

(1996) 02 MAD CK 0088

In the Madras High Court

Case No : Criminal Revision Case No. 650 of 1993

Somasundaran alias Tembi and others

APPELLANT

Vs

State by Inspector of Police

RESPONDENT

Date of Decision : 27-02-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 220, 221, 227, 228
Penal Code, 1860 (IPC) — Section 147, 148, 294, 302, 307

Citation : (1997) CriLJ 1769 : (1996) 2 LW(Cri) 457

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Advocate : Mr. G. Shankaran, K.V. Sridharan and C. S. Dhanasekara, for the Appellant; Mr. S. Manimaran, Government Advocate, for the Respondent

Judgement

1. This revision is against the order passed in CrI. M.P. No. 42 of 1993 in Sessions Case No. 183 of 1992 on the file of Assistant Sessions Judge,

Sankari, dismissing the application for discharge filed by the petitioners.

2. There are totally 13 accused. The allegation is that on 24-5-1991 at about 8.30 a.m. all the accused formed themselves into an unlawful

assembly and assaulted the complainant Mani severely by indiscriminate beating with the Thadi, Kuthukol etc. and tied him with the tree and again

inflicted injuries all over the body of P.W.1, the victim. On receipt of this news about the highhanded action of the petitioners, the Sub-Inspector of

Police and a constable came there and rescued the complainant by unlying the rope with which he was tied with the tree. During the process, the

Police Officers viz., the Sub-Inspector of Police and Constable were insulted by the accused persons by using filthy language. While a witness by

name Kandaswamy helped the police officials by handing over the TVS Moped to

enable them to take the victim to the police station the accused

persons assaulted Kandaswamy also with the weapons and caused injuries all over the body of the said Kandaswamy. On the basis of these

allegations an FIR has been registered by the Sub-Inspector of Police and after examination of the necessary witnesses, charge sheet has been filed

on 15-7-1992 before the Magistrate.

After the Committal the learned Assistant Sessions Judge, Sankari took up the case as Sessions case No. 183 of 1992 and at that stage, on 19-3-

1993 the petitioners accused 1 to 13 have filed an application in CrI. M.P. No. 42 of 1993 for discharge. After notice to Addl. Public Prosecutor

the learned Assistant Sessions Judge, Sankari dismissed the same rejecting the contentions raised by the petitioners/accused 1 to 13. Thereafter,

he framed the charges against all the accused for the offences under Ss. 147, 148, 342, 307, 294 and 353, IPC. Hence this revision.

3. Mr. G. Shankaran, the counsel for the petitioners took me through the entire evidence collected by the Investigating Agency in the form of 101

statements and submitted that the learned Assistant Sessions Judge was wrong in framing the charges for the above offences triable by Sessions

Court. His contentions are on two folds (1) that the injuries on the person of the complainant-Mani and one witness by name Kandaswamy do not

come within the ambit of S. 307, IPC and (2) that the offences alleged to have been committed by the petitioners/accused 10 to 13 was not

committed in the course of the same transaction in which accused 1 to 9 might have taken part.

4. While elaborating the first contention, of the counsel for the petitioners submits that the medical evidence disclosed that these witnesses sustained

only simple injuries except the dislocation of teeth which according to the doctor was grievous in nature and that according to the Doctor there is

no material to show that these injuries were likely to cause danger to the life of the witnesses and in the absence of the materials to show those

ingredients, the offence under S. 307, could not be made out. He inter alia said that charges which have been framed against A10 and A11 with

regard to the allegations that they insulted the police officials in filthy language constituting an offence under S. 294, IPC and the part played by

A12 and A-13 by preventing the public servant from discharging duties

constituting an offence under S. 353, IPC are only triable by the First

Class Magistrate and more over, this portion of the occurrence was a separate transaction and as such, joint trial could not be permissible and so,

the trial as far as A. 10 to A. 13 are concerned, must be conducted only by the Judicial Magistrate and not by the Sessions Court and the joint trial

of A. 10 to A. 13 who were not charged under S. 307, IPC is not permissible to be tried along with A1 to A. 9 who were charged for the

offences under Ss. 147, 148, 342 and 307, IPC.

5. I heard the Government Advocate appearing for the State who represented that the materials in the form of 161 statements of the witnesses and

the medical evidence would clinchingly establish that there is a prima facie case under S. 307, IPC and that though A. 10 to A. 13 were charged

with only for offences under Ss. 294 and 353, IPC since all the transactions took place in the series of single transaction, same place and at the

same time the Sessions Court is empowered to try the accused in one case under S. 221, Cr.P.C.

I have considered the contentions of both counsel and I have also gone through the entire records. At the outset, it must be mentioned here that the

order passed by the lower Court itself shows that the Sessions Court was of opinion that there are materials for trying the case for the offence

under S. 307, IPC in view of the averments made in the FIR.

