

(2017) 11 BOM CK 0194
In the Bombay High Court
Case No : 51 of 2017

Arjun Milind Vernekar

APPELLANT

Vs

State & Anr

RESPONDENT

Date of Decision : 28-11-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 227](#) - Discharge
[Indian Penal Code, 1860](#), [Section 34](#), [Section 307](#), [Section 326](#), [Section 326](#)

Citation : (2017) 11 BOM CK 0194

Hon'ble Judges : Prithviraj K. Chavan

Bench : SINGLE BENCH

Advocate : S. D. Lotlikar, Aditi Naik, S. R. Rivankar, R. Menezes

Judgement

1. Legality, propriety and correctness of an impugned order of framing charge against respondent nos.2 and 3(Original accused nos.1 and 2) by the Assistant Sessions Judge, Margao has been challenged invoking revisional jurisdiction of this Court.

2. The petitioner is the original complainant and the victim of the assault by respondent nos.2 and 3 on the wee hours of 31.5.2014 near KTC bus stand Margao. It reveals from the record that respondent nos.1 and 2 in furtherance of their common intention abused the petitioner in a filthy language. They committed mischief by damaging his Ritz car bearing registration No.GA-08/K-2603 by causing a loss to the tune of Rs.40,000/- and, inter alia, attempted to commit his murder by assaulting him on his head with an iron baton resulting into grievous injuries.

3. Accordingly, on the basis of the complaint by the petitioner, an FIR came to be registered on 31.5.2014, vide Crime No.273/2014 under Sections 504, 427, 326 read with Section 34 of IPC. After completing the investigation, the Investigating Officer laid a chargesheet against the respondents in the Court of JMFC Margao.

4. After committal, the learned Additional Sessions Judge while hearing an application of discharge on behalf of respondent nos. 2 and 3, by the impugned order discharged them of the offence under Section 307 read with Section 34 of IPC, inter alia, remanding the case back to the Court of learned JMFC for framing charge of assault in accordance with law.

5. I heard Shri Lotlikar, learned Senior Counsel for the petitioner and Shri R. Menezes, learned Counsel for respondent nos.2 and 3 as well as Shri S. R. Rivankar, learned Public Prosecutor for respondent nos.1 and 4, who supported the arguments of learned Senior Counsel for the petitioner.

6. Shri Lotlikar, learned Senior Counsel took me through the record, panchanama, statement of the witnesses as well as the medical certificate of the petitioner. At the outset, Shri Lotlikar, would submit that at the stage of framing charge re-appreciation of the evidence on record is not permissible which had been done by the learned trial Judge in the impugned order. He drew my attention to paragraph 19 of the impugned order by stating that factually incorrect observations have been made by the learned Judge which reads that the injury certificate does not mention that the injuries were grievous in nature or it would have resulted in death of the complainant. According to the learned Senior Counsel, the medical certificate, in fact, indicates that the petitioner had sustained grievous injuries on the left parietal region which required 8 stitches. The learned Senior Counsel also drew my attention to the supplementary statement of the petitioner as well as the statement of Ms. Sagarika Mujumdar. According to him, the tenor of the statement of the petitioner vis-a-vis the nature of the injuries and the type of weapon used by the respondents as well as the part of the body chosen by them to deal a blow would prima facie indicate that they intended to eliminate the petitioner. He, therefore, submits that the impugned order needs to be set aside by directing a charge to be framed under Section 307 read with 34 of IPC.

7. On the other hand, learned Counsel for respondent nos. 2 and 3 supported the impugned order by stating that it was an incident in a spur of moment and in a heat of passion wherein respondent nos.2 and 3 had never intended to kill the petitioner. According to the learned Counsel, Sagarika Mujumdar is the girl friend of respondent no.2. It is also submitted that had there been an intention to kill the petitioner, respondent no.2 would not have given a single blow. The learned Counsel also drew my attention to the conduct of the respondent nos.2 and 3 which can be borne out from the statement of Sagarika before the police wherein she had stated that the respondent Adriel took iron baton from the Eric and hit the same on the car and there was damage to the bonnet of the car and wind shield of the petitioner's car and thereafter hit on the head of the petitioner with the said baton. However, the petitioner went near the car of the respondent no.3 Eric and snatched the keys of the car and also took the baton, which according to the learned Counsel, shows the conduct of the respondents in not making any attempt further to assault the petitioner and, therefore, according to him, it

would not be a case of attempt to commit murder. It was a momentary act.

