

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE**

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 9th OF OCTOBER, 2023

CRIMINAL REVISION No. 3977 of 2023

BETWEEN:-

- 1. PRATAPSINGH ARYA S/O SHRI SARDARSINGH, AGED ABOUT 38 YEARS, OCCUPATION: MEMBER JILA PANCHAYAT AND AGRICULTURE VILLAGE BOLKHEDA NAU TEHSIL JHARDA DISTRICT UJJAIN (MADHYA PRADESH)**
- 2. RAM SINGH S/O BALU SINGH, AGED ABOUT 35 YEARS, OCCUPATION: AGRICULTURE SIMROLE TEH. JHARDA, DIST. UJJAIN (MADHYA PRADESH)**
- 3. DILEEP SINGH S/O TEJ SINGH, AGED ABOUT 23 YEARS, OCCUPATION: AGRICULTURE BOLKHEDA NAU, TEH. JHARDA, DIST. UJJAIN (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI ARPIT SINGH, ADVOCATE)

AND

THE STATE OF MADHYA PRADESH STATION HOUSE OFFICER THROUGH POLICE STATION RAGHVI DISTRICT UJJAIN. (MADHYA PRADESH)

.....RESPONDENT

(BY MS. HARSHLATA SONI, PANEL LAWYER APPEARING ON BEHALF OF ADVOCATE GENERAL).

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This revision coming on for admission this day, the court passed the following:

ORDER

- 1] The petitioners have filed the present revision petition under**

Section 397 read with 401, and 482 of the Criminal Procedure Code against of order dated 25.7.2023 passed by the IInd Additional Sessions Judge, Mahidpur, District-Ujjain (M.P.) in S.T. No.18/2023 whereby charges have been framed against the petitioner for offence punishable under Sections 307 of the I.P.C.

2] In brief, the facts of the case are that, on 22.7.2022, at around 2:46 A.M. the F.I.R. under Sections 147, 323, 324, 294 and 506 of IPC was registered against the accused persons at the instance of complainant Omsingh Parihar stating that at around 09:00 p.m. on 21.07.2022, the accused persons assaulted him. It is alleged in the FIR that complainant Omsingh Parihar along with his elder brother was going Simrole from his agriculture field, and when he reached near Ram Mandir, at that time, the accused persons Pratapsingh Arya, Ram Singh and Dileep Singh came in front of them from a four wheeler and started abusing the complainant. When the brother of the complainant Amarsingh tried to intervene, at that time, accused Pratapsingh Arya took out a knife from his pocket and started assaulting Omsingh, due to which, he received injury on his left elbow and the other accused persons also assaulted him. After the charge sheet was filed, the charges have been framed against the petitioners vide order dated 25.7.2023 as aforesaid u/ss. 147, 323, 324, 294 and 506 of IPC and, being aggrieved, this petition has been filed.

3] Counsel for the petitioners has submitted that a perusal of the FIR and other documents filed along with the charge sheet, it clearly

reveals that no case for commission of an offence under Section 307 of the IPC is made out as complainant Omsingh has suffered injury on his left elbow, which is also simple in nature and at that time, no injury was found on his person as it is alleged that the other accused persons assaulted him with kick and fists. It is also submitted that injured/complainant Omsingh subsequently got himself examined in the District hospital Ujjain on 6.8.2022 and at that time also, no other injury was found on his person. However, he again got himself examined in a private Laboratory, in which also, no injury was found. However, in his NCCT and HRCT chest report dated 8.8.2022, it is found that he has suffered displaced fracture at the anterior end of 6th, 7th, 8th and 9th ribs with early callus formation. It is further submitted that the aforesaid injury was not at all caused by them and it cannot be said that the ingredients of Section 307/34 of the IPC are made out. It is also submitted that no knife has been recovered in the present case and, thus, the charge under Section 307 of the IPC is liable to be set aside.

