
(2016) 02 MP CK 0004

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 82 of 2016

Pappu @ Ramdayal Dhakad and others

APPELLANT

Vs

State of M.P

RESPONDENT

Date of Decision : 02-02-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401
Penal Code, 1860 (IPC) — Section 307

Citation : (2016) 1 MPWN 162

Hon'ble Judges : Sheel Nagu, J.

Bench : Single Bench

Advocate : B.S. Dhakad, Advocate, for the Appellant; Sangeeta Panchouri, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Sheel Nagu, J.—The revisional powers of this Court under Section 397/401 of the Code of Criminal Procedure have been invoked for quashing of the order dated 12.05.2015 of the court below framing charges against all the six petitioners under Sections 148A, 307/149, 324/149, 323/149 & 294 of IPC.

2. The challenge, in the present petition, as contended by learned counsel for the petitioners, is restricted to the framing of charge under Section 307 of IPC.

3. Bare facts giving rise to the present dispute are that an FIR was lodged on 06.10.2014 bearing Crime No.954/2014 at Police Station Kotwali, Shivpuri (M.P.) by Mahesh Rawat, inter alia, alleging that one of the petitioners, namely, Pappu @ Ramdayal Dhakad with an intent to kill assaulted the said injured on the head with a Pharsa leading to sustaining of injury above the ear on the left side. Another co-accused petitioner Mohar Singh Dhakad inflicted injury on the head with lathi. The other co-accused and the said two accused are alleged with omnibus allegations of assault after forming unlawful assembly.

4. The MLC report of Mahesh discloses two injuries viz. one being lacerated

measuring 4 inches x ? inches bone deep on the right mid parietal region of the head inflicted with hard and blunt object; the second is a contusion measuring 8 inches X 5 inches on the left parieto-occipital temporal region on the head inflicted by hard and blunt object. While the other injured, namely, Kalyan was inflicted with lacerated wound on the forehead measuring 1 cm x ? cm; incised wound measuring 1 cm x ? cm on the left elbow and a contusion measuring 2 inches x ? cm on the right lower back. X-ray of injured Mahesh was conducted but no bony injuries were found as per the radiological report.

5. In the above-said factual background, it is contended by the learned counsel for the petitioners that in the absence of any fracture having been sustained by both the injured, no case of attempt to murder under Section 307 of IPC is made out and therefore, the impugned order of framing charge under Section 307 of IPC is vitiated under the law to that extent.

6. Learned counsel for the rival parties are heard on the question of admission.

7. True it is that radiological report did not disclose sustaining of any fracture by either of the injured but the fact remains that the MLC of one of the injured Mahesh discloses lacerated wound having clotted blood of size of 4 inches x ? inches bone deep on the head whereas the other injury is contusion measuring 8 inches x 5 inches on the head. The dimensions of both these injuries indicate the force with which the assault must have been made. Moreover these injuries led to clotting of blood. Moreover, both the injuries are on vital part of the body i.e. head. Similarly, the other injured person ? Kalyan has another injury on the forehead which is a vital part of the body which is though of a smaller size i.e. 1 cm x ? cm but the same is a lacerated wound with clotted blood.

8. Size of the injuries inflicted on the vital part of the body of the injured indicates prima facie towards the force applied during the assault. Looking to the size of the injury, the intensity of the force must have been such which could reasonably give rise to an inference at this stage that the assault was made with an intent to kill and not injure. It was only due to providence or some evasive action taken by the injured that saved his life. Thus, it prima facie appears that petitioner No.1 ? Pappu @ Ramdayal individually and other petitioners with the aid of Section 149 of IPC had all the intentions to commit murder of the injured and had done everything to ensure achieving of that goal. The injured survived because of reasons not attributed to the petitioners/accused.

9. In this view of the matter, the basic ingredients of Section 307 IPC of attempt to murder are made out and therefore the impugned charge framed against the petitioners is sustainable.

10. Consequently, the present petition deserves to be and is therefore rejected.