

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1. CRR-330 of 2015 (O&M)
Date of Decision : 28.02.2017

Gurbax SinghPetitioner

Versus

State of Punjab and othersRespondents

2. CRR-1611 of 2015 (O&M)

State of PunjabPetitioner

Versus

Raj Singh and othersRespondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. M.K. Garg, Advocate
for the petitioner in CRR No. 330 of 2015.

Mr. Ashish Sanghi, DAG, Punjab
for petitioner in CRR No. 1611 of 2015.

Mr. Surender Garg, Advocate
for private respondents.

Surinder Gupta, J.

Above captioned revision petitions have been filed against order dated 28.10.2014 passed by Additional Sessions Judge, Faridkot whereby case committed to Sessions Court for trial was sent to Chief Judicial Magistrate, Faridkot with the observation that no offence under Section 307 of Indian Penal Code (for short 'IPC') is made out against the accused as no injury on the person of injured-Gurbax Singh was declared dangerous to life.

2. Revision (CRR No. 330 of 2015) was filed by injured-Gurbax Singh while the other revision (CRR No. 1611 of 2015) was filed by State of Punjab against said order passed by learned Additional Sessions Judge.

3. Before proceeding further it will be relevant to have a look on the FIR registered in this case. As per allegations in the FIR, accused, who are private respondents in these revision petitions, were armed with weapons like *kirpan*, iron rod and *gandasi* etc. and waylaid the complainant on 02.05.2014, when he had gone to *dana mandi* to enquire about the labour. Darshan Singh (respondent no. 4 in CRR No. 330 of 2015) raised *lalkara* that complainant was obstructing them from casting the vote and exhorted his co-accused not to spare him. At this Raj Singh (respondent no. 2), in order to kill the complainant, gave a *kirpan* blow on his head which hit above his right eye. In the meanwhile, Amandeep Singh @ Amna Singh (respondent no. 5) gave *kirpan* blow on the head of complainant which he took on his left hand and the blow caused injury near the thumb. Teja Singh (respondent no. 7) gave *gandasi* blow on the head of complainant which he took on his right arm. The complainant fell on the ground and was given injuries by Dilbagh Singh (respondent no. 3) and Deputy Singh @ Sona (respondent no. 6) with iron rods and Teja Singh (respondent no. 7) with *gandasi*.

4. In the medical examination, 15 injuries were found on the person of complainant which included 7 lacerated wounds and two incised wounds. Injury no. 1 was on temporal region. Fractures were found in the injuries on right arm, right leg and left leg.

5. Learned counsel for the petitioner in CRR No. 330 of 2015 and learned State counsel (petitioner) in CRR No. 1611 of 2015 have argued that at the time of framing of charge Court has to see *prima facie* case to make out as to whether injuries were caused by the accused with intention and knowledge and under such circumstances, if by that act they would

have caused the death of the complainant-injured, they would have been guilty of murder. The trial Court has discharged the accused-respondents for offence punishable under Section 307 IPC on the sole ground that no injury on the person of complainant was declared as dangerous to life without looking into the intention of assailants who caused numerous injuries on the person of complainant including injuries on his head. The complainant has specifically stated that two blows with *kirpan* and *datar* given on his head were saved by him by raising hands. This shows that assailants had intention and knowledge that injuries, which they were inflicting on the person of complainant, may cause death. Whether there was intention to kill or knowledge that death will be caused, is a question of fact which could be proved during trial and allegations of complainant supported by medical evidence are sufficient to attract the provisions of Section 307 IPC. In support of their contention, they have relied on observations of the Apex Court in case **Anjani Kumar Chaudhary vs. State of Bihar and another, 2014 (12) SCC 286.**

6. Learned counsel for private respondents has argued that learned Additional Sessions Judge, Faridkot committed no error of law while discharging private respondents for offence punishable under Section 307 IPC as he did not find any evidence on file to make out a case for framing charge under Section 307 IPC. There is no opinion of doctor to suggest that any of the injuries on the person of complainant was dangerous to life. Even injuries on the head of complainant was having no fracture. In these circumstances no fault can be found with order of learned Additional Sessions Judge, Faridkot discharging the accused for offence punishable under Section 307 IPC.

