

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 737 of 2015**

Sanju Gupta @ Sanjay, S/o Bhola Prasad, aged about 29 years, resident of Fundurdihari, P.S. Gandhi Nagar, Ambikapur, Distt. Sarguja (CG)

---- Applicant**Versus**

1. State Of Chhattisgarh, through: the Station House Officer, Police Station Gandhi Nagar, Ambikapur, Distt. Sarguja (C.G.)
2. Bajrang Singh @ Neeraj Singh Rawat, S/o Pratap Singh Rawat, aged about 30 years, R/o Rawat Residence, Banaras Road, Bhagwanpur, Ambikapur (Sarguja) (CG)

---- Respondents

For Applicant: Mr. D.K. Gwalre, Advocate.

For Respondent/State: Mr. Neeraj Jain, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board**10/09/2015**

Heard.

(1) The applicant & three other co-accused persons were charge sheeted for the offences punishable under Sections 294 & 307 read with Section 34 of the Indian Penal Code.

(2) The trial Court, by its impugned order dated 5.8.2015, framed charges against the applicant and three other co-accused persons for the aforesaid offences.

(3) Feeling aggrieved & dissatisfied with the order framing charges, present applicant (alone) preferred instant revision under Section 397 read with Section 401 of the Code of Criminal Procedure.

(4) Mr. D.K. Gwalre, counsel for the applicant would vehemently submit that on a perusal of written report dated 14.9.2012 would show that he is not named in the offence in question and he has been implicated on the basis of Section 34 of the Indian Penal Code. He would further submit that on the basis of statement of complainant recorded under Section 161 Cr.P.C., applicant has been implicated in the offence in question and mere presence of a person at the time of commission of an offence by his confederates is not, in itself sufficient to bring his case within the purview of Section 34 of the Indian Penal Code, unless common intention is proved. He placed reliance upon the judgment of the Supreme Court in cases of Parasa Raja Manikyala Rao and another Vs. State of A.P.¹ and State of Maharashtra Vs. Association of Court Stenos., P.A., P.S. and another².

(5) I have heard counsel for the applicant and perused the order impugned with utmost circumspection.

(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?

1 (2003) 12 SCC 306

2 (2002) 2 SCC 141

(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**³, 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 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 13.09.2013 at about 9.30 pm applicant & other co-accused persons assaulted complainant- Neeraj Singh @ Bajrang Singh by brick, by which, he suffered fracture in temporal bone on his head and he remained hospitalized from 8.10.2012 to 5.11.2012

³ (2004) 13 SCC 189

and the brick is said to have been recovered from the possession of the applicant and the fracture in the temporal bone of the head of the complainant would definitely a grievous injuries within the meaning of Section 320 of the Indian Penal Code.

(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**⁴, 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 Bijaya (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.**⁵, the Supreme Court while considering Section 227 of the Cr.P.C. held as under:-

⁴ (1997) SCC (Criminal) 584

⁵ 2013 Cri.L.J. 754

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

(15) In **Amit Kapur v. Ramesh Chander and another**⁶, 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 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; and brick, which was used in the offence, has been recovered from the possession of the applicant, I do not consider it a fit case for interfering in the revision against order framing charge.

(18) The revision is, therefore, liable to be dismissed and it is hereby dismissed at the admission stage itself without notice to the other side.

Certified copy as per rules.

Sd/-
(Sanjay K. Agrawal)
Judge

D/-