

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
CR.R. No. 549 of 2021

1. Tushal Singh Thakur S/o Prem Singh Thakur Aged About 47 Years R/o Complete Address Bhaismundi, Tulsi Post Amoda, Police Station And Tahsil Narharpur District U. B. Kanker CG
2. Rajivan Komara S/o Lakhan Ram Komara Aged About 30 Years R/o Bhaismundi Tulsi, Police Station Narharpur, District U. B. Kanker CG
3. Chamar Singh Gawade S/o Latkhor Gawade Aged About 40 Years R/o Bhaismundi Tulsi, Police Station Narharpur, District U. B. Kanker CG
4. Mukesh Nareti S/o Makhanlal Aged About 31 Years R/o Bhaismundi Tulsi, Police Station Narharpur, District U. B. Kanker CG
5. Birendra Patel S/o Bhagirathi Patel Aged About 37 Years R/o Village Risewada, Police Station Narharpur, District U. B. Kanker CG
6. Dinut Kumar Nareti S/o Late Chhnnu Ram Aged About 23 Years R/o Bhaismundi Tulsi, Police Station Narharpur, District U. B. Kanker CG
7. Mahesh Kumar Usendi S/o Sagaram Usendi Aged About 40 Years R/o. Bhaismundi Tulsi, Police Station Narharpur, District U. B. Kanker CG
8. Pralhad Komra S/o Baldev Komra Aged About 31 Years R/o Bhaismundi Tulsi, Police Station Narharpur, District U. B. Kanker CG
9. Bholu Das Manikpuri S/o Late Tulsi Das Manikpuri Aged About 38 Years R/o Village Risewada, Police Station Narharpur, District U. B. Kanker CG
10. Lukesh Kumar Dugga S/o Somnath Dugga Aged About 41 Years R/o Village Risewada, Police Station Narharpur, District U. B. Kanker CG
11. Sanjay Kumar Patel S/o Lokeshwar Patel Aged About 26 Years R/o Village Risewada, Police Station Narharpur, District U. B. Kanker CG
12. Rohidas Nareti S/o Chain Singh Nareti Aged About 36 Years R/o Village Bhaismundi Tulsi, Police Station Narharpur, District U. B. Kanker CG

----Applicants

Versus

State of Chhattisgarh, through Station House Officer, Police Station Narharpur, District Uttar Baster Kanker, CG

----Non-applicant

 For Applicants : Mr. Parag Kotecha, Adv.
 For non-applicant/State : Mr. V.K. Agrawal, PL.

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

13-9-2021

1. This criminal revision has been preferred by the applicants against the order dated 27-7-2021 passed in Sessions Case No. 2/2021 (State of CG -v- Tushal Singh Thakur and others) by the 1st Addl. Sessions Judge, Uttar Bastar, Kanker, by which, charges have been framed against the applicants under Sections 186, 307/149, 333/149, 353/149, 294, 506 (Part II), 323/149 of the Indian Penal Code, 1860 (in short 'the IPC').
2. Learned counsel for the applicants submits that as per prosecution story, two constables namely Constable Vikas Dugga and Asstt. Constable Nakul Prasad Baghel were injured in the said incident, but as per MLC report of Asstt. Contable Nakul Prasad Baghel, injuries sustained by him are simple in nature, although, in MLC report of Constable Vikas Dugga, injury sustained by him has been opined dangerous in nature by the doctor, but there is no such category of injury defined in Section 320 of the IPC. He further submits that as per discharge slip, he remained admitted in Shri Narayana Hospital, Raipur, only for two days but neither any of his medical reports shows that injury sustained by him was grievous in nature, nor there is any such medical opinion that injuries were dangerous for his life, therefore, from the record of prosecution, necessary ingredients for framing of charges under Sections 307 and 333 of the IPC are not fulfilled, thus, framing of charges under aforesaid Sections is illegal and erroneous. He also submits that no prima facie case is made out against the applicants in respect of other charges also, therefore, the order impugned for framing alleged charges against the applicants is perverse, erroneous and not sustainable.
3. Learned counsel for the State opposes the arguments advanced by the counsel for the applicants submitting that injuries sustained by police constable Vikas Dugga was on vital part of the body and of serious nature, therefore, the doctor has opined about the injury as dangerous. He further submits that necessary ingredients for framing alleged charges against the applicants are

available on the record, therefore, the impugned order does not call for any interference of this Court.

