
(2011) 08 RAJ CK 0112

In the Rajasthan High Court

Case No : Criminal Revision Petition No. 491 of 2008

Manoharlal and Others

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 23-08-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, 228
Penal Code, 1860 (IPC) — Section 143, 148, 149, 227, 228

Citation : (2012) 3 RLW 2436

Hon'ble Judges : R.S. Chauhan, J

Bench : Single Bench

Advocate : Ashvin Garg, for the Appellant; Alka Bhatnagar, Public Prosecutor, for State, Anoop Dhand, for the Respondent

Judgement

Hon'ble Chauhan, J.—The petitioners are aggrieved by the order dated 23.4.2008 passed by Additional Sessions Judge (Fast Track), Sikar, whereby the learned Judge has framed charges for the offences under Sections 143, 148, 323, 341, 326 alternatively 326/149, 307 alternatively 307/149 and 302/149, 307 alternatively 307/149 and 302 alternatively 302/149 IPC against the accused petitioners. Briefly, the facts of the case are that on 28.8.2004 Parcha Bayan of Neki Ram, an FIR was chalked out at Police Station Khandela, District Sikar. According to Neki Ram, in the evening after having completed his work on his farm, he was coming back on his tractor along with his father, and his two nephews Mahendra and Mahipal. As they came near the village, Manohar, Phoola, Shyopal, Jhabar, Mohan, Birbal, Babulal and their wives stopped the tractor. Neki Ram was pulled down from tractor and assaulted by Manohar, who had a "Dantali" in his hand. He caused injury on the forehead near his left eye. He was also assaulted with stones. He further claimed that both his father and nephews were equally assaulted. Having escaped from the clutches of the assailants, he further claimed that they came to hospital where the Parcha Bayan was recorded. After the investigation, the police submitted a charge-sheet for offences under Sections 143, 148, 149, 323, 341, 324, 307, 326, 302 IPC. Vide

order dated 23.4.2008, the learned Judge framed the charges as aforementioned. Hence, this petition before this Court.

2. Mr. Ashvin Garg, the learned counsel for the petitioners, has vehemently raised the following contentions before this Court: firstly, the offence u/s 302 IPC is clearly not made out in the present case. Secondly, that in the FIR lodged by Neki Ram, he neither mentions the presence of the deceased, Surja Ram, nor mentions about any injury caused by the petitioners to Surja Ram. Thirdly, that according to the injury report of Surja Ram, although the incident is said to have occurred on 28.8.2004, his injury report was not drawn till 29.8.2004. Moreover, according to the injury report, Surja Ram has suffered two injuries, namely, a bruise and swelling on the lateral aspect of the left side of forearm and secondly a complaint of pain. According to the injury report, the injuries were caused within twelve hours. Fourthly, according to the Post-mortem Report of Surja Ram, the probable cause of death was fat embolism. Relying on Lyon's Medical jurisprudence and Toxicology, Revised by Prof. T.D. Dogra and Lt. Col. Abhijit Rudra (Delhi Law House, 2005), the learned counsel has contended that fat embolism is "a complication of fractures of bones that have a fatty bone marrow or where subcutaneous fat is either compressed or lacerated. Fat globules are released into the circulation and they eventually reach the lungs and brain. It might also occur in burns, surgical operations on fatty tissue, septicemia, and a host of other conditions". However, according to the learned counsel, none of these conditions exist in the present case. Therefore, the very cause of death is unknown. Lastly, that Surja Ram expired nine days after the alleged incident. Thus, there is no linking evidence between the alleged injuries caused by the petitioners and his death. Therefore, prima facie, no offence u/s 302 IPC is made out.

