

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 381 OF 2022

Maruti Ananda Ballal And Ors

...Applicants

Versus

The State Of Maharashtra

...Respondent

Mr. Ashish Chavan i/by Mr. Harsh Dedhia Advocate for Applicant.

Mr. Arfan Sait, APP for Respondent-State.

Mr. Kalpesh Patil Advocate for Respondent No.2.

CORAM : PRAKASH D. NAIK, J.

DATE : 2nd FEBRUARY, 2024

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P.C.:-

1. The applicants are aggrieved by order dated 25th July 2023 passed by the Court of learned Additional Sessions Judge, Inslampur rejecting the application for discharge for offence under Section 307 of Indian Penal Code, 1860 and Section 4 read with Section 25 of the Arms Act.

2. The prosecution case is that, the informant Sambhaji Vishnu Ballal along with his wife, son and daughters are the resident of village Bhatwadi Taluka Walwa. He is in transportation business. Accused Nos.1 and 3 are residing near his house. On 25th March 2017 at about 09:30 p.m. while the informant was taking dinner, the accused entered in his house. They abused him. The accused No.1 assaulted the first informant on his head, back and

chest by means of sword. The accused No.2 and 3 assaulted him on his left leg, knee and right shoulder by means of iron rod. They attempted to commit his murder. The wife of informant came to rescue. She was abused and assaulted. FIR was registered with Kasegaon Police Station vide C.R. No. 15 of 2017 for offences under Sections 324, 323, 504, 452 read with 34 of the Indian Penal Code.

3. The injured were examined. Injury certificate was issued. Investigation proceeded. Statement of witnesses were recorded. Sections 307 and 326 of IPC were added. Charge-sheet was filed.

4. The applicants preferred an application before the Court of Sessions for discharge under Section 227 of the Cr.P.C. contending that, there is no evidence against them to frame charge under Section 307 of IPC.

5. The application was rejected vide order dated 25th July 2023.

6. Learned Advocate for applicants Mr.Chavan submitted that, invocation of Section 307 of IPC was afterthought. F.I.R. was not registered for offence under Sections 307 and 326 of IPC. Statement of the wife of first informant was recorded. Subsequently, she has introduced the theory that the accused attempted to insert sword in the abdomen of injured. Based on such improvement, Section 307 of IPC was invoked. There was

no intention to kill. There is no evidence to substantiate charge under Section 307 of IPC.

7. Learned APP and learned Advocate for Respondent No.2 submitted that, the first informant's injury report itself indicate that the injured was assaulted with the aid of sword on head and other parts of the body. The offence under Section 307 of IPC is made out. The injury certificate refers to the grievous injuries suffered by the injured which corroborates the version of the complainant. Merely on the ground that, the charge under Sections 307 and 326 of IPC added subsequently, accused cannot be discharged when the charge-sheet contains substantial material to support charge under section 307 of IPC. Intention of the accused is clear and apparent from the statement of the witnesses. This is not a stage to appreciate evidence and give finding that Section 307 is not attracted.

8. Perused the FIR, statements of witnesses, injury certificate and the impugned order passed by trial Court. Prima facie case is made out against the accused to proceed against the them for offence under Sections 307 and 326 of IPC and other offences. At this stage, it is not possible to give finding that the offence under Section 307 of IPC is not made out. The first informant in his statement categorically stated that, the accused were armed with weapon. He was assaulted by giving blow on his head and other parts of body by sword. Perusal of the injury certificate indicate that,

injured had suffered several injuries which includes the fracture of skull. The injury certificate also denotes that, injuries were of grievous in nature. Considering the evidence on record the contention of the applicants cannot be accepted.

ORDER

- (i) Criminal Revision Application No.381 of 2022 stands rejected and disposed off.
- (ii) It is clarified that, the observations made in this application is prima facie for considering the issue involved in this application and trial Court shall decide the case in accordance with law.

(PRAKASH D. NAIK, J.)