

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Misc.No.M-12974 of 2018 (O&M)
Date of decision : 14.05.2018

Om Parkash and another

... Petitioners

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. Amarjit Singh Virk, Advocate and
Mr. A.S.Shera, Advocate,
for the petitioners.

RAJ SHEKHAR ATTRI, J.(Oral)

The petitioner has preferred the instant petition under Section 482 Cr.P.C. for quashing/modifying the order framing charges and the charge sheet dated 17.05.2017, passed by the Judicial Magistrate Ist Class, Faridabad.

Notice of motion.

Mr. Raj Kumar Makkad, DAG, Haryana, who is present in Court, has accepted notice on behalf of respondent-State. Complete copy of the paper book has been supplied to him.

Service is complete.

Learned counsel for the petitioners has vehemently contended that earlier vide Annexure P-5, a Medical Board has been constituted by B.K.Hospital, Faridabad, which reported a fracture on the skull of Subhash Chander son of Santi, and declared the injuries as grievous but subsequently, PGIMS Rohtak has ruled out the fracture on the right side of the skull.

I have gone through the material available on the record.

Initially, injured Subhash was got medically examined at General Hospital, Ballabgarh and vide opinion dated 12.04.2014 (Annexure P-3), it has opined that the injury on skull is a fracture. After examination of x-ray, it was found that there was fracture on the right temporal bone near zygomatic area of the skull. Thereafter, the opinion of the medical Board constituted by B.K.Hospital, was sought which had given the similar opinion on 05.09.2014 which is reproduced as under:-

- 1. Incised wound of approx. 2.5 cm. Size with regular margins on post occipital region on left side of scalp bone deep advice x-ray skull AP & Lateral view.*
- 2. Incise wound of approx. 2 cm. On left side of skull post parietal region parallel to wound one advice X-ray skull AP & Lateral view.*
- 3. Bruises over left upper thigh 4 cm x 1.5 cm anteriorly advice X-ray left thigh AP & Lateral view.*
- 4. Pain left side of face just below left ear. No ear bleeding or discharge.*

X-ray skull report (51/2014 dated 29.4.2014) shows fracture right temporal bone near zygomatic area of skull.

As all the injuries are on the left side of skull whereas X-ray skull shows fracture on the right side of the skull.

Board is not able to reach on concrete conclusion whether the fracture on right side can be caused by the injuries sustained on left side of skull (As describe in MLR). Board members are of the opinion that it requires specific forensic expert opinion. As no forensic expert is available in B.K.Hospital, Faridabad, the case may kindly be referred to PGIMS, Rohtak for forensic expert opinion.”

However, the matter was referred to PGIMS Rohtak.

Ultimately, the PGIMS Rohtak vide Annexure P-6 dated 29.04.2015, has

given the following opinion:-

“1. As per the NCCT Head report by the radiologist, PGIMS, Rohtak, there is no fracture or bony lesion on the right side of the skull. (Annexure 1-photocopy of report).

2. There was no external mark of injury or fracture on the right side of skull on examination. However, injury marks were present on the left side of scalp, in form of healing scar marks with stitch marks corresponding to injury No.1 & 2 as mentioned in the MLR No.AGM/179/2014 dt. 12/04/2014 of Subhash Chand prepared by Dr. Abhishek Gautam, MO, G.H.Ballabgarh.

However as opined earlier vide letter no.FMD/2014/2082 dated 16-10-2014, the injuries caused to Subhash S/o Santi mentioned vide Injury No.1 & 2 in MLR No.AGM/179/2014 dt. 12/04/2014 are grievous in nature and caused by sharp weapon.

Lastly, the PGIMS, Rohtak has also stated that injuries No.1 and 2 in MLR on the person of Subhash son of Santi are grievous in nature.

Framing of charge is a precious safeguard, so as to express, prelegal battle protection conferred upon the accused by the legislature.

Only prima facie case is to be seen and the aspect as to whether the case is beyond reasonable doubt, is not to be seen at this stage.

If the Court comes to the conclusion that the commission of offence is a probable consequence, a case for framing charge exists, at the stage of framing charges, the probative value of material on record cannot be gone into at this stage. Thus, at the stage of framing of charges the Court has to see if there is sufficient ground for presuming that the accused has committed an offence.

The probative value of the reports with regard to the nature of

injuries shall be considered at appropriate stage of the trial.

In this view of the matter, no case is made out to quash the impugned order and charge sheet dated 17.05.2017.

Accordingly, the instant petition stands dismissed. However, nothing express above will affect the merits of the case. The trial court, after conclusion of trial, shall indenepdently assess as to whether the injuries were grievous or not.

14.05.2018
mamta-M

(RAJ SHEKHAR ATTRI)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No