
(2011) 12 MP CK 0051

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 936 of 2009

Vijendra Singh and others

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 02-12-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, 228, 397, 401
Penal Code, 1860 (IPC) — Section 294, 307, 323, 325, 34

Citation : (2011) 12 MP CK 0051

Hon'ble Judges : M.A Siddiqui, J

Bench : Single Bench

Advocate : Khalid Noor Fakhruddin, for the Appellant; Prakash Gupta, Panel Lawyer for respondent /State and Shri Satyam Agrawal, Advocate for Objector, for the Respondent

Final Decision : Allowed

Judgement

Hon"ble Shri M.A. Siddiqui, J.—The criminal revision has been preferred by the petitioners u/s 397/401 of the Code of Criminal Procedure feeling aggrieved against the Order dated 12.05.2009, passed by 2nd Addl. Sessions Judge (Fast Track Court), Ashta, District-Sehore, in Sessions Trial No. 176/08 by which prayer of the petitioners has been rejected and charges have been framed u/s 307 of IPC against petitioners.

2. In short, the facts are that ST No. 176/08 which was registered for Crime No. 265/08 by PS-Ashta, District-Sehore was committed to the Court of Addl.Sessions Judge (Fast Track Court), Ashta, District Sehore by JMFC, Ashta for alleged offence punishable u/s 341, 307, 323, 325 read with section 34 of IPC. At the stage of framing of charge, it was vehemently agitated that prima facie case u/s 307 IPC was not made out, so Sessions Court has got no jurisdiction to try the offence, offence was at the most u/s 325/34 IPC and police has wrongly registered the case u/s 307 IPC against the facts and circumstances of the case. On the other hand, the complainant party and prosecution were of the view that

prima facie case u/s 307 IPC is made out. From both the sides, the matter was strongly agitated.

3. Trial Court, on 12.05.09, rejected the plea of petitioners that case u/s 307 IPC was not made out, and taken the cognizance, and charge u/s 307 IPC was framed on the petitioners, against that order, this petition has been filed.

4. I have heard both the sides and perused the documents on record.

5. Learned counsel for petitioners submitted that as per FIR dated 7.5.08 the incident took place at about 6.30 AM, matter was reported by Jagdish Mewda that he was sitting in front of his house along with his uncle Charan Singh and Kishore Singh, then Vijendra Singh, Yogendra Singh, Kamal Singh and Shiv Narayan, all residents of Loras Khurd, came there armed with lathis and started beating Charan Singh by means of lathis with an intention to kill him. In the incident, Charan Singh suffered grievous injury on his head. Jagdish and Kishore Singh intervened, they were also beaten by means of lathis and they suffered simple injuries. Report was written in Rojnamcha Sanha No.575 on 7.5.08 and injured were sent for their medical examination. Charan Singh was sent for further treatment to Hamidia Hospital, Bhopal where he was admitted, and then he himself took the discharge and went to L.B.S.Hospital, Bhopal, a private hospital, where he got himself examined and his CT-scan was done and it was found that there was linear fracture on his temporal region. A counter report was also lodged by petitioner Vijendra Singh on the same day for which crime no. 265/08 was registered for offence punishable under Sections 294, 323, 427/34 IPC against Jagdish Mewada, Charan Singh, Kishore Singh and three others.

6. Learned counsel for petitioners submitted that no case u/s 307 IPC is made out. Police, for the reasons best known to them, has registered the case directly u/s 307 IPC without even medical examination and there was no intention to kill at all which can be gathered from the acts of petitioners. Petitioners came with lathis, had their intention was to kill Charan Singh, they would have come with some deadly weapon and several injuries would have been caused.

Injury on the head for which X-ray was advised by hospital at Ashta and by Hamidia Hospital, Bhopal, Charan Singh was not examined, rather he took discharge against the advise and got himself admitted in a private hospital where he procured CT-scan X-ray. Counsel further submitted that lathis (sticks) cannot be termed to be a deadly weapon. The village people used to keep lathis with them, and by its use, it cannot be attributed that intention to kill was there.

