

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-1281-2021 (O&M)
Date of Decision: 10.04.2024

Sandeep Singh*Petitioner*

Versus

State of Punjab & another*Respondents*

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Petitioner – Sandeep Singh in person with
Mr. Manan Bhardwaj, Legal Aid Counsel.

Mr. Vinay Kumar Malhotra, DAG, Punjab.

Mr. Parampreet Singh Paul, Advocate,
for respondents No.2 to 5.

Respondent No.6 proceeded against ex parte.

Respondent No.7 is reported to have expired.

GURVINDER SINGH GILL, J.

1. The instant revision petition, filed by victim(injured), is directed against order dated 23.09.2021 passed by the learned Additional Sessions Judge, SAS Nagar, whereby an application filed by the petitioner seeking amendment of charges, so as to substitute charges for offence under section 308 IPC with charges for offence under section 307 IPC, has been dismissed.
2. The matter pertains to a trial arising out of a FIR No.27 dated 07.02.2017 registered at Police Station Sadar, Kurali, under Sections 308, 341, 325, 323, 201, 34 IPC, wherein charges were framed against accused for offences

under section 308 IPC. The FIR in question was lodged at the instance of Manmohan Singh, wherein it is stated that on 05.02.2017, he as well as other members of his family and also his friend Sandeep Singh had gone to attend marriage of his aunt's (*Bua's*) grand-daughter namely Manpreet Kaur at Kalsi Farm, Kurali. It is alleged that at about 5:00 PM, when Manjit Kaur wife of Piara Singh, daughter of complainant's another aunt (*Bua*), was chatting with the complainant's cousin Ravinder Singh, the complainant told his cousin Ravinder Singh that since their family (complainant's family) was not on talking terms with them for the last 10-12 years, he should not chat with Manjit Kaur. Thereupon, Manjit Kaur's husband, namely, Piara Singh and his son-in-law, who is resident of Kiri Afgana, came there and started abusing the complainant. It is further alleged that in the meantime Gurmeet Singh, Bhupinder Singh, Ramandeep Singh and Damanpreet Singh also came there and started abusing the complainant and also issued threats to cause harm to him. However, they were separated by their relatives. After the wedding was over, when the complainant and his friend Sandeep Singh were proceeding to the main gate of the palace so as to return to their houses, Gurmeet Singh, Bhupinder Singh, Damanpreet Singh, Raman Singh, Piara Singh and son-in-law of Piara Singh, accompanied by 3-4 unknown persons waylaid them. It is alleged that while Damanpreet Singh was carrying an iron rod, the remaining were carrying sticks. It is alleged that Piara Singh exhorted his companions to teach the complainant a lesson for bullying them after consuming liquor at the wedding and inflicted a blow with stick on his (complainant's) head hitting him below his right eye. It is alleged that Damanpreet Singh inflicted a blow with iron rod on the head of Sandeep Singh as a result of which Sandeep Singh fell on the ground. It is

further alleged that while the complainant was attending to Sandeep Singh, all the accused inflicted blows to them with sticks and rods and also kicked them. The other relatives present at the spot, however, saved them from the assailants, who ran away from the spot with their respective weapons while issuing threats. Since Sandeep Singh was seriously injured, he was taken to PGIMER, Chandigarh, where the Doctor informed that on account of fracture in the head, a surgery was to be performed.

3. Upon conclusion of investigation, challan was presented against the accused. Learned Illaqa Magistrate upon finding that the facts, *prima facie*, disclosed commission of an offence under Section 308 IPC, which is triable exclusive by Court of Sessions, committed the case to the Court of Sessions. Upon the matter being entrusted to the Court of Additional Sessions Judge, charges were framed against the accused for offence under Section 308 IPC.
4. The petitioner, thereafter, moved an application in terms of Section 216 Cr.P.C. so as to get the charge altered from Section 308 IPC to Section 307 IPC. The said application was, however, dismissed by the learned Additional Sessions Judge vide order dated 23.09.2021, which has been assailed in the present revision petition.
5. Learned counsel for the petitioner submitted that it is a case where the petitioner had sustained an injury with an iron rod on his head and the said injury was inflicted with such great force that it not only led to fracture of his skull, but has left him crippled for life and till date he is on a wheel-chair having been permanently disabled to the extent of 70%. It has been submitted that the injury in question has been opined to be '*dangerous to life*' and that the manner in which the injury has been caused by the accused

by waylaying the petitioner, who was accompanying the complainant, after the marriage ceremony was over, would clearly show that it was a pre-meditated murderous assault and thus attract an offence under Section 307 IPC.