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 FIR, complainant Head Constable Hemant Sahu was on election duty of 3 tier panchayat election. He was leading petrolling party on Bolero bearing registration No. CG 04 HA 8357 with other colleague constables. At about 22.15 pm. he received information from constable Vikas Dugga on mobile phone from Polling Booth 30 at Primary School, Risewada that many people have gathered there after consuming liquor and they are pelting stones. Petrolling party of complainant constable Hemant Sahu reached there, they explained the people appeared in mob to go 100 meter away from polling booth, despite that, the applicants abused them and pelted brick stones on them, also attacked by club, hands and fists upon police party. The applicants also threatened to kill and injured police personnel with intention to kill them. The applicants damaged the vehicle of petrolling party and severely injured constable Vikas Dugga. Asstt. Constable Nakul Prasad Baghel also sustained injuries. On 29-1-2020, Head Constable Hemant Sahu lodged FIR at PS Narharpur, Distt. Kanker, against applicants and other accused persons. Constable Vikas Dugga, complainant Hemant Sahu and other constables who were present there at the time of incident, also stated aforesaid facts in the statements recorded under Section 161 of the Criminal Procedure Code.

6. As per MLC report of Asstt. Constable Nakul Prasad Baghel, he sustained injury on neck and other part of the body which are opined by doctor as simple in nature, but as per MLC report of Constable Vikas Dugga, he sustained injury on his head and blood was oozing from his nose. He was admitted in Shri Narayana Hospital, Raipur on 29-1-2020 and discharged from there on 1-2-2020. None of his injuries has been found as grievous in nature, as

defined in Section 320 of the IPC. Therefore, necessary ingredients for framing charge under Section 333 of the IPC are not fulfilled.

7. Although, in medical report of both the injured constables, none of the injuries has been mentioned grievous in nature and there is no opinion of doctor on the record that the injury sustained by Constable Vikas Dugga is dangerous for his life, but as per M.R.I. report of surgical spine of constable Vikas Dugga, the doctor has observed that *mild diffuse disc bulges are seen at C4-C5 and C5-C6 disc levels indenting over the thecal sac but without any spinal canal stenosis or neural foraminal narrowing*. Also as per his X-ray report of cervical spine AP/LAT, the doctor has observed that *loss of normal curvature of cervical spine noted, paravertebral muscle spasm*. Above reports show that constable Vikas Dugga has sustained injury in aforesaid incident on his cervical spine. Though, he was admitted in the hospital only for 2 days, but aforesaid report shows that he sustained injury on his vital part of the body – neck, which reached to cervical spine.

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 injury sustained by the constable Vikas Dugga was 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 in

respect of charge under Section 307 of the IPC, because, the injuries caused by the applicants to constable Vikas Dugga were on vital part i.e. neck/cervical spine.

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, constable Vikas Dugga has sustained injury on his neck/cervical spine. Considering the facts and circumstances of the case that the applicants were abusing police personnel, they pelted stones upon them and also beat them by club with intention to kill them, thereby obstructed public servants in discharge of their public functions, and also assaulted and used criminal force to deter public servants from discharge of their duty, I do not find any infirmity in the impugned order framing charges under Section 186, 307/149, 353/149, 294, 506 (Part II), 323/149 of the I.P.C. against the applicants.

12. Consequently, the instant revision is partly allowed. The applicants are discharged from the charge framed against them under Section 333/149 of the I.P.C. This Court finds that trial Court has not committed any illegality in framing the charge under Section 186, 307/149, 353/149, 294, 506 (Part II), 323/149 of the I.P.C. against the applicants. They are upheld.

13. It is made clear that the trial Court shall proceed with the trial in accordance with law and decide the same without being influenced by any observation made by this Court in this order.

Sd/-
N.K. Chandravanshi
Judge