cause (a) death, or (b) such bodily injury as is likely to cause death, the accused having no excuse for incurring the risk of causing such death or injury.”

9. To justify conviction under Section 307 of IPC, it is not necessary that the bodily injury capable of causing death should have been actually inflicted but injuries sustained, the manner of assaults and the weapons used would clearly make out a case of Section 307 of IPC. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.

10. The Supreme Court in **Parsuram Pandey and others v. State of Bihar**¹, while dealing with the ingredients of Section 307 of IPC observed as under:-

“15. To constitute an offence under Section 307 two ingredients of the offence must be present:

- (a) an intention of or knowledge relating to commission of murder; and
- (b) the doing of an act towards it.

For the purpose of Section 307 what is material is the intention or the knowledge and not the consequence of the actual act done for

¹ (2004) 13 SCC 189

the purpose of carrying out the intention. The section clearly contemplates an act which is done with intention of causing death but which fails to bring about the intended consequence on account of intervening circumstances. The intention or knowledge of the accused must be such as is necessary to constitute murder. In the absence of intention or knowledge which is the necessary ingredient of Section 307, there can be no offence "of attempt to murder". Intent which is a state of mind cannot be proved by precise direct evidence, as a fact it can only be detected or inferred from other factors. Some of the relevant considerations may be the nature of the weapon used, the place where injuries were inflicted, the nature of the injuries and the circumstances in which the incident took place....."

11. In the light of aforesaid enunciation of law, the facts of the present case are to be examined, it is case of the prosecution that on 15/07/2012, applicants being members of unlawful assembly along with 12 other co-accused persons with the intention of causing death assaulted the complainant- Sheikh Aliasuddin by hands & fists and knife, by which, he suffered grievous injuries, which was sufficient to cause his death. From the perusal of charge-sheet and documents appended thereto; injuries suffered by complainant/victim and manner in which the applicants is said to have assaulted the complainant injures, it cannot be held at this stage that there is no intention on the part of the present applicants to cause death. Therefore, it cannot be said that there is no material on record for framing charge against the applicants for commission of offence punishable under Section 307 of IPC and an accused charged under Section 307 of IPC cannot be acquitted merely because the injuries inflicted on the victim are in the nature of a simple hurt.

12. Before proceeding further, it would be appropriate to notice relevant judgments of the Supreme Court with regard to jurisdiction of this Court to interfere with the order framing charge:-

13. In **State of Maharashtra v. Priya Sharan Maharaj and others**², the Supreme Court has held that at the stage of framing charge, Criminal Court has to find out whether there is ground for presuming that accused has committed offence or not to following effect:-

“8. The law on the subject is now well settled, as pointed out in **Niranjan Singh Punjabi vs. Jitendra Bijjaya (1990) 4 SCC 76**, that at Sections 227 and 228 the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken in their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may, for this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case. Therefore, at the stage of framing of charge the Court has to consider the material with a view to find out if there is ground for presuming that the accused has committed the offence or that there is not sufficient ground for proceeding against him and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction.”

14. Very recently in **Vinay Tyagi v. Irshad Ali alias Deepak and Ors.**³, the Supreme Court while considering Section 227 of the Cr.P.C. held as under:-

“12. On analysis of the above discussion, it can safely be concluded that 'presuming' is an expression of relevancy and places some weightage on the consideration of the record before the Court. The prosecution's record, at this stage, has to be examined on the plea of demur. Presumption is of a very weak and mild nature. It would cover the cases where some lacuna has been left out and is capable of being supplied and proved during the course of the trial. For instance, it is not necessary that at that stage each ingredient of an offence should be linguistically reproduced in the report and backed with meticulous facts. Suffice

² (1997) SCC (Criminal) 584

³ 2013 Cri.L.J. 754

would be substantial compliance to the requirements of the provisions.”

15. In **Amit Kapur v. Ramesh Chander and another**⁴, the Supreme Court while considering the scope of jurisdiction of this Court in revision against the order of charge held as under:-

“The above-stated principles clearly show that inherent as well as revisional jurisdiction should be exercised cautiously. If the jurisdiction under Section 482 of the Code in relation to quashing of an FIR is circumscribed by the factum and caution afore-noticed, in that event, the revisional jurisdiction, particularly while dealing with framing of a charge, has to be even more limited. Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the 'record of the case' and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the Section exists, then the Court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case.”

16. In the aforesaid decisions, their Lordships of the Supreme Court have clearly held at the stage of framing of charge, the Court has to consider the material with a view to find out if there is ground for presuming that an accused had committed offence and not for the purpose of arriving at a conclusion that it is not likely to lead a conviction. The learned Fifth Additional Session Judge, Raipur after considering the material on record clearly came

⁴ JT 2012 (9) SC 329

to the conclusion that there is ground for presuming that applicants have committed offence under aforesaid Sections and framed charge for commission of aforesaid offences.

17. After hearing learned counsel for the applicants and upon perusal of the record; considering the charge framed; nature of injury suffered by the complainant; weapon used and the manner, in which, applicants have assaulted the complainant/injured, I do not consider it a fit case for interfering in the revision against order framing charge.

18. Consequently, criminal revision deserves to be and is accordingly dismissed at the admission stage without notice to other side.

Sd/-

(Sanjay K. Agrawal)
JUDGE

Tiwari