6. Opposing the petition, learned counsel representing the accused i.e. respondents No.2 to 5 submitted that it is a case of solitary injury and that too with a blunt edged weapon i.e. an iron rod and as such, it cannot be said that the injury in question had been inflicted by the accused with an intention to kill him or to make a murderous assault upon him. It has been submitted that the complainant, nowhere in the FIR, alleged that the injury had been inflicted with an intention to make an attempt to commit murder and that it is only at the stage of recording statement of the petitioner during the proceedings of trial that such an improvement has been made by him. It has also been submitted that it is not a case of any pre-meditation on part of the accused and that the occurrence had taken place pursuant to some exchange of hot words at a wedding. It has also been submitted that the mere fact that the injury was caused on the head would not be sufficient to charge the accused for an offence under Section 307 IPC.

7. Learned counsel further submitted that even though the doctor at a belated stage opined that the injury could have been dangerous to life, but the medical opinion is not the only guiding factor for the Courts and is not binding upon the Courts and that the Courts are free to examine and evaluate an injury to arrive at a just conclusion. Learned counsel in order to buttress his aforesaid submission places reliance upon Gangabhavani Vs. Rayapati Venkat Reddy & others, 2013 (15) SCC 298.

8. Learned State counsel submitted that since the accused are already being tried by the Court of Sessions for an offence under Section 308 IPC, even if any alteration is made so as to charge the accused for offence under Section 307 IPC instead of offence under Section 308 IPC, the same would not have any effect on proceedings of trial and that it will always be open to the trial Court either to completely acquit the accused or to hold him guilty for any lesser offence.
9. This Court has considered the aforesaid rival submissions. The controversy in the present case can be crystallized to the following question:

“Whether the solitary grievous injury on head of petitioner, inflicted with a blunt edged weapon, will essentially attract offence under section 308 IPC and not 307 IPC?”

10. Before proceeding further, it is apposite to bear in mind the nature of exercise which the trial Court is expected to conduct at the stage of considering framing of charges. It is a well settled principle that at the stage of framing of charges, the Court has to sift and weigh the prosecution evidence on record only for the limited purpose to find out if the same *prima-facie* discloses the necessary ingredient to constitute the alleged offence. Hon’ble Supreme Court in Central Bureau of Investigation Versus K. Narayana Rao, 2012(9)SCC 512, while reiterating the law laid down in P.Vijayan Versus State of Kerala and another, 2010(1) R.C.R. (Criminal) 826 and in Sajjan Kumar Versus Central Bureau of Investigation, 2010(4) R.C.R. (Criminal) 382, held as under:-

“12. While considering the very same provisions i.e., framing of charges and discharge of accused, again in *Sajjan Kumar* (supra), this Court held thus:

- "19. It is clear that at the initial stage, if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is only for the purpose of deciding prima facie whether the court should proceed with the trial or not. If the evidence which the prosecution proposes to adduce proves the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.
20. A Magistrate enquiring into a case under Section 209 Criminal Procedure Code is not to act as a mere post office and has to come to a conclusion whether the case before him is fit for commitment of the accused to the Court of Session. He is entitled to sift and weigh the materials on record, but only for seeing whether there is sufficient evidence for commitment, and not whether there is sufficient evidence for conviction. If there is no prima facie evidence or the evidence is totally unworthy of credit, it is the duty of the Magistrate to discharge the accused, on the other hand, if there is some evidence on which the conviction may reasonably be based, he must commit the case. It is also clear that in exercising jurisdiction under Section 227 Criminal Procedure Code, the Magistrate should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

Exercise of jurisdiction under sections 227 and 228 Criminal Procedure Code

21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:
- (i) The Judge while considering the question of framing the charges under Section 227 Criminal Procedure Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.
 - (ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

- (iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.
- (iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.
- (v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.
- (vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that 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.
- (vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

From the above decisions, it is clear that at the initial stage, if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence, in that event, it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. A judicial magistrate enquiring into a case under Section 209 of the Code is not to act as a mere post office and has to arrive at a conclusion whether the case before him is fit for commitment of the accused to the Court of Session. He is entitled to sift and weigh the materials on record, but only for seeing whether there is sufficient evidence for commitment, and not whether there is sufficient evidence for conviction. On the other hand, if the Magistrate finds that there is no prima

facie evidence or the evidence placed is totally unworthy of credit, it is his duty to discharge the accused at once. It is also settled law that while exercising jurisdiction under Section 227 of the Code, the Magistrate should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial. This provision was introduced in the Code to avoid wastage of public time and to save the accused from unavoidable harassment and expenditure. While analyzing the role of the respondent herein (A-6) from the charge sheet and the materials supplied along with it, the above principles have to be kept in mind.”