8. I have meticulously gone through the record. At the outset, it appears that Sagarika had called the petitioner and narrated him about the abuses and slap given to her by her boy friend who is perhaps respondent no.2 Adriel. It reveals from her statement that both respondent nos.2 and 3 were continuously calling Sagarika on her mobile and were threatening her. Statement further reveals that when the petitioner alongwith Sagarika reached near the KTC bus stand and were waiting near a small chappel, the respondent nos.2 and 3 came out of their car and asked Sagarika to come out of the car of the petitioner. Since she was scared she locked the door of the car from inside whereupon respondent no.3 Eric who was carrying an iron baton in his hand came near the car and started banging it resulting into damage to the windshield and the bonnet. The petitioner, therefore, alighted from the car asking Sagarika to remain inside as she was apprehending some danger to her. Then respondent no.2 Adriel was continuously hitting the car and was asking her to accompany him which she refused. Her statement further indicates that thereafter respondent no.2 Adriel inflicted blow directly on the head of the petitioner with baton due to which he started bleeding profusely. Apprehending danger to the life of the petitioner Sagarika accompanied the respondents in their car but the petitioner took away the keys of the respondents car and so also the baton. It is specifically stated by Sagarika that in order to save the petitioner from getting any more hurt, as the respondent no.2 Adriel told her that if she did not accompany them, then he will kill the petitioner, and therefore, she walked away with them clearly indicates that respondent nos.2 and 3 came prepared with iron baton. Had their intention been to simply cause hurt to the petitioner, Adriel would not have inflicted a blow on the head of the petitioner which has resulted in grievous hurt resulting into eight stitches.

9. The injury certificate issued by the Apollo Victor Hospital on the same day depicts that the petitioner was examined by a Doctor with a history of assault with an iron rod who noticed a CLW on the left parietal region at about 7 cms and it was a grievous injury. Even the petitioner in his complaint clearly states that respondent Adriel came towards him shouting, took iron rod from the respondent Eric and started hitting his car. When the petitioner came out of the car to stop him, respondent no.2 Adriel hit the wind shield of his car and then by abusing him in filthy language hit on his head resulting into grievous injury. Even the supplementary statement of the petitioner recorded on the same date indicates that injured had 8 stitches and it was the sole intention of respondent nos.2 and 3 to kill him.

10. From the aforesaid material on record, it is difficult to accept the arguments of the learned Counsel for respondent nos.2 and 3 that only because it is case of a single blow it would not fall within the ambit of Section 307 of IPC for the reason that the material on record, more particularly, the weapon used which is not a stick but an iron baton, the part of the body chosen is vital part and the

nature of the injury being grievous would indicate that respondent nos.2 and 3 would not simply intended to cause hurt but something more.

11. I am conscious of the fact, that at the stage of framing charge evidence cannot be gone into meticulously. All that is required at the stage of framing of charge is whether a prima facie case is made out and it is not necessary to go into the merits of the case. Statement of the petitioner, Sagarika and the medical certificate coupled with circumstances, including prompt registration of the FIR is quite sufficient in the given circumstance to indicate that a charge could have been framed under Section 307 IPC. A charge can be framed if there are material showing that the possibility about the commission of the offence as against certainty. It is also not necessary to give reason while framing charge. Ingredients of Section 307 of IPC are precisely attracted in the light of the aforesaid circumstances and material on record.

12. The learned Counsel for the respondent has pressed into service a authority of the Hon"ble Supreme Court in the case of P. Vijayan Vs. State of Kerala and another (2010)2 Supreme Court Cases 398. The Hon"ble Supreme Court discussed the scope of Section 227 of Cr.P.C. The ratio can be culled out from paragraph 10 of the judgment, which reads thus:- "If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, as to the guilt of the accused, the trial Judge will be empowered to discharge the accused and at this stage the trial Judge is not to see whether the trial will end in conviction or acquittal. Further, the words "not sufficient ground for proceeding against the accused" in Section 227 Cr.P.C. clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or enter into a weighing and balancing of evidence and probabilities which is really the function of the Court, after the trial starts.

13. Thus, it is clear from the said ratio that if there is possibility of only suspicion from the material on record as distinguished from the grave suspicion as to the guilt of the accused, the learned trial Judge is empowered to discharge the accused. It is further observed that the words "not sufficient ground for proceeding against the accused" in Section 227 Cr.P.C. clearly shows that Judge is not a post office to frame charge. In the case at hand, there are sufficient grounds on the basis of the discussion made hereinabove that a charge can be safely be framed against respondent nos.2 and 3 under Section 307 of IPC as both of them had already made preparation to execute the assault by bringing with them an iron baton with which they did assault the petitioner on the head resulting into grievous injury. The common intention is apparent from their conduct. The ratio, therefore, could not be of any help to respondent nos.2 and 3. Similar is the ratio laid down by the Hon"ble Supreme Court in the case of Dilawar Balu Kurane Vs. State of Maharashtra, 2002(2) SCC 135.

14. Learned Assistant Sessions Judge in the impugned Order committed not only an error of law but also on facts by which she failed to appreciate the material on record in its correct perspective. It is an erroneous observation that the injuries were not grievous and further had they been grievous, doctor would not have discharged the petitioner on the same day. The learned Judge ought not to have evaluated the medical report at the stage of framing of charge, that too by making incorrect observation of the fact that the injury was not grievous when in fact she observed that there were eight stitches. Last but not the least, for an offence under Section 307 of IPC injury is not a sine qua non but what is important is the intention and knowledge. Therefore, the impugned order needs to be set aside as it is improper and incorrect.

15. Consequently, the revision petition is allowed. The impugned order passed by the learned Assistant Sessions judge below Exh. 10 on 30.10.2015 is set aside. The matter is remitted back to the learned Assistant Sessions Judge, South Goa Margao. The learned Judge shall proceed further in accordance with law.

16. Petition stands disposed of.