

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

CRR No.2510 of 2015.
Decided on:-19.09.2017.

Hardeep Singh.

.....Petitioner.

Versus

Gurmeet Singh @ Kala and another

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Vikas Kumar, Advocate
for the petitioner.

Mr. P.B.S. Goraya, Advocate
for respondent No.1.

Mr. A.S. Dhaliwal, DAG, Punjab.

HARI PAL VERMA, J.

The petitioner-complainant has filed the present revision petition against the order dated 05.05.2015 passed by learned Additional Sessions Judge, Fast Track Court, Bathinda, whereby learned Additional Sessions Judge had refused to frame charge against the respondent No.1 under Section 307 IPC and held that a prima-facie case under Sections 325, 323, 427 and 506 IPC had been found against the respondent No.1-accused. Since the offences in the case were triable by the Magistrate, the file was sent to the concerned Magistrate for further proceedings/trial in accordance with law.

Briefly stated, FIR No.48 dated 09.08.2014 under Sections 307, 328, 323, 506 and 427 IPC was registered against respondent No.1 at Police

Station Nandgarh, District Bathinda on the statement of petitioner-complainant Hardeep Singh. As per the FIR, on 08.08.2014, the complainant was going to village Loolbai on his motorcycle so as to buy medicine for his eye. When he reached near the house of Sukhdev Singh Ex. Member Panchayat at about 12.30 P.M., he saw a Ford tractor of blue colour coming from the opposite side. The tractor was being driven by respondent No.1-accused Gurmeet Singh alias Kala. On seeing the complainant, the accused raised a Lalkara not to spare him and with an intention to kill the complainant, he ran over the tractor over the complainant. As a result thereof, the complainant fell down from his motorcycle and the tyre of tractor ran over the right foot of the complainant. On raising hue and cry by the complainant, the accused ran away from the spot with his tractor. However, while leaving the place of occurrence, the accused had threatened that complainant had been saved on that day, but he (accused) would definitely kill him.

The motive behind the occurrence was that in the year 2013, the accused had contested the election of Member Panchayat against one Hardeep Singh son of Narain Singh and the complainant had supported said Hardeep Singh in the election. Due to this reason, the accused tried to kill the complainant by running over his tractor upon him.

Learned counsel for the petitioner-complainant has argued that after registration of the FIR, investigation was carried out in the case. The medico-legal examination of the petitioner was conducted and injuries were found on his person. Radio diagnosis report (CT report) dated 13.08.2014 of the petitioner was conducted by three doctors of Dayanand Medical College

and Hospital, Ludhiana. On the basis of CT report, the doctors had opined as under:

“There is evidence of comminuted fracture of proximal part of cuboid bone and distal part of calcaneum also extending to articular surface between them. However joint space is maintained. Fractured fragments are displaced into surrounding soft tissue.

Overlying Soft tissue swelling is seen.

Rest of the bones are osteopenic and shows degenerative changes.

To be correlated clinically.”

While referring to the report of the doctors, learned counsel for the petitioner has submitted that the accused had run over his tractor on the petitioner so as to cause his death and Challan against the accused was presented in the Court. The case was committed to the Court of Session for trial as the offence under Section 307 IPC was triable by the Court of Session. Even the Superintendent of Police (D), Bathinda verified the Challan and confirmed that a prima-facie case under Section 307 IPC is made out against the accused. But vide order dated 05.05.2015, learned Additional Sessions Judge, Fast Track Court, Bathinda has framed charge against respondent No.1-accused under Sections 325, 323, 427 and 506 IPC and has refused to frame charge against him under Section 307 IPC on the ground that the provision of Section 307 IPC are attracted only when the accused was armed with deadly weapon, which is not the case of prosecution in the instant case.

He has further argued that there are plethora of cases, wherein it has been observed that an intent coupled with some overt act in execution

thereof is sufficient to attract the provisions of Section 307 IPC. It is the intention or knowledge and not the injury inflicted, which is a deciding factor for applicability of Section 307 IPC. In order to attract the offence under Section 307 IPC, the prosecution is required to establish (i) an intention of or knowledge relating to commission of murder; and (ii) the doing of an act towards it.