11. Now coming to the difference between the quality of evidence, as required at the stage of consideration of framing of charges and at the stage of final hearing at the end of the trial, it is well-settled that at the time of framing of charges, the Court’s primary concern lies in determining as to whether a prima facie case exists against the accused and that as to whether the ingredients of the offence are prima facie satisfied. At the time of framing of charges, the Court need not delve into the realm as to whether the evidence collected during investigation would prove the case beyond reasonable doubt. Such satisfaction is to be recorded at the conclusion of trial after the entire evidence has been led. In other words, the principle criteria at the time of framing of charges is as to whether there exist sufficient grounds for ‘presuming’ is that by taking the evidence collected by the police at its face value whether the ingredients constituting the alleged offences are disclosed. The Court has to consider the material only with a view to find out if there is ground for ‘presuming’ that the accused had committed the offences alleged against him and not for arriving at a conclusion that it is not likely to lead to a conviction. A three-Judge Bench of Hon’ble Apex Court in State of Maharashtra Vs. Som Nath Thapa, (1996)

4 SCC 659, while delving and explaining the word ‘presume’, observed as under:

“32.if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the Court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage.”

12. Section 307 IPC, for the sake of ready reference, is reproduced hereinunder:

“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.”

13. Under Exception 4 to Section 300 IPC, culpable homicide is not murder if the stipulations contained in that provision are fulfilled. They are: (i) that the act was committed without pre-meditation; (ii) that there was a sudden fight; (iii) the act must be in the heat of passion upon a sudden quarrel; and (iv) the offender should not have taken undue advantage or acted in a cruel or unusual manner.

14. It is the specific case of the prosecution that the accused had inflicted an injury with the help of an iron rod on the head of the petitioner. The injury is described in the record of PGIMER, Chandigarh as ‘5x1 cm laceration

over the occiput'. The injury in question has been opined to be '*dangerous to life*'. The said injury has left the petitioner disabled physically permanently to the extent of 70%, as is evident from Disability Card/ Disability Certificate annexed as Annexure P-9.

15. A perusal of Section 307 IPC makes it clear that an intention or knowledge on the part of offender is a necessary ingredient. Though it is correct that in the FIR, there is no specific averment that the injury in question has been caused with an intention to commit murder, but it is well-settled that the intention 'to kill' or 'to commit murder' is not to be established on the basis of allegations or a specific recital made by the injured or by the complainant. Intention is a state of mind where a person acts with an object to achieve a particular consequence and which is borne in mind during preparation and commission of offence followed by the actual execution of the act to achieve the intended result.
16. Intention has to be gathered from various circumstances, such as, nature of weapon used, the seat of injury, the number of injuries, the nature of injuries etc. Intention has to be absolute and very specific and is not to be confused with mere recklessness of the offender. Hon'ble Apex Court in Pulicherla Nagaraju @ Nagaraja Reddy Vs. State of A.P., 2006(11) SCC 444, delineated various circumstances which could be suggestive of real intention of the assailant in causing injuries. The relevant extract reads as under:

“29. Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters - plucking of a fruit, straying of a cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally

absent in such cases. There may be no intention. There may be no pre-meditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under Section 302, are not converted into offences punishable under Section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under Section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances:

- (i) nature of the weapon used;
- (ii) whether the weapon was carried by the accused or was picked up from the spot;
- (iii) whether the blow is aimed at a vital part of the body;
- (iv) the amount of force employed in causing injury;
- (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight;
- (vi) whether the incident occurs by chance or whether there was any pre-meditation;
- (vii) whether there was any prior enmity or whether the deceased was a stranger;
- (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation;
- (ix) whether it was in the heat of passion;
- (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner;
- (xi) whether the accused dealt a single blow or several blows.

