

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR
Proceedings through Video Conferencing
CRR No. 446 of 2021

1. Sukhraj Sinha S/o Mr. Suraj Sinha Aged About 25 Years
2. Mukund Diwan S/o Mr. Budhlal Diwan Aged About 26 Years
R/o Village- Bhanpuri, P.S.- Farasgaon, District- Kondagaon,
CG Civil and Revenue District- Kondagaon, CG

----Applicants

Versus

State of Chhattisgarh, through the District Magistrate,
Kondagaon, CG

----Non-applicant

For Applicant : Mr. Raza Ali, Adv.
For non-applicant/State : Mr. Dinesh Tiwari, Dy. Govt. Adv.

Hon'ble Shri Justice N.K. Chandravanshi
Order on Board

2-9-2021

1. This criminal revision has been preferred by the applicants against the order dated 22-6-2021 passed in Sessions Case No. 2/2021 by the Addl. Sessions Judge, Kondagaon (State of CG -v- Sukhraj Sinha and another), by which, charges have been framed against the applicants under Sections 307/34 and 294 of the Indian Penal Code, 1860 (in short 'the IPC').

2. Learned counsel for the applicants submits that as per MLC report, complainant has sustained 5 injuries, whereas in the impugned order, it has been mentioned that 8 injuries were found upon his body. Except injury No. 2, other injuries have not been opined by the Doctor as grievous in nature, even, no such report of doctor has been filed by the prosecution which would demonstrate that the injuries caused to the complainant/victim are dangerous to life. He further submits that no X-ray report has been filed, whereas CT Scan report of brain shows no bony injury on the head of the complainant and he was admitted in the hospital only for one day. He further submits that from all the documents filed with the charge sheet, at the most, ingredients of Section 324 of the I.P.C. are available, but learned Court below without considering properly the facts and circumstances of the case, has framed charges under

Sections 307/34 and 294 of the I.P.C. which is erroneous and not sustainable.

3. Per contra, learned State counsel submits that complainant/ victim has clearly stated while lodging of F.I.R., and recording of his statement under Section 161 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') that the applicants and other co-accused with intention to kill him, inflicted successive more than 8 injuries on his vital part head by sharp edged weapon like sword. The Doctor has opined that injury No. 2 is grievous in nature. Even in CT scan report, soft tissues of his brain were found swollen with soft tissue emphysema with hyperdense foci (foreign bodies) over left frontal region. Therefore, looking to the incised injuries caused by the applicants/accused on vital part of the body, learned trial Court has not committed any error in framing of charges under Sections 307/34 and 294 of the I.P.C.

4. I have heard learned counsel for both the parties, perused the copy of charge sheet filed by the applicants and the material available on record.

5. As per F.I.R., at the time of incident i.e. about 6 – 7 pm, when complainant/ victim was returning after catching fish to his home, the applicants and other co-accused who had ambushed near the field of Tula to kill him, attacked on him by sharp edged weapon like sword. In his self-defence, he kicked Lokesh Diwan who fell on the ram. They inflicted successive injuries on his head. The applicants were also abusing him with filthy languages. On hearing his screams, two bye-passers who were going on Bade Dongar road, came, then the applicants ran away. It is also mentioned in the F.I.R. that while he was being attacked by said weapon, he held hands of applicant Sukhraj along with said weapon. Complainant has stated these facts also in his statement recorded under Section 161 of the Cr.P.C.

6. As per M.L.C. Report, the doctor has found following injuries upon the body of the complainant :-

- i. Four incised wounds over frontal region size 2" x ¼", 2" x ¼", 1 x ¼", 2" x ¼", and one incised wound (vertical) on parietal region size 3" x 1" ;
- ii. Incised wound (now bleeding) behind left ear pinna cut, size 4" x ¼", bone deep;
- iii. Incised wound over neck, size 4" x ¼" (Horizontal);
- iv. Incised wound over occipital region, size 3" x ½";
- v. Incised wound, size ½" x ¼" over right hand,

All injuries caused by hard and sharp object.

The doctor opined that injury No. 2 is grievous in nature.

7. Although, record of prosecution does not reveal any fracture on the body of complainant/victim, but as per CT scan report, the doctor has opined that extracalvarial soft tissue swelling with soft tissue emphysema with hyperdense foci (Foreign bodies) over left frontal region.

8. As per provisions of Section 307 of the I.P.C., necessary ingredients for framing charge under this section are (i) intention or knowledge relating to commission of murder; and (ii) doing of an act towards it. Thus, to frame charge under Section 307 of the I.P.C., important consideration is intention or knowledge of the accused and the circumstances under which the offence was committed, nature of injury is not necessary guiding consideration. The intention of the assailant is also to be taken into consideration from the nature of the weapon used and the parts of the body where the injuries are inflicted.

9. In the case of **State of M.P. -v- Kanha alias Omprakash** [(2019) 3 SCC 605], Hon'ble Supreme Court has held that proof of grievous or life threatening hurt is not a *sine qua non* for the offence under Section 307 of the I.P.C. Therefore, in the instant case, if there is no such medical report that the injuries sustained by the complainant/victim were dangerous to life or no injury was found grievous in nature, as per section 320 of the IPC, then also, the contention of learned counsel for the applicants has no force

because, the injuries caused by the accused/applicants were on vital part i.e. head of body and which were not only incised wound but the effect of injury was also reached to the brain of the complainant/ victim. As per the FIR, victim/complainant had held the hands of applicant Sukhraj along with said weapon, otherwise, the injury sustained by him could have been more dangerous. The complainant has stated that intention of the accused was to kill him.

10. In the case of **State of M.P. -v- Saleem alias Chamru and anr.** [2005) 5 SCC 554], Hon'ble Supreme Court has held that where there was intention to kill or knowledge that death will be caused is a question of fact and would depend on the facts of given case. The circumstances that the injury inflicted by the accused was simple or minor, will not by itself rule out application of Section 307, I.P.C. The determinative question is the intention or knowledge, as the case may be, and not the nature of the injury.

11. In the instant case, as the accused had ambushed at the place of incident and caused successive 9 incised injuries to the complainant, out of which 8 injuries were on his head and neck and even the effect of injury was reached to his brain and also looking to the fact mentioned in the F.I.R. that the complainant/ victim had held hands of applicant Sukhraj along with said sharp edged weapon, otherwise, injuries could have been more dangerous. Looking to the above facts and circumstances of the case, I do not find any infirmity in the impugned order framing charges under Sections 307/34 and 294 of the I.P.C.

12. The instant revision being devoid of substance, deserves to be and is hereby dismissed.

Sd/-
N.K. Chandravanshi
Judge