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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P. 687/2017**

STATE

.....Petitioner

Through: Mr. Ajay Vikram Singh,
APP for the State.
SI Bharat, PS Shalimar
Bagh.

versus

JASWANT @ RAHUL @ MOGLI & ORS

.....Respondents

Through: Mr. Shailesh Kumar, Adv.
through V.C.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
21.08.2024

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1. The present petition is filed under Sections 397/401 of the Criminal Procedure Code, 1973, *inter alia*, challenging the order on charge dated 29.05.2017 (hereafter '**impugned order**'), passed by the learned Additional Sessions Judge ('**ASJ**'), North-West District, Rohini Courts, Delhi, in CNR No.DLNW01-004768-2017 arising out of FIR No.297/2016, registered at Police Station Shalimar Bagh.

2. The learned ASJ, by the impugned order, discharged the accused persons of the offence under Sections 307/34 of the Indian Penal Code, 1860 ('**IPC**'). It was observed that since the accused persons had voluntarily caused simple injuries with sharp objects, the offence under Sections 324/24 of the IPC would be attracted and the matter was thus remanded to the

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learned Chief Metropolitan Magistrate, North-West District, Rohini Courts, Delhi for further trial.

3. The brief facts of the case are that on 04.04.2016, at about 1 PM, the complainant had gone to the Ayurvedic Hospital to fetch water bottles with his partner Sharwan. It is alleged that the accused persons, that is, the respondents and co-accused K (juvenile in conflict of law), were present there. It is alleged that Respondent No.1 and the co-accused K caught hold of the complainant. It is alleged that co-accused K incited Respondent No.2 to kill the complainant as he had beaten him two days ago. It is alleged that on hearing this, Respondent No.2 took out a blade from his pocket and struck the complainant on his face, neck and thigh. The injured was then rushed to the hospital. The MLC of the complainant revealed that the injuries sustained by him were simple in nature.

4. The learned Additional Public Prosecutor for the State submits that the impugned order is based on conjectures and not on the factual matrix of the case.

5. He submits that the learned ASJ erroneously discharged the accused persons of the offence under Sections 307/34 of the IPC merely on the ground that there was no element of pre-meditation as the accused persons were present at the spot.

6. He submits that the learned ASJ failed to appreciate that the accused persons in furtherance of their common intention had given multiple blows to the complainant on the vital parts of his body, which reflects that the accused persons had the intention to kill the complainant.

7. He submits that that the learned ASJ erred by not appreciating that the eye-witness Sharwan and the complainant



had supported the case of the prosecution and specifically stated that Respondent No.2 had given the blade blows to the complainant with the intention to kill him, however, the complainant had saved himself by moving back and forth.

8. He submits that the learned ASJ did not appreciate that the injury caused to the complainant was mitigated because the complainant moved backwards to save himself from the assault of the accused persons.

9. He submits that the weapon used in the commission of the offence was a blade which is a deadly weapon. He submits that there is sufficient *prima facie* evidence to frame charges against the accused persons for the offence under Sections 307/34 of the IPC.

ANALYSIS

10. Since the petitioner has assailed the impugned order whereby the learned ASJ discharged the respondents for the offence under Section 307/34 of the IPC, it will be apposite to succinctly discuss the law with respect to framing of charge and discharge under Sections 227 and 228 of the CrPC respectively.

The statutory provisions are set out below:

“227. Discharge

If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

228. Framing of Charge

(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which—

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, or any other Judicial Magistrate of the first class and



direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.”

11. The Hon’ble Apex Court, in the case of **Sajjan Kumar v. CBI: (2010) 9 SCC 368**, has culled out the following principles in respect of the scope of Sections 227 and 228 of the CrPC while observing that a *prima facie* case would depend on the facts and circumstances of each case. The relevant paragraphs read as under :

“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 CrPC 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."

(emphasis supplied)

12. The Court at the stage of framing of charge is to evaluate the material only for the purpose of finding out if the facts constitute the alleged offence, given the ingredients of the offence. Though, for the purpose of conviction, the same must be proved beyond reasonable doubt.