The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention.”

17. The present case is certainly a case of solitary injury and that too with blunt edged weapon i.e. iron rod. However, having regard to the manner in which the injury had been inflicted on a vital part i.e. on the head and the result which the said injury generated i.e. a fracture of the skull which required surgery and left the petitioner crippled for life, it is apparent that the injury in question had been inflicted with a great force with a heavy

object. It appears that the accused having been successful in inflicting the injury on the head of the petitioner with great force, which led to immediate falling down of the petitioner, did not feel necessity to cause more injuries.

18. In a given case, even a single injury with a blunt edged weapon on head can prove fatal. An assailant under normal circumstances cannot be expected to inflict an injury with such accuracy and precision that he would know as to whether such injury is not likely to cause death or that the same is sure to result into death. A Division Bench of this Court in Criminal Appeal No.632-DB of 2006 decided on 24.9.2008, titled as 'Banarsi @ Magha Vs. State of Haryana', wherein also it was a case of single injury with a blunt edged weapon, held that Section 307 IPC could be attracted. The relevant portion of the said judgment reads as follows:

"We are unable to agree with the submission made by learned counsel for appellant Banarsi that he had no intention to cause murder of the deceased as only one blow had been given. Each case has to be decided on its own facts. In the facts of the present case we are of the opinion that accused Banarsi had given injury with **such force with an iron rod** with intention to commit murder of Mukesh. After receipt of single injury Mukesh fell down. As per the ocular version, after Mukesh fell down the other accused gave him blows with brick bats. The said part of the ocular version is not corroborated by the medical evidence as no injury was found on the person of the deceased with brick bats. Learned trial Judge rightly held that the possibility of accused Mohan Lal, Balwant Singh and Raghbir having been falsely involved in this case could not be ruled out as they had no previous enmity with the deceased and had no motive to cause injuries on his person."

19. A Division Bench of this Court in Jai Chand Vs. State of Haryana 2007(4) RCR(Criminal) 221, wherein death had been caused on account of accused having inflicted a single blow on head with a hammer and wherein also a

contention was raised that the same would constitute an offence under section 304 Part-II IPC and not 302 IPC, it was held as under:

“22. Having considered the medical evidence and while analyzing the facts on the parameters as laid down by the Apex Court in *Pulicherla Nagaraju alias Nagaraja Reddy's* case (supra), we could not convince our mind to hold that the single blow given by the accused, in the given circumstances of the case, particularly keeping in view the nature, size of weapon i.e. hammer , used by the accused, the force with which the weapon was used, part of the body over which the injury was caused i.e. on the head, a vital part of the body, the nature of the injury resulted in an instantaneous collapse leading to death, leaves no room to doubt that the intention of the accused was to cause death or to cause such bodily injury which was sufficient, in the ordinary course of nature, to cause death. Thus, irresistible conclusion in this case, which could be drawn, is that provisions of Section 304II certainly could not be attracted and the accused Jai Chand could safely be held to have committed an offence under Section 302 Indian Penal Code.”

20. In this context, reference may be made to *Gudar Dusadh Vs. State of Bihar, 1972(3) SCC 118*, wherein it has been held as under:

“5. The two courts below accepted the prosecution case that it was the appellant who had given a lathi blow on the head of Ramlal deceased as a result of which the latter died. It was held that the case against the appellant fell under clause "3rdly" of section 300 of Indian Penal Code. As such, the appellant was convicted under section 302 Indian Penal code.

6. The only question with which we are concerned in appeal is whether the offence committed by the appellant is murder or whether it is culpable homicide not amounting to murder. In this respect we find that according to Dr. R. S. Singh who performed the post-mortem examination on the dead body of the deceased, the doctor found a lacerated wound 2" x ½" bone deep on the left side of the head of the deceased. The injury was ante-mortem and had been caused by a weapon like lathi. On dissection the doctor found 3" long fracture of the left parietal bone about 2½" from the middle line of the top of the head. On removing the skull the doctor noticed large amount of blood and blood clots on the left side of the doctor, was due to compression on the left side of the brain. The doctor further stated that the above injury was sufficient in the ordinary course of nature to cause death.

