

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Revision Petition No. 602/2021

1. Mahendra Singh
2. Karaj Singh
3. Kuldeep Singh

-----Petitioners

Versus

1. State Of Rajasthan, Through Pp
2. Nanak Singh

-----Respondents

For Petitioner(s) : Mr. Kanti Lal Thakur
For Respondent(s) : Mr. Mukesh Trivedi PP
Mr. D.S. Thind

HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI

Judgment

Reserved on 13/04/2022

Pronounced on 20/04/2022

1. In the wake of instant surge in COVID – 19 cases and spread of its highly infectious Omicron variant, abundant caution is being maintained, while hearing the matters in the Court, for the safety of all concerned.
2. This criminal revision petition under Section 397 read with Section 401 Cr.P.C. has been preferred against the order dated 26.07.2021 passed by learned Additional Sessions Judge,

Raisinghnagar, District Sriganaganagar in Criminal Misc. Case No.13/2017 (CIS No.13/2017), framing charges against the present accused-petitioners for the offences under Sections 308, 447, 427, 341, 323 & 325 read with Section 34 IPC.

3. Learned counsel for the accused-petitioners submits that on 04.07.2016, the respondent No.2-Nanak Singh (injured/complainant), while undergoing treatment at Community Health Centre, Sri Ganganagar, gave a *parcha bayan* to the police, alleging therein that on that date at about 12 o'clock, his son and his nephew, alongwith the injured/complainant were doing work in his agricultural field. At that time, some persons, including the present accused-petitioners entered the agricultural field of the complainant, and accused-Mahendra Singh, who was carrying pistol in his hand, fired upon the son of the injured/complainant, while using abusive language, with an intention to kill him; but somehow his son managed to save his life. Thereafter, when the son of the injured/complainant rushed towards his jeep and started the same, the accused persons surrounded the same, whereupon accused-Balvinder Singh, with an intention to kill the injured/complainant's son opened gunfire, and the pellet whereof hit his lips, resultantly blood started oozing. It was further alleged that accused-Kuldeep Singh was amongst the persons, who attacked the jeep of the complainant and broke the windshield thereof. It was also alleged that thereafter, many acts were done by the accused persons, with a clear intention to kill the complainant party.

4. Learned counsel for the accused-petitioners submits that on the basis of the aforementioned information, an FIR bearing No.117/2016 was registered at Police Muklawa, District Sri

Ganganagar for the offences under Sections 307, 336, 447, 323, 147, 148 & 149 IPC and Section 27 of Arms Act against the accused petitioners and one Darshan Singh, and the investigation commenced. Learned counsel also submits that after investigation, the concerned investigating office did not find the offences to be made out under Section 307 & 336 IPC and Section 27 of the Arms Act, but found the offences under Sections 308, 427, 341, 325 & 34 IPC to be made out, and accordingly, charge-sheet was filed against the present accused-petitioners and the said Darshan Singh for the offences under Section 308, 447, 427, 341, 323, 325 & 34 IPC before the learned Judicial Magistrate, First Class, Raisinghnagar, District Sriganganagar, who committed the case to the Court of Sessions, wherefrom the case was transferred to the learned trial court i.e. Additional Sessions Judge, Raisinghnagar, District Sriganganagar.

5. Learned counsel for the accused-petitioners further submits that the learned trial court thereafter, without due appreciation of the evidence and material placed before it, framed the charges against the present accused-petitioners for the offences under Sections 308, 447, 427, 341, 323, 325 read with Section 34 IPC, despite the fact that the criminal proceedings launched by the complainant against the accused-petitioners is nothing but an abuse of the process of law; this more so, when the FIR was registered after an unexplained delay of nine hours, as the incident in question alleged to have occurred at 12'o clock, whereas the FIR was registered at 9:00 p.m.

6. Learned counsel for the accused-petitioner also submits that the averment of the complainant regarding the accused-petitioners with an intention to kill the complainant party is also

falsified from the fact that no gunfire injury was suffered by the complainant in the alleged incident, nor there is any evidence to show the usage of the gun in the incident in question, and therefore, the offence under the Arms Act was not found to be made out by the concerned investigating officer.

7. Learned counsel for the accused-petitioners further submits that the respondent No.2/complainant was examined by the Dental Surgeon on 06.07.2016, and at that time, a scar was found on the alleged injury on his left lip; according to which, the said injury was found to have been caused 3-5 days prior to the alleged incident, which also is sufficient to create a doubt in the prosecution story.

8. Learned counsel for the accused-petitioners also submits that from the above mentioned factual aspects, it is clear that there was no intention or knowledge to commit the alleged incident in question on the part of the present accused-petitioners, and thus, the impugned order of framing of charges against the accused-petitioners is not sustainable in the eye of law.

9. Learned counsel for the accused-petitioners relied upon the precedent law laid down by the Hon'ble Supreme Court in ***Fireman Ghulam Mustafa Vs. State of Uttaranchal (Now Uttarakhand), 2015(4) Criminal Court Cases 546 (S.C.)***, relevant portion of which reads as under:

"7. To justify a conviction under Section 307 IPC the Court has to see whether the act was done with the intention to commit murder and it would depend upon the facts and circumstances of the case. Although the nature of injuries caused may be of assistance in coming to a finding as to the intention of the accused,

such intention may also be gathered from the circumstances like the nature of weapons used, parts of the body where the injuries were caused, severity of the blows given and motive, etc.

