IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M No.9655 of 2017 (O&M)
Date of decision:09.02.2024

Rakam Singh alias Rakma .....Petitioner

Versus

State of Punjab and others ....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

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Present: - Mr. G.S. Dhot, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

Mr. Preetinder Singh Ahluwalia, Advocate
for respondent no. 2 to 6.

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HARPREET SINGH BRAR, J. (ORAL)

1. The present petition is preferred under Section 482 of the Cr.P.C. seeking quashing of order dated 02.03.2017 (Annexure P-6) passed by learned Additional Sessions Judge, Patiala whereby revision petition against impugned order dated 03.01.2017 (Annexure P-5) passed by learned Judicial Magistrate Ist Class, Patiala vide which application under Section 216/209 Cr.P.C. was rejected in FIR No. 351 dated 29.10.2011 under Sections 307, 324, 323, 341, 506, 148 and 149 registered at Police Station Tripuri Town, District Patiala, was dismissed.

2. Briefly, the facts are that on 28.10.2011 the petitioner and complainant-Harsimram Singh alias Mani were at the Tripuri Bazar near the dispensary, when an Innova car stopped in front of their car. Respondent No.5-Rishi Goel alias Bhatto, armed with a sword, along with respondent No.4-

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Amrti Kumar Kinger armed with a rod, respondent No.3- Satpal alias Lallu armed with an axe, Rupinder Singh armed with rod and two other unidentified persons armed with *danda*, alighted from the car. They pulled the petitioner from the driver side window and Rishi alias Bhatto raised a *lalkara* that he will not be allowed to go alive and gave a sword blow which landed on his left elbow. Thereafter, Satpal alias Lallu gave an axe blow which landed on the right elbow of the petitioner. The unidentified persons pulled the petitioner's legs and threw him on the ground and gave *danda* blows on his arms. The complainant and the petitioner raised alarm causing people to gather at the spot. The respondents-accused threatened to kill and fled away from the spot along with their respective weapons.

3. Initially, when the petitioner was examined by the doctors, a report stating that the injuries to be dangerous to life was furnished as the petitioner had sustained multiple fractures on multiple bones. However, later a Board of Doctors was constituted and it was opined that the injuries were not dangerous to life. The petitioner assailed the charge before the learned trial Court and asserted that Section 307 IPC be added however, the same was rejected by the learned Court vide order dated 21.10.2014. A revision filed by the petitioner against the same was dismissed by the learned Revisional Court vide order dated 02.11.2015. Subsequently, the petitioner approached by filing CRM-M-2253-2016, which was disposed of vide order date 03.08.2016. Pursuant to the directions issued by this Court, Dr. Kulbhushan Garg, who opined that the injuries sustained by the petitioner were dangerous to life was examined as PW-4 and relying upon the same the petitioner filed an application under Sections 216/209 of the Cr.P.C praying for amendment of charge, which was dismissed vide order dated 03.01.2017 (Annexure P-5). Aggrieved by the

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same, a revision was preferred by petitioner before the learned Revisional Court, which was dismissed vide order dated 02.03.2017 (Annexure P-6).

4. Learned counsel for the petitioner *inter alia* contends that the intention within the meaning of Section 307 IPC can be inferred from the oral testimony of injured witness. A perusal of the FIR clearly indicates that the petitioner has specifically reiterated that the private respondents have inflicted injuries on the person of the petitioner with an intention to kill. A reference is made to the case set up by the prosecution in the FIR to emphasise that intention to cause death at the instance of the petitioner is clearly indicated therein. Moreover, there is an opinion of Dr. Sandeep Gupta of Alchemist Hospital, Panchkula that all injuries suffered by the petitioner were collectively dangerous to life. The learned trial Court has wrongly relied upon the opinion of the Board of Doctors, who were never produced before the learned trial Court and the only available opinion with regard to nature of injuries is that of Dr. Sandeep Gupta, who has categorically opined that all injuries suffered by the petitioner are collectively dangerous to life. He further relies upon the judgment of the Hon'ble Supreme Court rendered in ***S.K. Khaja Vs. The State of Maharashtra 2023 (sup2) CutLT (Criminal) 606*** to contend that ingredients of Section 307 IPC are made out even if the injuries sustained by the complainant were simple in nature and the accused cannot be absolved from being convicted for an offence punishable under Section 307 IPC.