7. On the other hand, learned counsel for State and objector have submitted that at the time of framing of charge, no minute scrutiny can be done. At the time of framing of charge, even no injury is required to prove a case u/s 307 IPC. Reliance has been placed on a decision of this Court in Sanu @ Imran and Others Vs. State of Madhya Pradesh, 8 and R. Prakash Vs. State of Karnataka,

8. From reading of above cases, it is very much clear that in case of Sanu @

Imran and others (supra) deadly weapon Chhuri was used, and in case of R.Prakash (supra) weapon Machu (some sharp edged weapon) was used and from the use of said weapon, it was gathered that intention to kill was there. Intention is the main thing which is to be seen at the time of framing of charge u/s 307 IPC.

9. At this stage, it would be proper to refer case of Smt. Om Wati and Another Vs. State, through Delhi Admn. and Others, wherein the Apex Court has held that under Sections 227 and 228 of Cr.P.C. a Court on perusal of evidence has only to find out whether there exists sufficient ground so that a prima facie case is made out to proceed against the accused. It is only when even accepting as it is the evidence, which prosecution proposes to adduce, no case is made out against the accused, court can discharge him, though it should be done where glaring injustice has been caused.

10. Learned counsel for petitioners have further assailed not only the cognizance taken by the trial Court, but also invited attention of this Court to the fact that the photo copy of the charges which has been supplied to them for the purpose of revision, in these copies of the charges, space is blank, and no name of accused or their father's name is there, and in 2nd charge for attempt to murder though ingredients have been taken, but instead of word "murder" the word "suicide" has been used, and section 323(II) has been mentioned while section 323 has no part. It seems that learned Presiding Officer of trial Court is not vigilant, he seems to be so careless and a lazy officer who even did not care to see at the time of giving photo copies of the charges. Though defect may be cured, but it is not expected from a judicial officer that he will handle the judicial work in such a careless manner.

11. The "intention" for the purpose of framing of charge u/s 307 IPC is the main ingredient to be seen. As per facts and circumstances of the case, if the story of prosecution is believed in toto, then it is clear that no deadly weapon were brought or used by the petitioners, and lathis which are not deadly weapons were used. The injuries in huge numbers have not been caused, so no intention to kill can be gathered from the acts of petitioners. As per prosecution case, there was enmity of Panchayat election, so serious enmity was not there. Injured Charan Singh was not examined at Ashta Hospital and at Hamidia Hospital, Bhopal, a reputed hospital which is attached with a medical college. Instead of getting the treatment and going through the X-rays as advised by above two hospitals, Charan Singh was taken to a private hospital where a linear fracture was found, though on the head, and it is said that fluid of brain (CSF) was leaking, but this report is controversial because from a linear fracture no fluid can come out. Moreover no such fluid was found at the hospital at Ashta and in Hamidia Hospital, Bhopal. So, this CT-Scan report of private hospital is suspicious. Even otherwise, if report is admitted, then for a linear fracture, at the most case u/s 325 IPC may be made out and not u/s 307 IPC.

12. It seems that case u/s 307 IPC was recorded directly by the police under

some compulsion or for the reasons best known to them, and on the report of beating of petitioners case u/s 323 IPC was registered. It seems that police was prejudiced against the petitioners. So, not only the police, but trial Court also failed to appreciate the circumstances of the case by applying judicious mind. At the most, case u/s 325/34 and 323/34 may be made out and that is not triable by a Court of Sessions, the offences are triable by Judicial Magistrate Ist Class.

13. So, as per above discussion, I find that order of trial Court dated 12.05.09 is improper, incorrect, erroneous, and has been passed without application of mind. Framing of charge u/s 307 IPC on accused/petitioners is held to be against the facts and circumstances of the case. Impugned order dated 12.05.09 deserves to be and is hereby quashed and consequently the charges u/s 307 IPC framed by learned Addl. Sessions Judge (Fast Track Court) Ashta are set aside and petitioners are discharged from the charges u/s 307 IPC. Learned trial Court is directed to send the case to Judicial Magistrate Ist Class of Ashta for trial and disposal according to law.

14. Resultantly, this revision is allowed to the extent indicated above.