6. In the FIR it is stated that on 27-5-1991 at about 8.30 a.m. the complainant and one Nagarajan went to the coconut thoppu for cutting tender

coconuts and at that time, all the accused persons with Thadi, Kuthukol shouted at the complainant Mani as (Vernacular matter omitted) and on

hearing the shouting, Mani ran to a distance of about 2 km and however, the accused persons chased and caught the victim and one of the accused

with Kuthukol by saying (Vernacular matter omitted) stabbed on the head of the victim and caused injury. The other accused with Thadi inflicted

injury by indiscriminate beating on the back, abdomen, left leg, thigh and other parts of the body and thereafter, there was an attempt to burn him

by lighting the match stick but then they said that could be done in the night and thereafter, he was handcuffed with towel and brought him to the

coconut tree belonged to the accused, there he was tied and then again he was brutally beaten and when he asked for water, they said (Vernacular

matter omitted) and then indulged in continuous beating, and then police came and tried to rescue and in that process they attacked one witness by

name Kandaswamy who helped the police by handing over his TVS Moped in order to take the victim-complainant to the police station. Even at

that time they used the words (Vernacular matter omitted) The contents of the FIR has been corroborated by the statement of other witness. The

Sub-Inspector of Police Chinna Thambi also gave statement relating to the later portion of the occurrence in which they were insulted and

prevented from discharging their duties. Infact, Chinnathambi has given the statement that even in his presence the accused shouted that the

complainant must be burnt alive by pouring petrol. It is true that the Doctor has given statement that Mani-witness has sustained totalling 8 injuries

and out of 8 injuries, 8th injury was dislocation of the tooth. The Doctor's statement reveals that the 7th injury is laceration over right side temporal

region and parital region 2 cm x 2 cm and on perusal of the statement given by the Doctor with regard to the injuries sustained by the witness

Kandaswamy it is clear also shows that he was beaten with iron rod and there was a contusion on the back of the neck and a contusion over the

lower part of right chest. Of course, the Doctor says that the injuries were simple in nature.

7. Under S. 227, Cr.P.C. the Sessions Judge upon consideration of the record of the the case and the document submitted there with and after

hearing the submissions of the accused and the prosecution, considers that there is no sufficient ground for proceeding against the accused he shall

discharge the accused. Under S. 228, Cr.P.C. if he is of opinion that there is ground for presuming that the accused has committed an offence

which is exclusively triable by Sessions Court, he shall frame in writing a charge against the accused. So, the only question to be decided is whether

there is ground for presuming that the accused has committed an offence which is exclusively triable by Sessions Court ?

8. Section 228(a) provides that if the Court of Sessions of opinion that there is ground for presuming that the accused has committed an offence

not triable by the Court of Sessions but only triable by the Magistrate then he may frame a charge against the accused in respect of the First Class

Offence and by order transfer the case for trial to the Chief Judicial Magistrate and thereupon the Chief Judicial Magistrate shall try the offence in

accordance with the procedure contemplated.

9. So, the conjoint reading of S. 227 and 228 of Cr.P.C. disclose that the Sessions Court is empowered to go through the records and hear the

submissions of the respective parties and to form an opinion whether there is sufficient ground for presuming that the accused has committed an

offence triable by the Court of Session or not. In this case, the Assistant Sessions Judge has categorically observed that there are materials in the

FIR and other documents to come to the conclusion that there is sufficient ground for presuming that an offence triable by the Court of sessions has

been made out. Apart from this order, the learned Government Advocate also has invited various materials collected by the Investigating Agency

which also would show that there are sufficient materials to frame charge under S. 307, IPC.

10. Mr. G. Shankaran learned counsel appearing for the petitioner has brought to my notice two decisions, in order to show that what are all

necessary materials to hold that S. 307 is made out. The first decision is Svenska Handelsbanken Vs. M/s. Indian Charge Chrome and others, The

relevant portion reads as follows :-

The trial Court had acquitted the appellants but the High Court convicted them under S. 307, IPC and sentenced them to rigorous imprisonment

for three years. The learned counsel for the appellants rightly pointed out that all the six incised wounds were not more than 1/2 inch in size and

were skin deep and, therefore, the High Court was not right in attributing an intention to cause death. The High Court came to the conclusion that

having regard to the fact that a sharp cutting instrument was used and certain injuries were caused on the chest portion of the complainant PW 2,

the intention of the assailant was clearly to commit murder and, therefore, the offence fall within the ambit of S. 307, IPC. We are afraid we cannot

accept this approach of the High Court. The circumstances under which the incident occurred do not permit such an inference. The quarrel took

place suddenly. The complainant too had a criminal history. When the complainant objected to the language used by the appellants the latter

reacted and these injuries were caused. There was no motive whatsoever. There could be no intention to kill. In order to bring the case within the

ambit of S. 307, IPC, it must be shown that the accused acted with such

intention or knowledge and under such circumstances that if he by that act caused death, he would be guilty of murder. To justify a conviction under this provision an intention or knowledge to constitute murder must exist, it is a different matter that the act fell short of that offence. The injuries caused are only skin deep and having regard to the size of the injuries it would not be permissible to infer that the assault was launched with such intent."".