7. On perusal of allegations in the FIR and copy of MLR of the complainant, I find that learned Additional Sessions Judge, Faridkot has committed error while reaching the conclusion that provisions of Section 307 IPC are not attracted to this case as neither of injuries on the person of complainant was declared dangerous to life. The Apex Court in **Anjani Kumar Chaudhary's case (supra)** observed in paras 10 and 16 as follows:-

“10. We can, at this stage, proceed only on the basis of the statement recorded in the FIR as well as on the statements of the witnesses recorded in the case diary to find out whether they satisfy the ingredients of Section 307 IPC. The scope of Section 307 IPC has elaborately been dealt with by this Court in Mohan's case¹ (supra), wherein this Court has taken the view that if anybody does any act with intention or knowledge that by his act he might cause death and hurt is caused, that is sufficient to attract Section 307 IPC. Further, this Court has also taken the view that, in order to attract Section 307 IPC, the injury need not be on the vital part of the body.”

11 to 15 xx xx xx xx xx xx xx xx

16. Statements of the witnesses Baiju and Manoj Chaudhary are also in the same lines. What is discernible from the above statements is that 1st accused and others, while committing the alleged offence, had exhorted that they would kill the appellant if the money was not paid. Open announcement by the accused and others that the appellant would not be alive to practice in the High Court, would prima facie indicate that the intention of the accused was, what he had spoken, followed by the infliction of injuries. Further, when several persons attack an unarmed person with deadly weapons, it is reasonable to presume that they had knowledge or

*intention that such an attack would result in death. In the instant case, as per the statements, the weapons used were Lathi, rod, Farsa, Talwar etc. and when we look at the nature of injuries, it is clear that the injuries were caused by using sharp cutting weapons and also with hard blunt substance. Injuries were inflicted on the right temporal region of scalp at the base of the right ear, right side of occipital region of scalp, left side of occipital region of scalp etc. Open declaration by the accused that a person would be killed, indicates his intention and, as held by this Court in **Vasanat Vithu Jadhav vs. State of Maharashtra, 2004 (2) RCR (Criminal) 200; 2004 (9) SCC 31**, the question as to whether there was intention to kill or knowledge that death will be caused is a question of fact and would depend on the facts of a given case which has to be attributed on evidence by the trial Court. Above facts would indicate that the ingredients of Section 307 IPC are made out.”*

8. In this case one of the injuries on the person of complainant was on vital part of the body while two injuries inflicted on his head were saved by raising hands. The number and nature of injuries on the person of complainant and the intention with which these were caused clearly manifest that ingredients of Section 307 IPC are made out in this case. Instead of sending the case for trial, learned Additional Sessions Judge was required to frame the charge for offence punishable under Section 307 IPC and to proceed with trial of the case.

9. In view of my above discussion, I allow these revision petitions, set aside order dated 28.10.2014 passed by learned Additional Judge, Faridkot. Trial of case is ordered to be entrusted to Court of Sessions, where fresh charge-sheet shall be framed as per above

observations. It is, however, made clear that observations made herein are only for the purpose to make out as to whether a *prima facie* case for framing of the charge under Section 307 IPC is made out. Nothing observed herein shall be read as expression of opinion on merit of the case and the trial Court on the basis of statements of witnesses and evidence produced by prosecution will decide the case on merit without making any reference of observations made in this order.

10. Copy of this order be conveyed to District and Sessions Judge, Faridkot, who will withdraw the case from the Court of Chief Judicial Magistrate or any other Magistrate where it is pending and entrust the same for trial to his own Court or any other Court of Additional Sessions Judge in Sessions Division of Faridkot for trial and disposal in accordance with law. Parties are directed to appear before the District and Sessions, Faridkot on 27.03.2017.

February 28, 2017
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/Reasoned

Yes/No

Whether Reportable

Yes/No