

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

CRR 419 of 2018

**Safik Khan@ Safiqul Khan
Vs.
The State of West Bengal & Ors.**

For the Petitioner	:	Mr. Kallol Mondal Mr. Krishna Roy Mr. Sk. Istiaque Mr. Souvik Das Mr. Anamitra Banerjee Mr. Samsher Ansari
For the State	:	Mr. Prasun kr. Dutta , Ld. APP Mr. Subrata Roy
Heard on	:	13.09.2022
Judgment on	:	23.09.2022

Ajoy Kumar Mukherjee, J.

1. Being aggrieved and dissatisfied with the order No. 42 dated 11.01.2018 passed by the Learned Additional Sessions Judge, Fast Track, 1st Court, Sealdha, South 24 Parganas in session Case No. 02(02)13, arising out of Cossipore police station case No. 183 of 2010 dated 02.12.2010 , Present application under section 401 read with section 482 of the code of criminal procedure has been preferred. Petitioner submits that on 02.12.2010 while

petitioner along with his cousin Sk. Mumtaz were returning home at about 11.30/11.45 am, the accused persons attacked them with dangerous weapons. Sk. Mumtaz somehow managed to escape but the accused persons caught hold of the petitioner and dealt fatal blow on his head. While trying to save himself from such blow, the petitioner raised his left hand and sustained fracture injury on the left hand, followed by bleeding injury on his head. Petitioner lodged FIR and on the basis of FIR Cossipore Police Station Case No. 183 of 2010 dated 02.12.2010 under sections 147/148/149/307/427 of the Indian Penal Code, was registered and the investigation started.

2. After conclusion of investigation police submitted charge-sheet against 10 accused persons being petitioner no.-2 to 11 herein under sections 147/148/149/307/427 of the Indian Penal Code. Learned Magistrate after being satisfied that the offence triable by a court of session, committed the case to the court of learned Additional Sessions Judge, Fast Track Court, Sealdah, South 24 Parganas. When the case was committed to the court of learned Additional Sessions Judge, Fast Track Court, the accused persons /opposite parties filed an application for framing of charge under sections 147/148/149/324/427 of the Indian Penal Code, and to send the record back to the learned ACJM for trial.

3. Said application filed by the accused person/opposite parties have been taken up for hearing by the learned judge on 11.01.2018, and after hearing learned Additional Sessions Judge passed the impugned order by which he has been pleased to send back the record of the case to the learned ACJM Sealdah,

directing him to proceed with the case considering the same as a case under sections 147/148/149/324/427 of the IPC.

4. Mr. Kallol Mondal learned counsel appearing on behalf of the petitioner submits that the petitioner was brutally assaulted aiming his head and while the petitioner tried to save his head, had sustained fracture injury on his left Ulna. He further submits that petitioner initially went to R.G. Kar Hospital for treatment but due to non availability of bed, hospital authority refused to admit and subsequently he was admitted to Sterling Hospital which is a private Hospital wherein his limb had been operated and he remained admitted for 39 days, which is reflected from the injury report. It is also apposite to mention herein that in course of the operation a steel plate was inserted in the hand of the petitioner for alignment and repair of the fracture injury and such plate has not been removed till date from the hand.

5. Mr. Mondal further submits that learned additional Sessions Judge has failed to consider the injury report of the petitioner in its proper perspective. The report is absolutely in consonance with the version of the petitioner and the eye witnesses given before the police under section 161 of Cr.P.C. Materials available in the record clearly establish the fact of commission of offence under section 307 of the IPC. The materials show that the fatal blow was aimed at the head of the petitioner and while he tried to save himself by raising his left arm, the major blow hit on his hand, for which his Ulna was broken and he also suffered severe swelling injury on his Parieto-Occipital region. Mr. Mondal further submits that assault was made with the help of Iron Rod which is a deadly weapons and in this context he relied upon the judgment of Apex Court

in ***Bijendar @ Naushad Vs. State*** reported in **(2014) SCC Online Delhi 682**.

He further submits that the learned Additional District Judge has acted unmindful and tried to evaluate the evidences and arbitrarily judged its relevance with regard to the ingredients of section 307 of the Indian Penal Code, although the prima facie consideration of the same clearly reveals all ingredients of section 307 of the IPC, with regard to the alleged offence.

6. Private opposite parties are not represented even after service of copy of revisional application.

7. Mr. Prasun Kumar Dutta appearing on behalf of the state submits that materials collected during investigation, as appearing from the case diary, prima facie discloses offence under section 307 of IPC and as such court below was not justified in sending the case record before the court of ACJM, holding section 307 of the code does not attract in the present context.