Yet another decision brought to my notice is 1989 (2) Crime 373 : (1990 Cri LJ 310) Madal Lal v. State of H.P. in which the Himachal Pradesh

High Court has held as follows :-

An offence under S. 307 of the Indian Penal Code is a very serious offence and it requires the same very factors to be proved as are needed to

prove an offence under S. 302 of the IPC except that in this case the act falls short of the death of the deceased which is necessary under S. 302

of the IPC. Sometimes, it becomes very difficult to differentiate between an offence under S. 307 of the IPC and others like under Ss. 324, 325,

326 etc. In both the cases, injuries may be there. There may be existence of motive or intention or knowledge on the part of the wrong doer. Care

has, therefore, to be taken that, in such cases there may not be wrong application of the evidence looking to the serious consequences following

from such an error; as the penalty prescribed under them vary to a great extent. Let this matter be approached keeping in view these aspects of the

matter"".

10A. Though I am in agreement with the principles laid down by the Supreme Court as well as the Himachal Pradesh High Court, it is not

applicable to the facts of the present case as the case on hand is at the stage of framing of charge only. But in those decisions evidence has been

appreciated and in the light of the facts and circumstances of the case the Supreme Court as well as the Himachal Pradesh High Court came to the

conclusion that 307 case is not made out. In this case, the motive, time of occurrence, place of occurrence, manner of occurrence, weapons used,

vital portion in which injuries have been inflicted and the other circumstances have to be taken into consideration, in order to find out whether 307

offence is made out or not. In the light of the materials above referred I am not able to agree with the submission made by the learned counsel for

the petitioner with regard to the first point. However, the learned Government Advocate appearing for the State brought to my notice the decision

reported in *Xavier Vs. Vincent Raj Alias Maria Vincent Raj*, where Justice Rengaswamy had an occasion to go into the question whether

appreciation of evidence at the stage of framing of charge is permissible or not. In that decision it is held that there are materials for presuming that

the offence committed by the accused is triable by the Court of Session. He took the support from another decision viz., *Supdt. and*

Remembrancer of Legal Affairs, West Bengal Vs. Anil Kumar Bhunja and Others, wherein the Supreme Court has observed as follows at page

1393; of Cri LJ :-

At the stage of framing charges the prosecution evidence does not commence. The Magistrate has therefore, to consider the question as to

framing of charge on a general consideration of the material placed before him by the investigating police officer. The standard test, proof and

judgment which is to be applied finally before finding the accused guilty or otherwise is not exactly to be applied at the stage of S. 227 or 228. At

this stage even a very strong suspicion founded upon materials before the Magistrate, which leads him to form a presumptive opinion as to the

existence of the factual ingredients constituting the offence alleged, may justify the framing of charges against the accused in respect of the

commission of that offence".

11. So, in the light of the observation made by the Supreme Court and this Court, the Sessions Judge is expected to consider the materials placed

before him i.e. in the records filed under S. 173, Cr.P.C. So, in short, I am of the opinion as referred in the Supreme Court decision the test to be

applied finally for the judgment and after appreciation cannot be applied at the stage of S. 227 or 228, Cr.P.C. Even a strong suspicion founded

upon materials before the Sessions Court, sufficient ground to frame charges against the accused persons. In this case, I feel there are materials for

presuming that the accused have committed an offence triable by the Court of Sessions.

11A. With regard to the second point, I feel that contentions raised by the learned counsel for the petitioner has no merit, in view of the fact that

under S. 220, Cr.P.C. the Court below if in one series of acts so connected

together as to form the same transaction, more offences that one are committed by the same persons, he may be charged with and tried at one trial for every such offence. In this case, though there are series of three acts (1) assault on Mani (2) assault on witness Kandaswamy and (3) insulting police officials by using filthy language and preventing them from discharging their duties took place as series of acts so connected together which forms as the same transaction. So there is nothing wrong in framing charges against all the accused as referred to above as contemplated under S. 220, Cr.P.C. So, in the light of the reasonings given above, I find there is no illegality in the order of the Court below and as such, the revision has no merits. Accordingly, this Revision is dismissed. However, I direct the Court below to go on with the case expeditiously and dispose of the same at an early date. The Registry is directed to send the records to Court below forthwith.

The observation made in this order will not stand in the way of defence to be taken by the accused and the disposal of the case accordingly & direct the trial judge to dispose the case without influenced by the observations made in this order.

12. Petition dismissed.