

CRR-890 of 2017 (O&M)

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

CRR-890 of 2017 (O&M)
Date of Decision: 27.09.2018

Jatinder Kumar and another

....Petitioners

Versus

State of Punjab

....Respondent

CRR-1004 of 2017 (O&M)

Jatinder Kumar and another

....Petitioners

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Ish Puneet Singh, Advocate, for the petitioners.
Mr. Davinder Bir Singh, DAG, Punjab.
Mr. Vikram Bali, Advocate, for the applicant.

RAMENDRA JAIN, J. (ORAL)

1. By this common judgment, I shall dispose of above-titled two revision petitions filed by accused-petitioners.

2. Briefly, petitioners and one Permanand (died during trial) caused injuries to the complainant in the early hours of 01.10.2009 with their respective weapons like *datar*, sticks etc. after putting a rope around his neck and then dragged him on the road. On these broad allegations, after two days on receipt of MLR and X-ray report, FIR No.207 dated 03.10.2009 was registered on the statement of complainant, under Sections 308, 323, 148 and 149 IPC. During investigation, all the injuries suffered by the complainant were declared simple in nature. Consequently, deleting

Section 308 IPC final report under Section 173(2) Cr.P.C. was filed against

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the petitioners only under Sections 323, 148 and 149 IPC and they were charge-sheeted accordingly vide order dated 07.08.2010. Two years thereafter, Kishan Dass father of complainant-injured moved application under Section 216 Cr.P.C. to charge-sheet the petitioners under Section 308 IPC also, which after hearing both the sides was dismissed vide order dated 08.12.2015 (Annexure P-3). Being aggrieved, Kishan Dass approached the revisional Court, who, setting aside aforesaid order dated 08.12.2015, directed the trial Court to pass fresh order.

3. Consequently, the trial Court after re-hearing the parties, vide impugned order dated 20.12.2016 came to the conclusion that offence under Section 308 IPC is also attracted against the petitioners in addition to the offences for which they have already been charge-sheeted and ordered for committal of case to the Court of Sessions, inasmuch as Section 308 IPC is exclusively triable by the Sessions Court.

4. Being aggrieved, petitioners preferred CRR-890 of 2017 assailing order dated 20.12.2016. However, In the meantime, Sessions Court framed additional charge against the petitioners under Section 308 IPC vide order dated 31.01.2017, which has been impugned in CRR-1004 of 2017.

5. Learned counsel for the petitioners *inter alia* submits that both the Courts below failed to appreciate that application under Section 216 Cr.P.C. after two years of framing of charge, filed by father of the complainant-injured, he being not a “victim” as per definition given in Section 2(wa) Cr.P.C., was not maintainable. Rather the same amounts to gross abuse of process of law. Both the Courts below also failed to appreciate that all the injuries allegedly suffered by the complainant were declared simple in nature. Therefore, from this angle also, petitioners could not have been

charge-sheeted under Section 308 IPC.

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6. On the other hand, learned State counsel, assisted by learned counsel for the applicant has placed reliance on *M/s Tata Steel Ltd. v. M/s Atma Tube Products Ltd. and others*, 2013(2) R.C.R.(Criminal) 1005 (P&H) to contend that applicant, being father of the injured complainant, falls under the definition of “victim”. Therefore, his application under Section 216 Cr.P.C. has rightly been allowed by the trial Court.

7. Having given thoughtful consideration to the submissions made by both the sides, this Court finds that instant revision petitions merit acceptance for the reasons to follow.

(i) This is a luxury litigation being fought by father of the complainant, who is permanently settled abroad.

(ii) Initially application of Kishan Dass father of the complainant injured was dismissed, but now after remand of case by the revisional Court, the trial Court has accepted the same without any sound reasoning.

(iii) Father of the complainant does not fall under the definition of “victim” as envisaged under Section 2 (wa) Cr.P.C. It was only the complainant injured who could file application under Section 216 Cr.P.C., if was aggrieved by action of the police for deleting Section 308 IPC against the petitioners, but he, during a span of nine years, has never come forward to raise any grouse.

(iv) Undisputedly, all the injuries suffered by the complainant injured have been declared simple in nature.

Petitioners are facing the agony of protracted trial,

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since last nine years. Now after framing additional charge under Section 308 IPC against them, the trial has become *de novo*. Therefore, petitioners have further to suffer for a sufficient long time for no reasons inasmuch as the prosecution would not be able to prove the ingredients of Section 308 IPC against them, as all the alleged injuries suffered by complainant have been declared simple in nature.

8. Facts and circumstances of *M/s Tata Steel Ltd.* (supra) relied upon by learned counsel for the applicant are completely distinguishable inasmuch as in that case father of the deceased was declared as victim, whereas in the instant case, injured complainant is alive.

9. In view of the discussion made above, order dated 20.12.2016 of learned Judicial Magistrate Ist Class, Phagwara, for committal of the case to the Court of Sessions and order dated 31.01.2017 of learned Additional Sessions Judge, Kapurthala, framing additional charge under Section 308 IPC against the petitioners, are set aside with a direction to the Court of Sessions to remand the case to the trial Court to proceed further with the trial on the basis of charge-sheet dated 07.08.2010 against the petitioners under Sections 323, 148 and 149 IPC.

10. Both the parties are directed to appear before the Court of Sessions on 05.10.2018.

September 27, 2018
R.S.

(Ramendra Jain)
Judge

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No