7. The appellant who caused the above injury to Ramlal deceased, in our opinion, was guilty of the offence of murder and he has been rightly convicted under section 302 Indian Penal Code. The appellant along with his companions was lying in wait to attack Ramlal and, according to the evidence on record which has been accepted by the High Court, he gave a blow on the head of Ramlal as a result of which Ramlal fell down and died instantaneously. It has also been found by the High Court that there was no altercation or exchange of abuses between Ramlal and the accused party. The circumstances of the case thus show that the assault was premeditated and the blow on the head of Ramlal was not accidental. The fact that the appellant gave only blow on the head would not mitigate the offence of the appellant and make him guilty of the offence of culpable homicide not amounting to murder. The blow on the head of Ramlal with lathi was plainly given with some force and resulted in a 3" long fracture of the left parietal bone. Ramlal deceased died instantaneously and as such, there arose no occasion for giving a second blow to him. As the injury on the head was deliberate and not accidental and as the injury was sufficient in the ordinary course of nature to cause death, the case against the appellant would fall squarely within the ambit of clause "3rdly" of Section 300 Indian Penal Code. According to that clause, culpable homicide is murder if it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. Section 300 also provides for some exceptions but we are not concerned with them in this case."

21. While elaborating the legal position regarding single blow injury, the Apex Court in case Jagrup Singh Vs. State of Haryana, AIR 1981 Supreme Court 1552 observed as under :-

- "6. There is no justification for the assertion that the giving of a solitary blow on a vital part of the body resulting in death must always necessarily reduce the offence to culpable homicide not amounting to murder punishable under Section 304 Part II of the Code. If a man deliberately strikes another on the head **with** a heavy log of wood or an iron rod or even a lathi so as to cause a fracture of the skull, he must in the absence of any circumstances negating the presumption, be deemed to have intended to cause the death of the victim or such bodily **injury** as is sufficient to cause death. The whole thing depends upon the intention to cause death, and the case may be covered by either clause firstly or clause thirdly. The nature of intention must be gathered from the kind of weapon used, the part of the body hit, the amount of force employed and the circumstances attendant upon the death."

22. It is, thus, evident that there is no absolute rule that in every case of a single injury with a blunt edged weapon, the offence under 304 (or 308) IPC would be attracted and not 302 (or 307) IPC.
23. The present case, as already noticed above, is a case where the blow on head of the petitioner with iron rod had a consequence of not only fracture of skull of the petitioner, but it also left him disabled for life to the extent of 70% and which could only have been possible if the blow had been given with immense force. There is very fine distinction between offence under Section 307 IPC and Section 308 IPC mainly as regards the intention of the assailant, which has to be gathered from the facts and circumstances. Having regard to the fine distinction, the case of the prosecution with regard to commission of offence under Section 307 IPC cannot be thrown out at the initial stage particularly when circumstances are suggestive that the blow had been inflicted on a vital part of body with immense force leading to near fatal consequences. As a matter of fact, an accused while inflicting injury with an iron rod or with some other weapon cannot be expected to measure the force with which the blow is to be inflicted with such precision so as to be sure that the same would not cause death. It is the duty of the Court to refrain from entering into niceties at the stage of framing of charges particularly when there is a fine distinction between two offences, which could be said to have been committed. It can safely be left to the trial Court to consider at the conclusion of trial as to whether the evidence establishes a graver offence or a lesser offence. The relevant extract from Pulicherla Nagaraju @ Nagaraja Reddy's case (supra), even at the sake of repetition, is reproduced hereinunder:

“29.At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under Section 302, are not converted into offences punishable under Section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under Section 302.”

24. Having regard to the facts and circumstances, the instant case is a fit case where charges ought to be amended/alterd so as to substitute the charges for an offence under Section 308 IPC with Section 307 IPC. Needless to mention, a trial Court upon conclusion of trial and upon appraisal of the entire evidence always has an option to totally acquit the accused of the graver charge or to convict such accused for lesser offence in case the evidence establishes commission of any lesser offence only.

25. The petition, as such, is accepted and the order dated 23.09.2021 passed by the learned Additional Sessions Judge, SAS Nagar, is hereby set aside. The trial Court is directed to alter the charges so as to substitute offence under Section 308 IPC with offence under Section 307 IPC and to proceed further in accordance with law.

10.04.2024

Vimal

**(GURVINDER SINGH GILL)
JUDGE**

Whether speaking/reasoned: **Yes**

Whether reportable: **Yes**