

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-922-2015 (O&M)
Date of decision: 28.08.2015

Ashok Kumar and others

... Petitioners

Vs.

State of Punjab and another

... Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. A.P.S. Deol, Senior Advocate with
Mr. Daldeep Singh, Advocate
for the petitioners.

Mr. Daljit Singh Virk, AAG, Punjab.

None for respondent No.2.

1. Whether reporters of local papers may be allowed to see the judgment? YES/NO
2. To be referred to the reporters or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

RAMESHWAR SINGH MALIK, J.

Present criminal revision petition is directed against the impugned order dated 15.09.2014, passed by learned Sessions Judge, Amritsar, framing charge against the petitioners-accused for commission of different offences, including the one under Section 307 of the Indian Penal Code ('IPC' for short).

Notice of motion was issued in the application for condonation of delay as well as in the main case and pursuant thereto, learned counsel for the State as well as learned counsel for respondent No.2 appeared and sought time for filing reply to the application for condonation of delay, which was granted

by this Court vide order dated 18.05.2015, adjourning the case for today. However, neither any reply has been filed nor anybody has come present on behalf of respondent No.2. Not even any request for pass over was made on behalf of learned counsel for respondent No.2. After hearing the learned counsel for the applicant-petitioner, delay of 87 days in filing the criminal revision petition has been condoned by allowing CRM-8391-2015, vide separate order passed today.

Learned Senior Counsel for the petitioners submits that he does not intend to challenge the impugned order framing charge, for other offences except under Section 307 IPC. Learned Senior Counsel for the petitioners submits that the medical evidence available on record does not support the charge under Section 307 IPC. He further submits that at the most, the charge would be made out only under Section 326 IPC. Learned Senior Counsel for the petitioners would next contend that none of the injuries was on any of the vital part of the body, because of which intention to kill was conspicuously missing. In support of his contentions, learned Senior Counsel places reliance on a judgment of the Hon'ble Supreme Court in **Neelam Bahal and another Vs. State of Uttarakhand, 2010 (1) RCR (Crl.) 929**. He concluded by submitting that impugned order for framing of charge under Section 307 IPC does not go hand in hand with the medical evidence available on record and also runs counter to the law laid down by the Hon'ble Supreme Court in Neelam Bahal's case (supra). He prays for setting aside the impugned order only to the limited extent of deleting the charge under Section 307 IPC, by allowing the present petition.

On the other hand, learned counsel for the State submits that the

learned Sessions Judge did not exceed his jurisdiction, while passing the impugned order. He further submits that only a prima face case was required for framing of the charge and probative value of the evidence available on record would be seen during the course of trial, which was not required to be seen at the time of framing of the charge. He would next contend that in view of the number and nature of injuries caused by the petitioners and their co-accused, different charges, including the charges under Section 307 IPC have been rightly framed against them and the impugned order deserves to be upheld. He prays for dismissal of the present petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case, instant one has been found to be a fit case warranting interference at the hands of this Court, while exercising its revisional jurisdiction. Present criminal revision petition deserves to be partly allowed, only qua the charge under Section 307 IPC. To say so, reasons are more than one, which are being recorded hereinafter.

A combined reading of the impugned order, medical evidence in the form of Medico Legal Reports, police report under Section 173 Cr.P.C. and other attending circumstances of the case, would leave no room for doubt that although charges for commission of other offences punishable under different Sections of the IPC have been rightly framed by the learned Sessions Judge, however, petitioners were not liable to be charged for an offence under Section 307 IPC. It is so said because a careful perusal of the medical

evidence available on record would show that intention to kill was conspicuously missing in the present case. This is the reason that none of the injuries suffered by the complainant side has been found on any vital part of the body. Had there been intention to kill, accused persons would have certainly made attempts to cause one or more injuries on any vital part of the body of the injured, particularly when they were allegedly armed with sharp-edged weapons. Having said that, this Court feels no hesitation to conclude that the learned Sessions Judge has exceeded his jurisdiction, only to this limited extent of framing charge under Section 307 IPC.