He has further contended that for applicability of Section 307 IPC, receipt of injury by the victim is not a pre-requisite, rather, it is the intention or knowledge, which attracts the first part of Section 307 IPC. He has relied upon *Aman and others Versus State of Haryana 2008(3) Criminal Court Cases 208 (P&H)* to contend that in order to prove the offence under Section 307 IPC, it is not essential that bodily injury capable of causing death should have been inflicted. It is sufficient in law if there is present an intent coupled with some overt act in execution thereof, such act being proximate to the crime intended and if the attempt has gone so far that it would have been complete but for the extraneous intervention which frustrated its consummation. Reliance has also been placed upon *Ratan Singh Versus State of M.P. and another 2009(4) Criminal Court Cases 737 (SC)*.

While relying upon *Jasbir Singh Versus State of Punjab 2007(1) Criminal Court Cases 120 (P&H)*, he has further contended that reading of Section 307 IPC leads to a singular conclusion that absence of an injury would not necessarily exonerate an accused of an offence under Section 307 IPC. The nature of injury or the absence thereof is a mere circumstance for or against the commission of offence under Section 307 IPC.

Therefore, absence of injury cannot by itself be the sole circumstances to hold

that the petitioner could not be charged for the commission of offence under Section 307 IPC. The nature of offence under Section 307 IPC is governed not by injury alone but by intention of the assailant.

He has further argued that respondent No.1, who has been granted concession of bail vide order dated 19.12.2014 by this Court, has grossly abused his liberty by attacking and assaulting the petitioner in order to pressurise the petitioner so that he may not give evidence against respondent No.1-accused. For nefarious act of respondent No.1-accused, proceeding under Sections 107 and 151 Cr.P.C. has been initiated against him, wherein he was arrested and detained in custody. Even as per the injuries so referred, it is clear that respondent No.1 is guilty for committing offence under Section 307 IPC. Therefore, the order dated 05.05.2015 passed by learned Additional Sessions Judge, Fast Track Court, Bathinda is liable to be set aside.

On the other hand, learned counsel for respondent No.1 has argued that he does not dispute the proposition of law that it is not the injury, but it is the intention or knowledge which is relevant for the purposes of framing of charge under Section 307 IPC. However, in the case in hand, the element of intention or knowledge is badly missing. It is the case of complainant that the motive behind the alleged occurrence is that in the year 2013, when there was a Panchayat election in the village, respondent No.1-accused had contested the election of Member Panchayat against one Hardeep Singh and the petitioner-complainant had supported said Hardeep Singh and due to this reason, the respondent-accused had tried to kill the petitioner by running over him with his tractor. The alleged occurrence took place on 08.08.2014, whereas the Panchayat elections were held in the year 2013.

Therefore, the occurrence is not connected with the motive, which has taken place after about a year of Panchayat elections.

He has relied upon *State of Maharashtra Versus Salman Salim Khan and another 2004(1) RCR (Criminal) 314*, wherein the Apex Court has held that if during the course of trial, some material has come before the Court, it is open to the trial Court to alter the charge at any stage of trial depending on the material that is brought before it in the form of evidence.

I have heard learned counsel for the parties.

Taking into consideration the nature of injury which is otherwise on the non-vital part of the body of petitioner-complainant i.e. on right foot, it cannot be stated that the respondent No.1-accused had an intention or knowledge to kill him. Unless it is established that the accused does any act with such an intention or knowledge and under such circumstances that if he by that act does cause death, he would be guilty of murder, only then the provisions of Section 307 IPC are attracted. But in the instant case, there is no such allegation against the accused. The plea of the petitioner is that the motive behind the alleged occurrence was that the petitioner-complainant had supported one Hardeep Singh son of Narain Singh, who had contested the elections of Member Panchayat against respondent No.1-accused. However, this plea does not inspire confidence as the alleged occurrence had taken place on 08.08.2014, whereas the Panchayat Elections were held in the year 2013. During the period i.e. from the date of Panchayat election till 08.08.2014 when complainant suffered injuries, there is no allegation against the respondent-accused that he ever tried to give any serious injury.

Therefore, this Court does not find any illegality or irregularity in the impugned order dated 05.05.2015 passed by learned Additional Sessions Judge, Fast Track Court, Bathinda. Accordingly, affirming the impugned order, the present revision petition, being without any merit, is dismissed.

However, during the trial, if the trial Court finds that some material has been brought on record by way of evidence, the trial Court shall not be influenced by the order passed by this Court and shall act independently as observed by the Apex Court in ***Salman Salim Khan and another's case (supra)***.

September 19, 2017

Yag Dutt

**(HARI PAL VERMA)
JUDGE**

Whether speaking/reasoned: Yes

Whether Reportable: No