

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

**CRR No.3463 of 2018 (O&M)
Decided on: 12.10.2018**

Salim

....Petitioner

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Inderjeet Singh, Advocate
for the petitioner.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this revision petition is for setting-aside the order dated 18.09.2018 passed by the Additional Sessions Judge, Yamuna Nagar at Jagadhri in FIR No.2 dated 11.01.2018 registered under Sections 148, 149, 323, 325, 452, 307 and 506 of the Indian Penal Code (in short 'IPC') at Police Station Khizrabad, vide which the application filed by the petitioner/accused for alteration of the order dated 15.06.2018, vide which charge was framed under Section 307 IPC, was dismissed.

Brief facts of the case are that on 11.01.2018, the aforesaid FIR was registered on the statement of Jhanger son of Akbar Ali that he along with his brother and sister are living in a house in village Kaleshar and the petitioner – Saleem is living in their neighbourhood. There is Mosque (Masjid) in the front portion of their house and the main road is in the front of the house of Salim. The waste water of the house of the petitioner – Salim entered the house of the complainant

and when the complainant asked the petitioner to drain out the water, he refused and called his family members and other relatives on telephone, who arrived in a Scorpio car carrying weapons like danda, lathi, iron rod, in their hands and attacked the family members of the complainant and caused injuries to the complainant, his wife, Babli wife of his brother, his sister-in-law Kaushar and other relatives. In the incident, the injured witness Muntaha suffered grievous injuries at the hands of the accused persons. Thereafter, the police arrested the accused persons and they were granted bail and challan under Section 173 Cr.P.C. was submitted. Later on, the trial Court vide order dated 13.07.2018 framed the charge against the petitioner under Sections 148, 149, 323, 325, 452, 307 and 506 IPC, to which the petitioner did not plead guilty and claimed trial.

Thereafter, the petitioner filed an application for alteration of the charge and prayed for deleting the charge framed under Section 307 IPC.

The complainant filed reply to the same and contested the said application and the trial Court vide order impugned dated 18.09.2018 dismissed the application.

Feeling aggrieved against the said order, the petitioner/accused preferred the present revision petition before this Court.

Counsel for the petitioner has submitted that as per the MLR of Muntaha wife of Ashraf Ali, the following injuries are found:-

“INJURIES

- 1. Lacerated wound of size 9 cm x 0.8 cm***

present on the left Parieto Temporal Region of Skull. Colour is pinkish, Surgeon opinion.

2. Swelling of size 1 cm x 1 cm present on the left Frontol Parietal Region of Skull. Colour is pinkish, Surgeon opinion.”

Counsel for the petitioner has further submitted that, thereafter, the doctor, who conducted the MLR on an application given by the Investigating Officer for giving opinion regarding injuries No.1 reported as under:-

“The injury is grievous in nature. However regarding injury, possibility of injury being dangerous to life cannot be ruled out, but opinion to be taken from PGIMER, Chandigarh regarding the injury being dangerous to life.”

Counsel for the petitioner has further argued that as per the medico legal case summary of PGIMER, Chandigarh, the nature of injuries are said to be grievous. It is, thus, stated that in the absence of any specific opinion by the doctors at PGI that the injuries were dangerous to life, the charge under Section 307 IPC is not sustainable.

Counsel for the petitioner has also submitted that it has come in the statement of the complainant that while leaving, the accused persons exhorted that today the injured persons have escaped and they will kill them on some other day and, therefore, on the day when the incident had occurred, there was no such intention on the part of the petitioner/accused to kill them and, therefore, Section 307 IPC is not made out.

After hearing the counsel for the petitioner, I do not find any merit in the present revision petition. The police while submitting

the report under Section 173 Cr.P.C. has reported as under:-

“During investigation on 2.2.2018, opinion of doctor regarding nature of injury of Muntaha MLR PPP S M.L. R11/KHZ dt. 10.1.2018 from MLHG Yamuna Nagar. Doctor opined that “as per record by police NCCT Report shows fracture Temporal Bone with Haemmrohragic contusion X-ray shows fracture left condoyle. The injuries is grievous in nature. However regarding injury possibility of injury being dangerous to life cannot be ruled out but opinion can be taken from PGIMER Chandigarh regarding injury being dangerous to life. During investigation on 26.2.2018 statements of injured Muntaha, Asgar Ali, Kosar got recorded. Considering statement and opinion of doctor, offence u/s 325/307 IPC added.”

The report under Section 173 Cr.P.C. was submitted after recording the statement of injured Muntaha under Section 161 Cr.P.C., in which she has stated ***“accused gave a lalkara that we should be killed and on hearing so, Afzal gave an iron rod blow on my head and Naseem gave iron rod blow on my right side of the head and Wajid gave an iron rod blow on my forehead with an intention to kill and thereafter, I fell down.”***

It is, thus, apparent that the injured witness namely Muntaha, who is a lady, was given severe beatings by the accused with an intention to kill her as stated by her in the statement recorded under Section 161 Cr.P.C.

A perusal of the discharge summary of PGI relied upon by the petitioner also show that it is only the medico legal case summary and is not based on specific opinion taken by the police regarding the nature of injury, whether the same is dangerous to life or not and,

therefore, opinion given by the doctor, who conducted the MLR that possibility of injuries being dangerous to life cannot be ruled out, cannot be ignored while framing the charge under Section 307 IPC.

Even otherwise, the petitioner has not challenged the order dated 13.07.2017 framing charge under Section 307 IPC and has only challenged the subsequent order vide which his application for alteration/deletion of charge under Section 307 IPC was dismissed.

It is well settled principle of law that an application of alteration of charge can be moved at any stage and the petitioner has filed this application without waiting for recording the statement of the complainant, injured witnesses as well as two doctors, who treated them at CHC Khizrabad and PGIMER, Chandigarh and therefore, the trial Court has rightly dismissed the application.

In view of what has been discussed hereinbefore, I do not find any ground to differ with the opinion of the trial Court that the intention to kill is to be ascertained during the trial from the testimony of the material prosecution witnesses and on the basis of the medical report/medical opinion. Therefore, the present revision petition is dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

12.10.2018
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Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No