3. On the other hand, Mr. Anoop Dhand, the learned counsel for the complainant, has raised the following contentions before this Court: firstly, that according to the prosecution, two incidents had occurred, one immediately after the other. While the first incident was of assault on Neki Ram, his father and nephews. In the second incident, immediately following the first one, the petitioners as assailants had also come to the house of the deceased. They had not only assaulted the deceased, but had also assaulted the women of the family. In order to buttress this contention, the learned counsel has relied on the statement of Surja Ram, the deceased himself. Moreover, he has relied on the statement of Smt. Vimla, the wife of Neki Ram, who was an eye-witness to both the incidents. Secondly that according to the Post-mortem Report, the deceased had suffered a fracture of the lower end of the radius and fracture of the left femur bone. Both these bones are known as "long bones". Relying on the Pocket Companion to Cecil Textbook of Medicine by Lee Goldman & J. Claude Bennette, (21st Edition) the learned counsel has contended that "fat embolism commonly occurs in the setting of traumatic fracture of long bones." Also relying on Merck Manual of Diagnosis & Therapy, (18th Edition) written by Mark H. Beers and others, he has further contended that "fat embolism is caused by introduction of fat or bone

marrow particles into the systemic venous system and then to pulmonary arteries. Causes include long bone fractures, orthopedic procedures etc." According to the learned counsel, since both the left femur and the radius were fractured. Thus, a gave possibility does exists that the particles of fat from either of these bones may have entered into circulatory system of the deceased and may have caused his death nine days after the alleged incident. Thirdly, that according to the witnesses, the occurrence took place in the late evening of 28.8.2004; the injury report of Surja Ram was drawn on 29.8.2004 in the morning at 9.40 a.m. therefore, the observation of the doctor that the injuries were caused within twelve hours, in fact, supports the case of the prosecution. Lastly, considering the statement of the eye-witnesses, considering the medical evidence, a strong prima facie case is made out against the petitioners for offence u/s 302 IPC. Hence, the learned counsel has supported the impugned order.

4. The learned Public Prosecutor has echoed the arguments of Mr. Anoop Dhand. Therefore, they need not be repeated.

5. Heard the learned counsel for the parties and perused the impugned order and the record submitted before this Court.

6. In the case of Sajjan Kumar Vs. Central Bureau of Investigation, , the Hon''ble Supreme Court has recently reiterated he principles which govern the framing of charge by the learned trial Court. It would, indeed, be beneficial to quote the principles laid down by the Apex Court, which are as under:

On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerges:

(i) The Judge while considering the question of framing the charges u/s 227 Cr.P.C. 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 evidences 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 Sec. 227 & 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.

7. A bare perusal of the principles mentioned above, clearly reveal that the learned trial Court has the limited power to sift from the evidence to see if a strong suspicion is aroused that the offences may have been committed by the offender before the Court. In case, strong suspicion is created, then the trial Court has no other option, but to frame the charge. At the time of framing of the charge, the Court cannot meticulously examine the evidence to see whether the trial would end up in conviction or not. After all, appreciation of the evidence cannot be done at the time of framing of the charge. The meticulous examination of the evidence, the pros & cons of the prosecution case is adjudicated upon only after the evidence has been thoroughly marshaled out during the course of the trial.

8. In the present case, the statement of Surja Ram, the deceased, were recorded on 29.8.2004. According to Surja Ram, the petitioners had assaulted him and the women of his family. Similarly, according to Smt. Vimla, she was an eye-witness to both the incidents. According to her, initially, petitioners had assaulted her husband. Moreover, since the houses are near each other, the petitioner had proceeded to go to her house and to assault Surja Ram, who was sitting on a cot. According to Surja Ram's injury report, he had suffered two injuries. According to his Post-mortem Report, he had suffered two fractures. Although it is true that his x-ray report does not indicate the presence of the fracture, but it is for the prosecution to explain the absence of the fracture in the x-ray report, and its presence in the Post-mortem Report. At the present stage, what is important is that both the fractures have occurred in "long bones". According to medical jurisprudence, as quoted above, fat embolism can occur due to fracture of a "long bone". Thus, a strong prima facie case does exist that the injuries caused by the petitioners may have led to fat embolism, which was cause of the death of Surja Ram. Thus, sufficient evidence does exist for the learned trial Judge to frame charge for the offence u/s 302 IPC. Hence, for the reasons stated

above, this Court does not find any illegality or perversity in the impugned order. However, by way of abundant caution, it is hereby clarified that any observation made by this Court shall neither influence the objective assessment of the evidence by the learned trial court nor influence the final adjudication of the case. Learned trial Court is, of course, expected to objectively assess the evidence as produced by the prosecution, and as countered by the defence.