4] To bolster his submissions, counsel for the petitioners has relied upon the decisions rendered by the Hon'ble Supreme Court in the cases of *Champa Lal Dhakar vs. Naval Singh Rajput and others* reported as (2019) 4 SCC 146; *Ghulam Mustafa vs. State of Uttaranchal* reported as (2016)15 SCC 752 and *Union of India vs. Prafulla Kumar Samal and another* reported as (1979) 3 SCC 4 and the decision rendered by the Co-ordinate Bench of this Court at Jabalpur in the case of *Ramnath @ Rammu Gond & ors. vs. State of M.P.* reported as I.L.R.(2012) M.P. 587.

5] Counsel for the respondent/State, on the other hand, has opposed the prayer. However, it is not denied that no knife has been seized from any of the accused persons and there is no FSL report available on record.

6] Heard the counsel for the parties and perused the record.

7] So far as the intention of a person to cause injury with an intension to cause death is concerned, in the case of *Champa Lal Dhakar* (supra), the Hon'ble Supreme Court has held in paras 7, 8 & 9, which read as under:-

“7. Heard the learned counsel appearing on behalf of the parties at length. We have also perused and considered the material on record, more particularly, the injuries sustained by the original complainant. Considering the material/evidence on record, we have noticed that the complainant sustained injuries on the nose and fracture of the nasal bone was found. That the case may fall within the grievous hurt, but it cannot be said that even, prima facie, a case is made out for the offence under Section 307 IPC.

8. Section 307 IPC reads as under:

“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 herein before mentioned.”

9. Considering the material/evidence on record and the medical certificate and the injuries sustained by the complainant, it cannot be said that the intention of the accused was to cause death of the complainant. Therefore, as rightly observed by the High Court, a charge under Sections 325/149 ought to have been framed. Therefore, the High Court has not committed any error in setting aside the order passed by the trial court insofar as framing the charge under Section 307 IPC is concerned. We are in complete agreement with the view taken by the High Court.”

(emphasis supplied)

8] In the case of *Ghulam Mustafa* (supra), the Hon’ble Supreme Court has held in para 8, which read as under:-

“8.To justify a conviction under Section 307 IPC, the court has to see whether the act was done with the intention to commit murder and it would depend upon the facts and circumstances of the case. Although the nature of injuries caused may be of assistance in coming to a finding as to the intention of the accused, such intention may also be gathered from the circumstances like the nature of weapons used, parts of the body where the injuries were caused, severity of the blows given and motive, etc.”

(emphasis supplied)

9] From the perusal of the charge sheet, it is found that the incident is said to have taken place on 21.7.2022 and at that time, the case was registered under Sections 147, 323, 324, 294 and 506 of the IPC. Admittedly, on that day, no serious injuries were found on the person of the complainant Omsingh Parihar and after many investigations, it could be found that complainant-Omsingh Parihar

had suffered undisplaced fracture at the anterior end of 6th, 7th, 8th and 9th ribs. In the query dated 23.8.2022, the doctor has opined that as per HRCT report, the injury was dangerous to life.

10] In the considered opinion of this Court, when it took almost one month to the doctors to find out the cause of pain of the complainant it can hardly be said that the aforesaid injuries caused by the petitioners were inflicted with an intention to commit the murder of the complainant. It is also found that even the knife has not been recovered from the accused and the injuries caused by the knife is also said to be simple in nature on the left arm elbow of the complainant.

11] In such circumstances, this Court is of the considered opinion that the charge under Section 307 of the IPC under the facts and circumstances of the case, cannot be said to be made out. Accordingly, the charge under the aforesaid Section 307 of IPC is hereby set aside. However, a case under Section 325/34 of the IPC is certainly made out hence the learned Judge of the Trial Court is requested to frame the charges accordingly. Whereas the other part of the charge under the other sections of the IPC are hereby affirmed.

12] In view of the same, the criminal revision is hereby **partly allowed** and disposed of.

(SUBODH ABHYANKAR)

JUDGE