8. At the beginning the relevant portion of the impugned order No. 42 dated 11.01.2018 may be reproduced below:-

“Considering the submissions of both the parties, and on perusal of the case diary, F.I.R., injury report and the statement of the witnesses recorded u/s. 161 Cr.P.C., it appears that in between the parties there is case and counter case over the self same incident. From the injury it appears that the injured Soufiq Khan was medically treated at R.G. Kar medical College and Hospital on 02.12.2010. It further reveals from the injury report that the Soufiq Khan sustained swelling injury over auxiparital region. There is nothing in the report that the injured was at the hospital for his treatment.

Having considered the submissions of both the sides, I find that there is no materials u/s. 307 of I.P.C. but there is ingredient of Sec. 324 of I.P.C. which is triable by the ld. Court of Magistrate. Accordingly, the record be sent back to the ld. ACJM, Sealdah to proceed with the case considering the same as a case u/s. 147, 148, 149, 324, and 427 I.P.C. and the Ld. Court is also requested to proceed with the case against all the accd persons after framing of charge.”

9. From the aforesaid observation it is clear that according to the court below, there appeared case and counter case between the parties and the injury report reveals that victim Soufiq Khan sustained swelling injury over Parieto-Occipital region and there is nothing in the report that the injured was at Hospital for his treatment and on the basis of this learned court below came to the conclusion that there is no material under section 307 of the IPC in the present case, for which it can be tried by a sessions Court.

10. On perusal of the case diary it appears that during investigation police has collected injury report from R.G. Kar Hospital which clearly shows swelling over Parieto-Occipital region and also fracture injury over left Ulna. The victim was also treated in Sterling Hospital where he was admitted on 02.12.2020 and injury report shows that patient got injury to head (Parietal region) and fracture Ulna (left) and he was found in the hospital in a state of critically ill condition and according to the victim he was admitted in the said Hospital and was treated therein for a considerable period of time. From the statement of the witnesses as recorded under section 161 of Cr.P.C., it appears that the witnesses have stated that the attack was made upon the victim with the help of Iron Rod, with the intention to kill him. Now the question is whether the learned trial court was justified in holding that section 307 does not attract in the present context.

11. Needless to say that in order to justify a conviction under section 307 it is not essential that fatal injury capable of causing death should have been inflicted. What is important to justify a conviction under section 307 is whether there appears an intention coupled with overt act in execution thereof. The

court has to see whether the act, irrespective of its result was done with the intention or knowledge and under circumstances mentioned in the section.

12. Learned court below only on the basis of the finding that the victim only sustained swelling injury on his Parieto-Occipital region and that there is nothing in the report that the injured was at the Hospital for treatment, hastily came to the conclusion that section 307 does not attract in the present context. Whether there was intention to kill in the minds of the accused persons or knowledge that death will be caused, are question of facts and depends on the facts of the case. The nature of weapon used, manner in which it is used, motive for the crime, severity of the blow, the part of the body where the injury is inflicted are some of the factors that may be taken into consideration to determine the 'intention' during trial.

13. The circumstances that the victim only sustained swelling injury in Parieto-Occipital region and/or that he sustained fracture injury in his left Ulna, will not by itself rule out application of section 307 of IPC. The determining question is the intention or knowledge and under circumstances which has to be gathered from the evidence during trial and not on the basis of the nature of injury as reflected in the injury report. The nature of injury caused may be given some assistance in coming to a finding as to intention of accused, but such intention may also be deduced from other circumstances and may be ascertained in some cases without reference to actual wounds. In this context reliance has also been placed upon Apex Court judgment in ***State of Madhya Pradesh Vs. Kashiram & others***, reported in **(2009) 4 SCC 26**.

14. In view of above I find that the learned court below was not justified in passing the impugned order by which he has sent back the case record to the learned ACJM, Sealdah, South 24 Parganas with a direction to proceed with the case considering the same as the case under sections 147/148/149/324/427 of the IPC.

15. Accordingly CRR 419 of 2018 is allowed. The impugned order No. 42 dated 11.01.2018 passed by learned Additional Sessions Judge, FTC-1, Sealdah, South 24 Parganas is hereby set aside. Learned Additional Sessions Judge FTC-1 Sealdah, South 24 Parganas is directed to call for the case record immediately and to proceed with the case in accordance with law and to conclude the entire proceeding preferably within a period of one year from the date of communication of the order.

However there shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(AJAY KUMAR MUKHERJEE, J.)