

CRR-1116-2017 (O&M)

216

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-1116-2017 (O&M)

Date of decision: September 01, 2023

Rohit and another

....Petitioners

versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Saurabh Dalal, Advocate for petitioners.

Mr. Vikas Bhardwaj, AAG Haryana.

ARUN MONGA, J. (ORAL)

Revision herein is for setting aside impugned order dated 07.03.2017 passed by learned Additional Sessions Judge, Sonipat to the extent that charges were framed against the petitioners and they were charge-sheeted under Sections 307 read with Section 34 of the Indian Penal Code, 1860 (for short 'IPC') besides charges under Sections 427, 294 read with Section 34 of IPC. Further, prayed to remand the case to learned Sub Divisional Judicial Magistrate, Ganaur for trial.

2. Succinct factual background, as noted in the impugned order, reads as under:

"2. Briefly stated facts of the present case are that the present FIR has been registered on the complaint of Sheetal and Komal, students of ITI Rajlugarhi who are pursuing Steno course from there. It is mentioned in the complaint that on 21/09/2016 after taking half day leave from the institution they along with co-student Joyti reached at station at about 2.15 PM. When they reached at station three boys came into a Santro car and started making obscene gestures towards them and abusing them in filthy language. The number of car was known lateron as HR 51Y 9962. When they raised objection, accused did not listen them and somehow with great difficulty they reached at police post Rajlugari, otherwise they would trying to abduct them. On receipt of this information, police party reached at station on motorcycle bearing number HR-10Y-1475 and on seeing them two young boys who were sitting in a Santro car tried to fled away from the spot in the said car. When police party tried to stop the car then the said boys hit the motorcycle with their car and had taken away their car over the front tyre of the motorcycle with intention to kill the police persons and the police party narrowly escaped. Upon this, police informed control room for nakabandi. After sometime it came into knowledge that the said car which had hit the police party was lying found turned turtle in a field of Jawar at Rajpura road. Upon this, police party reached at the spot and

found that the two said boys were also lying there in injured condition. On asking, both the boys disclosed their names as Rohit and Mohit. Mohit being seriously injured was got admitted in the hospital by one Satish who was already standing nearby them. The other boy Rohit had suffered minor injuries so he was apprehended after giving first aid. Thus the present FIR was registered under section 294, 307, 427, 34 IPC against the applicants-accused."

3. Learned counsel for the petitioners submits that there is lack of intention or knowledge to commit murder of SI Yudhvir Singh, the police officer, who chased, intimidated, terrorized and caused severe injuries to the petitioners and damaged their car. He further submits that thus, no offence under Section 307 IPC is made out. He also urges that compliant in question pertained to making obscene gestures and verbally abusing the girls. No overt act of attempt to murder the girls was committed. He further submits that rather petitioners suffered injuries due to overt act of SI Yudhvir Singh to the extent that Mohit remained unconscious for 21 days. Medical Certificate as well as photographs are contained at Annexures P-2 and P-3.

3.1. He further submits that learned trial Court has committed grave legal error when there is not even an abrasion on the police official. In the entire challan, there is no report of any injury to SI Yudhvir Singh. There is no damage to the motorcycle. Petitioners were granted bail vide orders dated 18.11.2016 and 30.11.2016 (Annexure P-4 colly) wherein it was stated that it is a case of no injury.

4. *Per contra*, learned State counsel on instructions from SI Raj Kumar opposes the revision and submits that impugned order framing charges against the petitioners for commission of offence punishable under Section 307 IPC does not require any interference as the same has been passed after due appreciation of material and documents on record.

5. I have heard learned counsel for the parties and gone through the record.

6. On a specific query as to what is the nature of injury as to what weapon was used and what is the seat of injury caused to the complainant, so as to invoke Section 307 IPC, learned State counsel is unable to show anything from the record either MLR or any other allegation of any kind, which would be suggestive that ingredients of Section 307

IPC are made out.

CRR-1116-2017 (O&M)

6.1. In fact, a coordinate Bench of this Court then seized of the matter had also made similar observations vide order dated 23.03.2017 while issuing notice of motion.

The same being apposite is reproduced herein below:

“Learned counsel for the petitioners submits that as regards the charge under Section 307 IPC, it would not be made out at all, in view of the fact that even a perusal of the photograph of the motorcycle of the police officials would show that other than the mudguard which is seen to be slightly damaged, no such corresponding damage is seen on the wheel itself, or the spokes of the wheel or the brake disc and the shock absorbers. Hence, even if it was accepted at face value that the car had somehow hit on the front side of the motorcycle, there was no intention to kill the riders of the motorcycle, with such a small damage on the mudguard of the motorcycle.

Notice of motion returnable on 05.04.2017.

In the meanwhile, the Court below would not proceed against the petitioners as regards the charge under Section 307 IPC, till the next date of hearing.”

7. I have seen the record and impugned order. I am of the view that no case of invocation under Section 307 of IPC is made out. The damage was done to the vehicle alone, and there were only bald allegations that damage was caused to the vehicle with an intention to kill, and therefore, offence under Section 307 IPC was made out. Being relevant, Section 307 of IPC reads thus:-

“307. Attempt to murder.—Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

Attempts by life-convicts.—When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death.”

8. Perusal of the above Section leaves no manner of doubt that extent of damage to the vehicle as noticed in the order dated 23.03.2017 passed by the learned co-ordinate Bench is such from which it cannot be inferred that there was an intention to kill when any actual injury was not caused so as to invoke Section 307 IPC as done by learned Trial Court. Prosecution has rightly not invoked Section 307 IPC and learned trial Court, therefore, committed material irregularity in going beyond the scope of charge-sheet and the evidence presented in support thereof.

CRR-1116-2017 (O&M)

9. Impugned order to the extent of charge sheeting petitioners for the offence punishable under Section 307 read with Section 34 IPC, being unsustainable, is therefore, quashed. Learned Additional Sessions Judge, Sonipat to proceed further, in accordance with law.
10. Disposed of, accordingly.
11. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

September 01, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No