



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on : May 24, 2024
Date of Decision : May 28, 2024

CRR-1843-2023 (O&M)

Satish Kumar @ Satish and others

...Petitioners

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued By : - Dr. Anmol Rattan Singh, Senior Advocate with
Mr. Pratham Sethi, Advocate for the petitioners.

Mr. Ram Kumar Singla, DAG, Haryana.

Mr. Ashish Verma, Advocate for respondent No.2.

DEEPAK GUPTA, J.

Under challenge in this revision petition, is the legality of order dated 18.07.2023 passed by the Court of learned Addl. Sessions Judge, Panipat, charge sheeting the accused (*petitioners herein*) under Sections 148, 186, 323/149, 307/149, 506/149 of IPC and Section 3 of the Prevention of Damage to Public Property Act, 1984, in a case arising out of FIR No.83 dated 26.01.2023 registered at Police Station Samalkha, Panipat.

2. Learned Sr. counsel for the petitioners has confined his prayer to assail the legality of charge sheeting the petitioners only to the extent of Section 307 IPC, by contending that there is no material even to make out a *prima facie* case to charge sheet the accused-petitioners for



the offence under Section 307 IPC.

3. FIR in question (*Annexure P-1*) was lodged on the complaint of one Sunil Sharma, as per which on 25.01.2023, he alongwith Satyawar S/o Paleram, and Yashdeep @ Tinu S/o Jagat Singh had gone to the office of Shyam Bareja, where Manish Beniwal, Councilor of Ward No.10, Satish Kuhad and Jaipal Kuhad were already present. They were arguing over the issues pertaining to the municipal election , when they started assaulting and in the brawl, Satyawar and Yashdeep sustained injuries. He (Sunil Sharma) took both of them for treatment at S.D. Hospital, Samalkha. They were getting the treatment, when suddenly Manish Beniwal alongwith his brother Monu, Satish Kuhad, Sandeep Beniwal and 15-16 other persons carrying weapons came to the hospital. Yashdeep started assaulting him. Satyawar, who was getting treatment inside, was assaulted inside by the assailants, who were having weapons. Satish Kuhad with an intention to kill hit butt of weapon on his head. As they raised alarm, all of the assailants fled away.

4. During police investigation, the medico legal reports pertaining to injured Yashdeep, Sunil Sharma and Satyawar were collected. Sunil Sharma was found to have sustained 05 injuries. Yashdeep was found to have sustained 08 injuries and Satyawar was found to have sustained 04 injuries. As the final report under Section 173 Cr.P.C. would reveal that during investigation, footage of the CCTV camera installed in the hospital was obtained and the examination thereof revealed the capturing of the incident, showing that no arm was used and



so, Section 25 of the Arms Act was deleted. However, it was found that during occurrence, a three legged iron stool lying in the hospital was used to cause injuries on the head of the injured. Medical opinion was collected. After concluding investigation, final report under Section 173 Cr.P.C. was filed.

5. Learned Sr. counsel has drawn attention towards the medico legal report of Yashdeep (Annexure P-2), so as to contend that out of 08 injuries found on his person, one of the injury has been opined by the doctor to be grievous, but not life threatening. Sunil Sharma is found to have sustained 05 injuries, as per the medico legal report, but none of the injury is found to be bony or life threatening. By drawing attention towards the opinion taken from the concerned medical officers during investigation, it is urged by learned Sr. counsel that in the absence of any medical evidence to reveal any of the injury on the person of any of the injured to be dangerous to life, the charge under Section 307 IPC cannot be sustained.

6.1 Opposing the revision petition, learned State counsel ably supported by counsel for the complainant contends that in order to attract Section 307 IPC, it is not mandatory that there should be medical evidence to show that any of the injury on person of the injured was dangerous to life. It is contended that the only necessary ingredient to bring an offence within the scope of Section 307 IPC is that when the act is done with such intention or knowledge and under such circumstances that if by the said act death is caused, then the offender is guilty of



murder. Learned counsels have drawn attention towards the medico legal reports of the injured to contend that out of 08 injuries found on the person of Yashdeep, one is on left temporal region, other is on right parietal region, the third is on the left side of forehead, the fourth is on the nose, revealing that repeat injuries were caused on his person on the vital parts of the body. Similarly, out of 05 injuries caused to Sunil Sharma, three of the injuries are on frontal region of jaw, the right cheek and the right eye. Satyawar was caused 04 injuries, out of which, 03 are in the area of left parietal region, right parietal region and right occipital region, indicating the intention of the assailants to cause their death.