A bare perusal of the provisions under Section 307 IPC would show that intention or knowledge of the accused is of paramount importance so as to constitute an offence under Section 307 IPC. Number or nature of injuries would come later. Judicial precedents cannot be substitute to the statutory provisions. If in a given case, in spite of having armed with sharp-edged weapon, as in the present case, accused did not cause even a single injury on any vital part of the body of the injured, it would show that he had no intention to kill the injured. In such a situation, no charge under Section 307 IPC would be made out. Under these circumstances, it can be safely concluded that no charge under Section 307 IPC could have been framed against the petitioners and the impugned order cannot be sustained in its entirety.

It is equally pertinent to note here that important thing to be borne in mind in determining the question as to whether an offence under Section 307 IPC would be made out against an accused or not, would depend on the intention of the accused, which is a question of fact and not a question

of law. It goes without saying that it would all depend on the given fact situation of each case. It is also not necessary that injury sufficient for causing death, should have been inflicted by the accused. However, what is material to attract the provisions of Section 307 IPC is the guilty intention or knowledge with which the act (s) or all was done, irrespective of its result.

Thus, the intention and knowledge of the accused are the matters of inference to be drawn from totality of facts and circumstances of each case and the same cannot be measured merely from the results. After giving anxious consideration to the peculiar fact situation of the present case, this Court has come to the conclusion that since the intention of the petitioners to cause death of the injured has been found conspicuously missing in the present case, petitioners were not liable to be charged under Section 307 IPC and the impugned order is liable to be set aside to this limited extent.

The abovesaid observations made by this Court also find support from the judgments of the Hon'ble Supreme Court in **Harikishan and State of Haryana Vs. Sukhbir 1988 AIR SC 2127** and also from the judgment relied upon by learned Senior Counsel for the petitioners in **Neelam Bahal's** case (supra).

The relevant observations made by the Hon'ble Supreme Court in **Harikishan and State of Haryana's** case (supra), which can be gainfully followed in the present case, read as under: -

“ On the first question as to acquittal of the accused under Section 307/149 IPC, some significant aspects may be borne in mind. Under Section 307 IPC what the Court has to see is, whether the act irrespective of its result, was done with the

intention or knowledge and under circumstances mentioned in that section. The intention or knowledge of the accused must be such as is necessary to constitute' murder. Without this ingredient being established, there can be no offence of "attempt to murder". Under Section 307 the intention precedes the act attributed to accused. Therefore, the intention is to be gathered from all circumstances, and not merely from the consequences that ensue. The nature of the weapon used, manner in which it is used. motive for the crime, severity of the blow, the part of the body where the injury is inflicted are some of the factors that may be taken into consideration it, determine the intention. In this case, two parties in the course of a fight inflicted on each other injuries both serious and minor. The accused though armed with ballam never used the sharp edge of it. They used only the blunt side of it despite they being attacked by the other side. They suffered injuries but not provoked or tempted to use the cutting edge of the weapon. It is very very significant. It seems to us that they had no intention to commit murder. They had no motive either. The fight as the High Court has observed, might have been a sudden flare up. Where the fight is accidental owing to a sudden quarrel, the conviction under Section 307 is generally not called for. We, therefore, see no reason to disturb the acquittal of accused under Section 307 IPC."

Respectfully following the law laid down by the Hon'ble Supreme Court in the cases referred to hereinabove, it is unhesitatingly held

that the learned trial Court failed to appreciate the true import of peculiar fact situation obtaining in the present case, particularly the guilty intention or knowledge of the petitioners to kill, which was conspicuously missing and the impugned order to the extent of framing of charge under Section 307 IPC cannot be sustained.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that present petition deserves to be partly allowed. Consequently, impugned order dated 15.09.2014 passed by the learned trial Court is set aside, however, only to the limited extent, i.e., for framing of charge under Section 307 IPC. As a bounden precaution, it is clarified that charges framed against the petitioners, vide abovesaid impugned order, for all other offences, except under Section 307 IPC, shall remain intact and they shall face the criminal trial, accordingly.

Resultantly, with the abovesaid observations made and directions issued, present petition stands partly allowed, however, with no orders as to costs.

28.08.2015
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[RAMESHWAR SINGH MALIK]
JUDGE