

HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE
SINGLE BENCH : Hon'ble Shri Justice Ved Prakash Sharma

Criminal Revision No.1009/2016

Annapurna Nath

Vs.

State of M.P.

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Shri Avinash Sirpurkar, learned counsel for the petitioner.

Shri C.S. Ujjainiya, learned Public Prosecutor for the respondent-State.

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ORDER

(Passed on 19th day of September, 2016)

This petition under Section 397/401 of Code of Criminal Procedure (for short 'the Code') is directed against order dated 28.07.2016 passed by 2nd Additional Sessions Judge, Indore in S.T. No.432/2016, whereby charge for offence under Section 307, in addition to charge for offences under Section 294 & 506 part-II of IPC, has been framed against the petitioner.

02. It is contended by learned counsel for the petitioner that the injuries alleged to have been caused to the victim are simple; there is no grievous hurt on any vital part of his body; the doctor has not opined that the injuries found on his person were sufficient in the ordinary course of nature to cause death, hence, it cannot be said that the accused

had an intention to commit murder. It is urged that the incident, allegedly, occurred all of a sudden due to dispute over parking, therefore, in these circumstances the petitioner deserved to be discharged for offence under Section 307 'IPC'.

03. In support of his submissions the learned counsel for the petitioner has placed reliance on *Balusingh & Ors. vs. State of M.P., 2015 Cr.L.R. (M.P.) 376*, *Keshav Sharma & Ors. vs. State of M.P., 2015 Cr.L.R. (M.P.) 716*, *Bhallu @ Balkishan Yadav & another vs. State of M.P., 2014(1) MPLJ (Cri.) 480*, and *Mohammad Shahid vs. State of M.P., 2014 Cr.L.R. (M.P.) 169*.

04. Per contra, it is submitted by the learned counsel for the State that to constitute an offence under Section 307 IPC, the primary consideration is the intention of the accused. If the accused has caused an injury with the intention to cause death, then it would *prima-facie* amount to an offence under Section 307 IPC and it is immaterial whether injury caused is simple or grievous. It is submitted that to constitute an offence under Section 307 IPC, it is not necessary that doctor should opine that injury caused to the victim was sufficient to cause death in the ordinary course of nature. It is also submitted that the learned trial Court on an overall assessment of the record and documents of the case submitted before it has come to a *prima-facie* conclusion that there is sufficient material available to frame charge for offence under Sections 307 IPC, therefore, no interference is called for in the impugned order.

05. Heard the learned counsel for the parties and perused the record.

06. To appreciate the contentions made by the learned counsel for the rival parties it is apposite to refer to Section 227 of Cr.P.C. , which reads as under:-

"227. If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

07. The law is fairly well settled that at the stage of framing of charge, the court is required only to find out whether prima facie material is available to indicate towards the involvement of the accused in the alleged offence. This has to be gathered from the record of the case and the documents submitted therewith.

08. The sweep of Section 227 of the Cr.P.C. was considered by the apex Court in *Sajjan Kumar vs. C.B.I., (2010)9 SCC 368*, wherein after referring to relevant authorities it was held as under in para 19:

“ 19. It is clear that at the initial stage, *if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the court to say that there is no sufficient ground for proceeding against the accused.* The presumption of the guilt of the accused which is to

be drawn at the initial stage is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. *If the evidence which the prosecution proposes to adduce prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.*” (emphasis supplied)

09. Here reference can also be made to Section 307 'IPC' which reads thus:-

“307. Attempt to murder.—Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; *and if hurt is caused to any person by such act*, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.”

10. A bare reading of section 307 of IPC makes it clear that to constitute an offence under Section 307 of IPC, the prosecution is required to establish that the accused did an act and that the act was done with such intention or knowledge and under such circumstances, that if he by that act caused death he would be guilty of murder. If hurt is caused by such act, the offender becomes liable to

imprisonment for life, otherwise, the maximum term of imprisonment prescribed is 10 years.

11. As a matter of fact, Section 307 IPC does not even require proof of an injury what to say of an injury which is dangerous or threatening to life. Indeed, it does not take into account the effect of the act of the accused to fasten penal liability upon him. In this connection following observations made by Hon'ble the apex Court in the case of **Bappa alias Bapu vs. State of Maharashtra and Another, AIR 2004 SC 4119**, can usefully be referred :

“7. It is sufficient to justify a conviction under S. 307 if there is present an intent coupled with some overt act in execution thereof. *It is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds.* The section makes a distinction between the act of the accused and its result, if any. The Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.”

12. Reference can also be made to the decision rendered by Rajasthan High Court in **Shahid Khan vs State**

Of Rajasthan And Ors, 2001 (3) WLC 603, wherein it is held that 'so far as Section 307 IPC is concerned, it is settled law that for this offence, it is not necessary that injured person has received grievous hurt on the vital part and it is also not necessary that doctor has opined that injured person has received such injuries which are sufficient in the ordinary course of nature to cause death. The main thing for Section 307 IPC is whether accused persons had intention to cause death of the injured. So far as the intention of accused person is concerned, it can be gathered from the number of injuries, from the nature of the weapon used, from the part of the body chosen by the accused persons for causing injuries, by the other circumstances under which the offence was committed, and what are the relations between the accused and injured etc.

13. In view of the aforesaid, the contention made by the learned counsel for the petitioner that injury sustained by the victim being not grievous or likely to cause death, the offence under Section 307 of IPC is not made out even *prima-facie*, is unacceptable. In the instant case, allegedly, the petitioner assaulted the victim on his head by a rod which is *prima facie* a dangerous weapon. The victim has sustained head injury. The same did not prove fatal is a matter of chance. Law is clear that nature of injury is one of the factors and not the sole factor to decide whether *prima facie* an offence under Section 307 IPC is made out or not. Further a grave suspension regarding complicity of the accused in the

alleged offence is sufficient to frame charge, therefore, it cannot be said that the learned trial Court has committed any legal or factual error in framing charge for offence under Section 307 'IPC' against the petitioner.

14. The case relied on by the learned counsel for the petitioners are based on peculiar facts and circumstances of each case, hence, the same cannot be treated as binding precedent, particularly, in the light of the law enunciated by the apex Court in *Bappa alias Bapu's case (Supra)*.

15. In view of the aforesaid, this petition, having no merit, deserves to be and is accordingly, dismissed.

Cc as per rules.

(Ved Prakash Sharma)
Judge

soumya