6.2 Learned State counsel further submits that a three legged iron stool lying in the hospital was used as a weapon of offence to hit on the head of the injured persons, indicating the intention of the assailants to cause the death. It is also argued that at the stage of framing of the charge only *prima facie* case to prosecute the accused is to be noticed, without recording any reason. It is also urged that charge should be as broad as possible, as prosecution can lead evidence only in accordance with the charge framed by the Trial Court. In case, higher charge is not framed for which there is evidence, accused will become entitled to assume that he is called upon to defend himself only with regard to the lesser offence for which he has been charged. Learned counsel has referred to “**Gulam Hassan Beigh v. Mohammad Maqbool Magrey & Ors.**”, Law Finder Doc Id #2016782 and “**Bhawna Bai v. Ghanshyam and others**”, Law Finder Doc Id # 1634005.



7. I have considered submissions of both the sides and appraised the record carefully.

8. In order to see that whether there is an attempt to murder so as to attract section 307 IPC, it is required that the act must be done with such intention or knowledge and done under such circumstances that if death be caused by that act, offence of murder would emerge. Intention or knowledge of accused must be such as is necessary to constitute murder. Since mens rea (intention or knowledge) precedes the act, so said mens rea has to be gathered from all the circumstances. There is no golden scale to judge intention of the accused, same being hidden in his mind. Therefore, it is to be deduced from various circumstances. Certain guiding factors in this regard can be nature of injury, part of body involved, kind of weapon used, number of injuries, time and place of occurrence, preparation made, manner of occurrence, motive and consequence of the injuries. Reference can be made to **“Ajay Pal vs. State of Punjab”**, 1999(1) RCR (Criminal) 437 and **“State of Haryana Vs. Babu Singh”** 1987(1) RCR (Criminal) 117.

9. In fact, it is not even essential that bodily injury capable of causing death must be inflicted, so as to sustain conviction under section 307 IPC. For example, if a shot is fired with an intention to kill the victim but it misses the target, conviction u/s 307 IPC would be justified, even though no bodily injury capable of causing death is inflicted. Reference can be made to **“Om Parkash vs. State of Punjab”**, AIR 1961 SC 1782. It is sufficient in law, if there is present an intent coupled with some overt



act in execution thereof, such act being proximate to the crime intended. Reference can be made to “*Sagayam Vs. State of Karnataka*”, 2000 (4) SCC 454 [SC]. In “*State of Madhya Pradesh Vs. Saleem alias Chamaru*”, (2005) 5 SCC 554, it has been held by Hon’ble Supreme Court that an accused charged under section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt. It was observed that bodily injury may not be sufficient to cause death. Accused may be convicted under section 307 IPC, if he had intention to cause death. The determinative question is intention or knowledge, as the case may be, and not nature of the injury. Intention or knowledge is the question of fact and would depend on facts of a given case. Same view was taken by Hon’ble Supreme Court in “*Vasant Vithu Yadav v State*”, 2004 (9) SCC 31.

10. As far as the absence of any medical opinion regarding the nature of injury is concerned, it is suffice to say that at the stage of considering the charge, only prima facie material is required to be seen. For this, it is not at all necessary that in order to invoke Section 307 IPC, there must be a medical opinion declaring injury to be dangerous to life.

11. In the present case, no doubt there is no medical opinion regarding any of the injury on the person of any of the three injured to be dangerous to life, but at the same time, the Court cannot ignore the fact that many of the injuries on the person of three injured are on the vital parts of their bodies. The injuries are alleged to have been caused at the head with a heavy blunt weapon, i.e. a three legged iron stool, which was



used as weapon of offence. Therefore, it will a matter of evidence, as to whether charge under Section 307 IPC is proved or not; and as to in which of the two occurrences referred in the FIR, the injuries were caused.

12. At the stage of framing of the charge, only the *prime facie* material is to be seen, without scrutinizing the evidence in such a way as to whether charge will ultimately be proved or not. Charge should be as broad as possible because in case higher charge is not framed, and evidence is produced by the prosecution in respect of that offence, the accused cannot be ultimately convicted for that offence. On the other hand, if higher charge is framed and the prosecution fails to produce evidence so as to prove that offence, the accused can be acquitted of the same and can be convicted of the lesser offence depending upon the evidence produced by the prosecution.

13. Consequently, this Court does not find any merit in the present revision petition. As such, the same is hereby dismissed.

May 28, 2024

Sarita

(DEEPAK GUPTA)

JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable: Yes/No