
(2013) 10 MP CK 0233
In the Madhya Pradesh High Court
Case No : Cr.R. No. 486 of 2013

Brahma nand @ Brahmajeet Singh and Others	APPELLANT
Vs	
State of M.P.	RESPONDENT

Date of Decision : 03-10-2013

Acts Referred:

Citation : (2013) 10 MP CK 0233

Hon'ble Judges : Brij Kishore Dube, J

Bench : Single Bench

Advocate : Rajnish Sharma, for the Appellant; Pramod Pachauri, Public Prosecutor, for the Respondent

Judgement

Brij Kishore Dube, J.—The petitioners/accused have filed this Criminal Revision under Sections 397 read with 401 of Cr.P.C., challenging the order dated 09/05/2013 passed in Sessions Trial No. 111/2013 by V Additional Sessions Judge, Bhind whereby charge has been framed under Sections 307, 323 (4 counts), 294 and 506 Part II of IPC, against each of them. The background facts of the case, in brief, are that the complainant, Shivraj Singh Yadav on 23/02/2013 at 12.05 hours reached to the Police Station, Dehat, District Bhind and lodged a report to the effect that today at about 10.30 a.m. wife of Jaiveer Singh came at his home and told his (complainant) wife, Suman that her grandson picked up her soap from the hand-pump, then, his wife Suman replied that his grandson did not brought her soap and in spite of that, she will pay the cost of the soap. At that juncture, Brahmajeet, Rinku and Ramraj having lathis" came there and started abusing with filthy language to his wife, Suman. On restraining, Rinku committed marpeet with lathi to his wife. When he tried to save his wife, Brahmajeet dealt a lathi blow which struck over his forehead. His mother, Longa Devi, son Jeetu and uncle, Ramvaran rushed to save him. Ramraj @ Gullu dealt lathi blow to his mother with intention to cause his death which struck over her head. Blood started oozing out from the wound. His mother fell down and became unconscious. Uma Singh and Samrath Singh Yadav came and

saved them. The accused persons have also pelted stones as a result of which his son Jeetu and his uncle, Ramvaran sustained injuries. The accused have also threatened to kill them.

2. The FIR was registered at Crime No. 78/2013 under Sections 307, 323, 294, 506 Part II read with 34 of IPC on the very same day, i.e., at 23.02.2013 against Brahmajeet, Rinku and Ramraj Singh. The injured were sent to the hospital for their medical examination and treatment. After due investigation, challan was filed for the offence punishable under Sections 307, 323, 294, 506 Part II read with 34 of IPC against all the three accused persons before the Committal Court, which on its turn committed the case to the Court of Sessions from where it was received by the learned Trial Court for the trial.

3. The learned Trial Court on the basis of material placed on record framed the charge under Sections 307, 323 (4 counts), 294 and 506 Part II of IPC against the accused persons. They abjured the guilt.

4. Learned counsel for the petitioners submits that the injuries sustained by the victim, Longa Devi are simple in nature and caused by hard and blunt object. None of the injury sustained by her was dangerous to life or grievous in nature. The Medical Officer has not opined that the injuries sustained by Longa Devi were sufficient to cause her death in the ordinary course of nature. Even on taking into consideration the face value of the charge sheet including the nature of the injuries sustained by Longa Devi and the medical evidence as accepted in its entirety, the charge of Section 307 of IPC is not made out against the petitioners. There was no intention of the petitioners to kill the victim, Longa Devi. In such premises, it cannot be deemed that the petitioners or any of the other accused have committed the offence punishable u/s 307 of IPC, To this extent, the charge is not sustainable and prayed to discharge the petitioners from the charge u/s 307 of IPC, by allowing this revision petition. Learned counsel for the petitioners does not made any submission for discharging the petitioners from the remaining charge framed by the Trial Court.

