

(2003) 08 BOM CK 0014

In the Bombay High Court

Case No : Criminal Revision Application No. 150 of 1999

Ajay Patil and Others

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 22-08-2003

Acts Referred:

Penal Code, 1860 (IPC) — Section 307

Citation : (2004) 1 MhLj 343 : (2004) 2 RCR(Criminal) 91

Hon'ble Judges : P.S. Brahme, J

Bench : Single Bench

Advocate : M.R. Daga, for the Appellant; S.G. Loney, A.P.P, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Brahme, J.—Heard Mr. M.R. Daga, Advocate for the Applicants and Mr. Loney, the learned A.P.P. for the State-Respondent.

2. This revision application is preferred by the applicants for challenging the order passed by the 2nd Additional Sessions Judge, Washim on application Exh. 43 in Sessions Trial No. 85 of 1996 filed by the applicants accused for alteration of the charge. The learned Additional Sessions Judge, Washim heard the counsel for the parties and rejected one application filed by the applicants for discharging them. Then the learned Sessions Judge framed charge for the offences under Sections 147, 148, 307, 341, 342, 354 and 427 of the Indian Penal Code. Thereafter, the applicants filed an application Exh. 43 claiming for alteration of the charge to offence u/s 324 of the Indian Penal Code. The trial Court rejected the application. The applicants approached this Court by preferring criminal revision No. 134 of 1999. This Court, by an order dated 10th September, 1999, disposed of the revision application and remitted back the matter for re-consideration.

3. The learned Additional Sessions Judge, Washim then, after hearing counsel for the parties, again rejected the application by the order dated 12th October, 1999

which is under challenge before this Court. Mr. Daga, the learned counsel for the applicants, vehemently submitted that considering the nature of injuries sustained by the victim and also the circumstances attending the case, the offence u/s 307 of Indian Penal Code is not at all made out and at the most, the offence would be that of u/s 324 of Indian Penal Code. He, therefore, urged that the trial Court has committed an error of law in rejecting the application.

4. Mr. Loney, the learned A.P.P., submitted that to constitute offence u/s 307 of the Indian Penal Code, it is not necessary that in every case the victim should sustain injury. To attract Section 307 of Indian Penal Code what is material is the intention on the part of the assailant. He also submitted that no prejudice is being caused to the applicants even though the charge for the offence u/s 307 of Indian Penal Code is framed in the facts and circumstances of the case. He also placed reliance on the decision of our High Court in State of Maharashtra Vs. Ramdas Shankar Kurlekar and Another, ,

5. Having given my considerable thought to the submissions of the learned counsel for the parties and considering the merits of the case, I do not think that the order passed by the trial Court rejecting the application filed by the applicants for alteration of charge calls for any interference. The trial Court has rightly observed that at the stage of framing of charge the Court is not required to enter into meticulous examination of the statements of witnesses and other material on record nor the Court is required to give detailed reasons. Mr. Loney, the learned A.P.P. was right in his submission that to attract Section 307 of Indian Penal Code, it is not necessary to show that the bodily injury capable of causing death was inflicted, but the Court has to see whether the act irrespective of its results was done with the intention or knowledge and under the circumstances mentioned in this section. It is needless to say that for the purpose of commission of offence u/s 307 of Indian Penal Code, what is material is the intention or the knowledge and not the consequence of the actual act done for the purpose of carrying out the intention. Therefore, there is no substance in the submission of the learned counsel for the applicants.

6. The learned counsel for the applicants failed to show that any prejudice was caused to the applicants by framing charge for the offence u/s 307 of the Indian Penal Code, In this context, the learned A.P.P. was right in his submission that if by framing charge no prejudice is going to cause to the accused, it is not permissible to alter the charge. This Court in State of Maharashtra Vs. Ramdas Shankar Kurlekar and Another, has held that even though the Court can alter the charge with the available material, if prejudice is caused to the accused by altering the charges, it is not permissible for the trial Court to change the charge.

7. In the case before hand, even on merits, considering the allegations against the applicants, as per the prosecution case, there appears justification for the trial Court to frame charge for the offence u/s 307 of the Indian Penal Code. The trial Court has rightly observed that to attract Section 307 of Indian Penal Code, it is not necessary to show that bodily injury capable of causing death was

inflicted. The Court has to see whether the act irrespective of its result was done with the intention or knowledge and under the circumstances mentioned in this section. It is needless to say that to attract Section 307 of Indian Penal Code, what is material is the intention or the knowledge and not the consequences of the actual act done for the purpose of carrying out the intention.

8. In my opinion, the applicants, after going for trial on the charges, if it is found that on the evidence on record the offence u/s 307 of Indian Penal Code is not made out, can apply the Court for discharge or even acquittal. Therefore, no prejudice is being caused to the applicants when, in the facts and circumstances of the case, the trial Court has refused to alter the charge. In the result, I do not find any merit and substance in this revision. The order passed by the trial Court is perfectly legal. There is no reason to interfere with this order. The application is rejected. The record and proceedings be immediately sent to the trial Court. The trial Court is directed to expedite hearing of the matter. The applicants to appear before the trial Court on 22nd September, 2003.