5. Per contra, learned counsel appearing for respondents No.2 to 6 submits that it is a trite law that the complainant cannot file an application under Section 216 Cr.P.C. and seek alteration of charge. The learned trial Court has considered the case in the right perspective in dismissing the application filed by the petitioner under Section 216 Cr.P.C. Moreover, this is a

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third round of litigation. On earlier two occasions, the petitioner remained unsuccessful and he cannot be allowed to re-agitate the same for the third time. All the injuries suffered by the petitioner are on non-vital part of the body and the Medical Board has concluded that none of the injuries suffered by the petitioner can be declared as dangerous to life. In support of his contentions, he relies upon the judgments passed by the Hon'ble Supreme Court of India in ***P. Kartikalakshmi Vs. Sri Ganesh and another*** passed in Criminal Appeal No.1709 of 2014 decided on 12.08.2014, ***Dr. Nallapareddy Sridhar Reddy Vs. State of Andhra Pradesh and others AIR 2020 SC 753, Panchram Vs. State of Chhatisgarh and another 2023 SCC OnLine SC 394, Jai Narain Mishra and others Vs. State of Bihar (1971) 3 SCC 762*** and the judgment passed by this Court in ***Amrinder Pal Singh Vs. State of Punjab and another 2023 (1) RCR (Criminal) 594, Atma Singh Vs. The State of Punjab*** passed in Criminal Appeal No.1077 of 1976 decided on 14.07.1980, ***Prince Kumar Vs. State of Punjab*** passed in CRA-S No.1715-SB of 2012 decided on 06.07.2019 and ***Balwant Singh Vs. State of Punjab*** passed in Criminal Appeal No.1468-SB of 2002 decided on 04.03.2013.

6. Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner had received a total of 17 injuries on his legs and arms. Except injury No.1, all other injuries were opined to be caused by blunt weapons. Only injury No.1 on the left lower leg was found to be caused by a sharp-edged weapon. The investigating agency has deleted the offence under Section 307 IPC after obtaining the opinion of the Board of Doctors.

7. To attract the provisions of Section 307 IPC, following ingredients must exist:-

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(i) Attempt to commit murder of a human being was made.

(ii) Accused must have made an attempt with intention of causing death or with an intention to cause such bodily injuries, as the accused has the knowledge that these injuries are likely to cause death.

(iii) Accused has made an attempt to cause death by doing an act to be so imminently dangerous that it must in all probability cause death.

8. The intention and knowledge within the meaning of Section 307 IPC can be gathered either from the act of the accused or from the nature and extent of injuries. The intention cannot be inferred from the *ipse dixit* of the complainant. Mere recording of expression that the accused had caused injury with intention to kill would not breach the threshold of Section 307 IPC. Adverting to the facts of the case, the nature of weapon used and parts of the body in which the injuries were allegedly inflicted by respondents No.2 to 6, in the considered opinion of this Court, would not attract the offence under Section 307 IPC. Moreover, in view of the law as laid down by the Hon'ble Supreme Court of India in ***P. Kartikalakshmi's case*** (supra), the complainant cannot invoke the provisions of Section 216 Cr.P.C.

9. Furthermore, it cannot be expected even at the initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case. The primary consideration at the stage of framing of charge is the test of existence of a *prima facie* case, and at this stage, the probative value of materials on record need not be gone into. The veracity of the evidence can only be evaluated during the trial.

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10. In view of the above, this Court is in agreement with the findings rendered by the learned trial Court as well as the learned Revisional Court and therefore, the impugned order dated 03.01.2017 is upheld. Consequently, the instant petition stands dismissed.

(HARPREET SINGH BRAR)
JUDGE

February 09, 2024
Pankaj*

Whether speaking/reasoned Yes/No

Whether reportable Yes/No

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