13. In the present case, the chargesheet was filed against the respondents for the offence under Sections 307/34 of the IPC. The learned ASJ, by the impugned order, discharged the respondents for the offence under Sections 307/34 of the IPC after perusing the statement of the complainant and the eye-witness Sharwan, and the MLC of the complainant. It was noted that the MLC did not indicate the depth of the injury and that the complainant was inebriated when he was brought to the hospital as the smell of alcohol was emanating from him. The relevant



portion of the impugned order is reproduced hereunder:

“10. In the case in hand, it is very much evident and palpable that accused(s) had not gone to the place of victim. The accused persons were already present at a place where the complainant had, coincidentally, reached later. Thus, there is no element of any pre-meditation. I also cannot be oblivious of the fact that injured was under the influence of alcohol and it seems very likely that incident took place at the spur of the moment on account of some sudden quarrel. Blade, though, happens to be a sharp object yet the manner in which the injury was inflicted cannot be said to be sufficient to conclusively hold that the accused had clear-cut intention to commit murder and murder only. As already noticed above, the depth of injury is not given.

11. I would like to highlight that Section 307 IPC comes into play irrespective of the infliction of injuries and, therefore, nature of injury is not the deciding and governing factor to find out whether the case is of attempt to commit murder or not. it is the intention and knowledge which are the most crucial factors. Injury, on most of the occasions, takes a back seat though the nature of injury may prove to be very handy at the time of deciding quantum of sentence.

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14. Here, there is no grievous Injury which may attract Section 326 IPC. There is no allegation of previous enmity between the parties which also has potential to indicate that it was a case of sudden fight. There is no other fact or circumstance which may compel me to hold that the intention of accused was to commit murder.

15. In view of my foregoing discussion, I do not find it to be a case falling u/s 307/34 IPC...”

14. The limited question for consideration is whether the learned ASJ was right in concluding that the offence under Section 323/34 of the IPC was attracted in the present case instead of the offence under Section 307/34 of the IPC. At the outset, it is relevant to note the ingredients that constitute the offence under Section 307 of the IPC.

15. Section 307 of the IPC reads as under:

“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.”

16. The Hon’ble Apex Court in the case of ***Jage Ram v. State of Haryana : (2015) 11 SCC 366*** has observed as under:

“12. For the purpose of conviction under Section 307 IPC, the prosecution has to establish (i) the intention to commit murder; and (ii) the act done by the accused. The burden is on the prosecution that the accused had attempted to commit the murder of the prosecution witness. Whether the accused person intended to commit murder of another person would depend upon the facts and circumstances of each case. To justify a conviction under Section 307 IPC, it is not essential that fatal injury capable of causing death should have been caused. Although the nature of injury actually caused may be of assistance in coming to a finding as to the intention of the accused, such intention may also be adduced from other circumstances. The intention of the accused is to be gathered from the circumstances like the nature of the weapon used, words used by the accused at the time of the incident, motive of the accused, parts of the body where the injury was caused and the nature of injury and severity of the blows given, etc.”

17. As rightly observed by the learned Trial Court, the injuries on the victim were not grievous. From the complaint, it is apparent that the accused / respondents had not gone to the place of the victim but were already present at a place where the victim reached later. Thus, the meeting of the parties was admittedly coincidental.

18. As per the complaint, the injured victim had some prior acrimony with one of the co-accused. As rightly noted by the learned Trial Court, the quarrel between the parties happened at the spur of a moment. Even though a blade is alleged to have been used, the injuries caused, however, being simple, do not



point towards the intention to commit murder.

19. It is also admitted fact that the injured was under the influence of alcohol at the time of incident. Thus, in the opinion of this Court, the learned Trial Court rightly observed that the incident is likely to have taken place on spur of the moment on account of a quarrel between the parties. The nature of injuries, in such circumstances, does not point towards a grave suspicion that an attempt to commit murder was made by the accused persons.

20. The learned Trial Court has evidently applied its judicial mind and considered the totality of the facts before discharging the accused persons of the offence under Sections 307/34 of the IPC in light of the absence of grave suspicion against them.

21. In view of the above, this Court finds no reason to interfere with the impugned order.

22. The present petition is dismissed.

AMIT MAHAJAN, J

AUGUST 21, 2024