5. In response, Shri Pramod Pachauri, learned Public Prosecutor by justifying the impugned order stated that the charges framed by the Trial Court are in consonance with the papers of the charge-sheet. He fairly submitted that although the doctor has not given the clear opinion that the injuries sustained by Longa Devi were sufficient to cause her death in the ordinary course of nature but in view of the part of the person of the injured, on which, she sustained injuries and her statement in which she has categorically stated that such an assault was carried out by the accused persons with intention to cause her death, the impugned charge u/s 307 of IPC does not require for any interference at this stage and prayed for dismissal of this revision.

6. I have considered the rival contentions of the learned counsel for the parties and perused the record.

7. According to the provisions of Sections 227 and 228 of Cr.P.C., it is for the Trial

Court to consider the material available on record with the object that if it is not rebutted, then whether the accused can be convicted for a particular offence or not. By considering such material, if the accused is convicted for that offence, then charges for that offence shall be framed.

8. In the case of State of M.P. Vs. S.B. Johari and Others, , the Apex Court ruled as under:

It is settled law that at the stage of framing the charge, the Court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The Court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for conviction of the accused. If the Court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed. The charge can be quashed if the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by defence evidence if any, cannot show that accused committed the particular offence. In such a case there would be no sufficient ground for proceeding with the trial.

9. In the case of Achhelal Choudhary and Others Vs. State of M.P., , this Court observed as under:

... that the accused like the applicants could be convicted for such offence and such injuries which they have actually caused and committed and not for that offence which could have been committed but did not commit by the accused like applicant. Mere on assumptions and presumptions, in the lack of any positive, reliable and admissible circumstances, the accused like the applicants, could not be tried by framing the charge of such offence which they have not actually committed...

10. This Court in the case of Anil Alias Noni Panda and Another Vs. State of M.P. , it has been held that the charges can be framed by the Trial Court if the Court prima facie finds that the accused can be convicted if the evidence is not rebutted. At the stage of framing charges, veracity of the witnesses is not required to be considered but evidence produced by the police should be considered to evaluate that the charges relating to that crime may be framed or not.

11. If the facts of the present case are considered in the light of the aforesaid judgments, then it would be clear that the accused persons were having lathis. According to the FIR and the statements of Shivraj Singh and Longa Devi, the accused/Ramraj Singh @ Gullu dealt a lathi blow to Longa Devi with intention to kill which struck over her head as a result of which, Longa Devi sustained injuries over her head and blood started oozing out from the wound. She became unconscious and fell down. She was examined on 23.02.2013 at 1.00 pm by the Medical Officer at District Hospital, Bhind. The MLC report reads as under:-

(i) Lacerated wound over left side of forehead-3 cm x 1 cm x ms deep

(ii) Contusion over right thigh, 3 cm x 1.5 cm.

12. The MLC doctor opined that injuries No. 1 and 2 are caused by hard and blunt object. The injury No. 2 is simple in nature. The patient was referred for x-ray of injury No. 1. The nature of injury No. 1 will be decided after receiving the x-ray report. On the same day, x-ray of the skull of Smt. Longa Devi was conducted and no bony injury was seen.

13. From a bare perusal of the charge-sheet, it is transpired that there is no medical opinion that the injuries sustained by Longa Devi were dangerous to her life or sufficient to cause her death in the ordinary course of nature. It is apparent that both the injuries found on her person were simple in nature.

14. In view of the aforesaid statements recorded u/s 161 of Cr.P.C. in which the injured, Longa Devi and the fact that the complainant stated that Longa Devi was assaulted by the accused, Ramraj @ Gullu with intention to cause her death is prima-facie not sustained.

15. Besides the aforesaid, I have not found any other circumstance to discharge any of the petitioners from other charge framed by the Trial Court.

16. On the basis of the aforesaid discussion, by allowing this revision in part, the charge of Section 307 of IPC framed against the present petitioners by the Trial Court is hereby set aside and instead it, the Trial Court is directed to frame appropriate charge against the present petitioners with respect to injuries caused to Longa Devi. Till this extent, the impugned order and charge framed stand modified while the other findings on the charge are hereby affirmed. With the aforesaid, revision petition stands allowed in part and disposed of.