

**CRIMINAL APPLICATION (APPR) NO.120 OF 2016
IN/AND
CRIMINAL REVISION NO. OF 2017**

1. Mohd. Asif Iqaramuddin Qureshi
Aged 35 Years, Occp. Business,
2. Mohd. Rashid Iqaramuddin Qureshi,
Aged : 30 Years, Occp. Business,
3. Mohd. Ashraf Iqaramuddin Qureshi,
Age : 24 Years, Occp. Business,
4. Mohd. Shami Iqaramuddin Qureshi,
Aged 25 Years, Occp. Business,
5. Mohd. Yasar Iqaramuddin Qureshi,
Aged : 29 Years, Occp. Business,

All R/o Pinjari Galli, Akola Tah. &
Distt. Akola ..APPLICANTS

VERSUS

1. The State of Maharashtra,
Through P.S.O., Police Station
City Kotwali, Tah. & Distt. Akola
2. Vilas Patil
Aged : Adult, Occp. Service,
C/o City Kotwali Police Station,
Akola

Mr Shivkumar Dwivedi, advocate holding for Mr U.J. Deshpande, Advocate
for applicants;
Mr V.P. Gangane, Addl. Public Prosecutor for respondent no.1

CORAM : N.W. SAMBRE, J.

DATE : 23rd March, 2017

ORAL ORDER

Heard Mr Shivkumar Dwivedi, learned Counsel appearing on behalf of the applicants and learned Addl. Public Prosecutor.

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2. For the reasons stated in the application, delay of 42 days caused in preferring revision is condoned. Criminal Application (APPR) No.120 of 2016 stands allowed.

3. Since the delay has been condoned, Registry is directed to register the Criminal Revision.

4. Heard Mr Shivkumar Dwivedi, learned Counsel appearing on behalf of the applicants and learned Addl. Public Prosecutor in Criminal Revision.

5. The applicants – accused are charge-sheeted in C.R. No.27 of 2011, registered on 16th April, 2011 with Police Station City Kotwali, Akola, for offences punishable under Sections 307, 326, 147, 148, 149, 323, 324 and 450 of the Indian Penal Code.

6. The applicants – accused moved application Exh.15 in Sessions Trial No.77 of 2015 for discharge under Section 227 of the Code of Criminal Procedure, which came to be rejected by learned Additional Sessions Judge-3, Akola, vide order dated 20th February, 2016. As such, present revision questioning the said order and seeking discharge.

7. Mr Dwivedi, learned Counsel appearing on behalf of the applicants – accused, while inviting my attention to the contents of the first information report, the nature of injuries suffered by the complainant, would urge that

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the necessary ingredients for making out of offences punishable under Sections 307, 326 and 324 of the Indian Penal Code are not satisfied. He would then submit that the complainant has suffered simple injuries and at the most the offence punishable under Section 323 of the Indian Penal Code could be made out. He would further urge that even in the first information report and statements of the witnesses, there is no attribution against the accused persons that the attack was with an intention to commit murder of the victim, so as to invoke the provisions of Section 307 of the Indian Penal Code. According to him, the order impugned is not sustainable and the applicants are entitled for discharge.

8. Per contra, the learned Addl. Public Prosecutor, while inviting my attention to the discovery memo dated 17th April, 2011, under Section 27 of the Indian Evidence Act, submits that there is *prima facie* involvement of the applicants in the crime in question as the sword used in commission of the offence has been discovered. He would then urge that the nature of injuries, whether there was an intention or not could be appreciated only after conclusion of recording of the evidence and at this stage it is premature to infer that the applicants are not involved in offences punishable under Sections 307, 326 and 324 of the Indian Penal Code. He prays for rejection of the revision.

9. With the assistance of the respective Counsel, I have scanned the charge-sheet and considered the statements of the witnesses, including that of medical evidence. It is required to be noted therefrom that though

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the victims have suffered simple injuries caused by hard and blunt object, still they were referred for opinion of Orthopedician. Such opinion is not placed on record so as to find out whether the victims have suffered grievous injury or not. Apart therefrom, it is required to be noted that the cumulative effect of the statements of the witnesses speaks of an intention of the applicants-accused to attack the victim on head and while saving from such attack by hands, the victim has suffered injuries to hand/fingers, etc. In addition to this, there are eye-witnesses to the incident including victims and *prima facie* satisfaction of the ingredients of the offences for which the applicants are charge-sheeted is required to be inferred.

10. The Apex Court, in the matter of **R. Prakash vs. State of Karnataka**, reported in **AIR 2004 SC 1812** and **Sagayam vs. State of Karnataka**, reported in **AIR 2000 SC 2161**, has observed that for justifying conviction under Section 307 of the Indian Penal Code, it is not necessary that bodily injury caused should be proved. What is required to be inferred from the ingredients of Section 307 of the Indian Penal Code is, whether there was an attempt on the part of the accused to cause murder of the victim. It is also observed that the conviction can be justified under Section 307 of the Indian Penal Code, if an intent coupled with some over-act in the execution thereof could be noticed. Such evidence can be appreciated only after oral evidence is recorded in the trial.

11. In the aforesaid backdrop, in my opinion, no case for discharge under Section 227 of the Code of Criminal Procedure is made out. In this

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view of the matter, the order impugned passed by learned Additional Sessions Judge does not warrant any interference.

12. In view thereof, Criminal Revision fails and stands rejected.

(N.W. SAMBRE, J.)

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