8. Just before the occurrence PW1 Munnu Lal came to the Fire Station for surprise check and recorded the absence of the accused in the general diary and returned home. Within few minutes the appellants/accused armed with lathis went to his house and indiscriminately beat him with lathis causing injuries in neck, chest, hands, buttocks and thighs. PW3 Dr. N.D. Punetha mentioned in her report that injury nos.11, 17 and 18 are grievous in nature. In fact the grievous injuries are the fractures of wrist bones in both the hands. Though the injuries caused were 18 in number they were not on vital parts of the body. It is true that the appellants had acted in a state of fury but it cannot be said that they caused those injuries with the intention to cause death. The appellants are not liable to be convicted for the offence under Section 307 IPC and at the same time for having voluntarily caused grievous hurt they are liable to be punished under Section 325 of the Indian Penal Code."

10. Learned counsel for the accused-petitioners also relied upon the judgment rendered by this Hon'ble Court in **Ram Lal & Ors. Vs. State of Rajasthan, 2016(4) Criminal Court Cases 535 (Raj.)**, relevant portion of which reads as under:

"7. In the instant case, there is no injury on the body of the injured persons in the nature of grievous caused by sharp edged weapon and injuries inflicted were not found on the vital part of the body of the injured persons. This reveals that there was no attempt with intention or knowledge to cause death by

inflicting such injuries. Therefore, before framing of the charge under Section 308 IPC, the court is duty bound to see whether there is a sufficient evidence available or not to show the existence of essential ingredients of Section 308 IPC.

Section 308 IPC read as under :

308. Attempt to commit culpable homicide.— 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 culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

8. In these circumstances, therefore in my view the trial court fell in error in framing charge against the petitioners for offence under Sections 308 & 308/149 IPC."

11. Learned counsel for the accused-petitioners also placed reliance on the judgment rendered by this Hon'ble Court in ***Prabhu Ram & Ors. Vs. State of Rajasthan (S.B. Criminal Revision Petition No.616/2014, decided on 21.01.2015)***, relevant portion of which reads as under:

"Since, no grievous injury was found on vital part of the injured, the injury sustained on head (Parietal region) is treated as simple of blunt weapon. From the statements of witnesses including the injured, it reveals that accused persons were armed with Barchi, Jayee, Iron rod, Makadia and inflicted injuries by these weapons, still no sharp aged, incised or stab wound was found, therefore, prima facie, it seems that there

was no intention to commit death of the injured. From the nature of the injuries and the fact that grievous injuries have not been caused on any vital part on the body of the injured Budha Ram and there being no other evidence that the petitioners-accused caused the injuries with such intention or knowledge and under such circumstances that by their act, death caused, they would be guilty of culpable homicide not amounting to murder. The essential ingredients of the offence under Section 308 IPC are not made out from the evidence available on record. The same view was taken by the coordinate Benches of this court in above mentioned judgments.”

12. On the other hand, learned Public Prosecutor as well as learned counsel for the complainant oppose the aforesaid submissions made on behalf of the accused-petitioners. They submit that at the stage of framing of charges, what is to be seen, is whether prima facie case is made out or not; and the evidence collected by the investigating agency during the investigation are sufficient to frame the charges against the petitioners, and thus, the learned trial court has not committed any error in passing the impugned order. Moreover, as per learned counsel, the facts of the case clearly reveal that the criminal act committed by the accused-persons could even have resulted into causing death of the complainant party.

13. After hearing learned counsel for the parties as well as perusing the record of the case, this Court finds that the injury report of the injured/complainant though reveal grievous injuries, but none of them have been opined to be dangerous to life; however, the medical report showing the extraction of pellet from the lip of the victim has changed the dimension of the case. Such

medical evidence cannot be doubted, that too, at the stage of framing of charges, where as per the settled law laid down by the Hon'ble Supreme Court, the possibility of acquittal of the accused person are not to be taken into consideration, rather it is to be seen whether *prima facie* case is made out or not; the impugned order passed by the learned trial court clearly reveals that the said proposition, amongst others, has been kept into consideration by the learned trial court, and rightly so.

14. This Court also finds that the impugned order passed by the learned trial court, is a well reasoned speaking order, which lays out that the accused-petitioners, armed with weapon and pistol, verbally abused the complainant and his associates, and threatened their lives.

15. This Court further finds that at the stage of framing of charge, the learned trial court is not required to conduct a meticulous appreciation of evidence or a roving inquiry into the same, as was laid down by the Hon'ble Apex Court in the judgments rendered in ***Ashish Chadha v. Asha Kumari and Ors (2012) 1 SCC 680*** and ***State of NCT of Delhi and Ors. vs. Shiv Charan Bansal and Ors. (2020) 2 SCC 290***.

16. In light of the aforesaid observations, this Court finds that the impugned order does not suffer from any legal infirmity so as to call for any interference by this Court, at this stage.

17. Consequently, the present petition is dismissed. All pending applications stand disposed of.

(DR.PUSHPENDRA SINGH BHATI), J.

SKant/-