
(2007) 03 AHC CK 0100
In the Allahabad High Court

Ram Kesh Maurya

APPELLANT

Vs

State of Uttar Pradesh and Basant Prajapati

RESPONDENT

Date of Decision : 02-03-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Penal Code, 1860 (IPC) — Section 308, 323, 34, 504, 506

Citation : (2007) 4 ADJ 418

Hon'ble Judges : Barkat Ali Zaidi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Barkat Ali Zaidi, J.—In these proceeding u/s 482 Cr.P.C., one out of the three accused in the case complains that the Trial Judge (Addl. Sessions Judge) Fast Track Court, Jaunpur has framed a charge under Sections 308/34, 504, 506 and Section 323/34 I.P.C., while according to the doctor, the injuries sustained by the two injured ladies are simple in nature and, therefore, a charge u/s 308 I.P.C. was unjustified and charge should have been framed u/s 323 I.P.C. and the Trial should have taken place before the Magistrate.

2. I have heard Sri S.K. Dubey, learned Counsel for the applicant and Sri R.K. Maurya, Addl. Government Advocate for the State.

3. This argument was raised before the Trial Judge, which he dispelled by his order and maintained that it was an appropriate case for framing a charge u/s 308 I.P.C. because the injury was on the head , which is a vital part and could have been fatal though fortunately it did not prove to be so.

4. This controversy could have been easily reconciled if the doctor had advised an X-ray and the X-ray was thereafter performed, from which it could be ascertained whether there is any fracture of the skull bone or not? Since there is no X-ray report, it may be presumed that the doctor did not consider it necessary to advise X-ray because he found the injury to be quite simple.

5. Since the injury has been described by the doctor as simple and since we have no sufficient reason to assume otherwise, the charge should have been u/s 323 I.P.C. It would not be appropriate to frame a charge u/s 308 I.P.C. as a precautionary measure because that would deprive the accused of one tier of appeal. In case the charge is u/s 308 I.P.C, it would be tried by the court of Sessions and appeal will lie to the High Court while if the charge is u/s 323 I.P.C., the case be tried by the Magistrate and appeal will lie to the Sessions Court.

6. In view of the aforesaid circumstances, the complainant's objection is justified and the charge should not be u/s 308 I.P.C. and the case should go back to the Magistrate for Trial.

7. Petition allowed. Ordered accordingly.