

HIGH COURT OF MADHYA PRADESH, JABALPUR

Criminal Revision No.229 of 2014

Shrish Kumar Mishra

Versus

State of M.P.

Present : Hon. Shri Justice Anurag Shrivastava

Shri Mahesh Prasad Shukla, Counsel for applicant.

Shri Akshay Namdeo, Panel Lawyer, for the
respondent/State.

Whether approved for reporting: Yes/No.

ORDER
(.05.2016)

This revision under Section 397/401 of the Code of Criminal Procedure is directed against the order dated 12.7.2013 passed by the learned Sessions Judge, Singrauli in Sessions Trial No.26/2013, by which the charges under Sections 294 and 307 of the Indian Penal Code and Section 25(1-B)(b) of the Arms Act, have been framed against applicant/accused.

2. As per the prosecution story, on 22.9.2012 at about 9:30 a.m. in Village Waidhan, complainant Chandrabushan Singh alias Raju Singh, while returning from Singrauli Railway Station stopped his car near the medical store of

applicant/accused Shrish Kumar Mishra and went to a fruit juice shop. Meanwhile, the applicant came near the car and told Driver Satish to remove the car, which was parked in front of his medical shop, otherwise he would break the glasses of the car. Hearing this, the complainant came on the spot and tried to intervene into the matter. The applicant got angry and started abusing him, when complainant tried to interrupt him. Thereafter, applicant went to his shop and brought a knife and in order to kill the complainant stabbed him in his stomach and caused injury. The complainant was taken to nearby Waidhan Hospital, where he was medically examined and as his condition was not stable, he was referred to Nehru Hospital Jayant, where he was admitted. The report of the incident was lodged by the complainant on the same day at Police Station Waidhan. The police registered the offence against the applicant. The complainant was medically examined and after usual investigation, the charge-sheet was filed.

3. It is argued by the learned counsel for the applicant that complainant has not received any grievous injury, but his father is working as Senior Doctor in Waidhan Hospital, therefore, due to his influence the treating doctor in MLC report has described the injury of complainant as dangerous to life. This report is not reliable because subsequently in Nehru Hospital, Jayant, the treating doctor in his report was not able to describe the nature of injury whether it is grievous or not. Therefore, the MLC report of doctor of Waidhan Hospital becomes suspicious. The complainant was discharged from the hospital within one day. Therefore, the injury of complainant seems to be

simple in nature. *Prima facie* there is no evidence on record, which shows that the applicant had caused injuries to complainant with intention to kill him.

4. It is also submitted by the learned counsel for the applicant that at the time of the incident complainant party had assaulted the applicant and caused injuries to him in his shop. The applicant lodged the report against the culprits, but it was not registered by the police, then he had made a complaint to the Inspector General of Police, Rewa, against in-activeness of the police and thereafter, on 25.10.2012 the police registered an offence under Sections 294, 323 and 506/34 against the complainant and two other persons. A copy of this first information report is filed as Annexure A-5. Therefore, the report lodged by the complainant becomes suspicious and *prima facie* no case is made out against the applicant under Section 307 of the Indian Penal Code. The learned trial Court has wrongly framed the charge under this section, therefore, the impugned order is liable to be set aside and applicant may be discharged.

5. On perusal of the first information report and other documents relating to the sessions trial *prima facie* it appears that the dispute arose on parking of the car by the complainant, near the shop of applicant. The applicant asked the driver of the car to remove it and some hot talks between them took place. The complainant tried to intervene there and then the applicant started abusing him and he brought a knife from his medical shop and gave knife blow on abdomen of complainant. The MLC report of

this hospital, Annexure A-3, which has been given by the Government Hospital, Waidhan shows - "the injury caused by the pointed and sharp object, dangerous to life." Thereafter, complainant was taken to Northern Coal Fields, Nehru Hospital Jayant, where he was medically examined. The MLC report, Annexure A-4, also confirms an incised wound in right side of abdomen caused by sharp object. Here the doctor has given opinion regarding the nature of injury as - "it may be of grievous nature". Generally in case of stab wound the nature of injury cannot be ascertained by external examination only. It requires internal examination to find out whether any vital organ is affected/damaged or not. Therefore, medical report, Annexure A-4, does not rule out the possibility of grievous injury. Thus, from both the medical reports it appears that the injury was caused by some pointed sharp weapon on the stomach of the complainant. In the first information report, complainant has categorically stated that the applicant caused this injury in order to kill him. The applicant brought the knife from his shop in order to assault the complainant and caused injury on his vital part of the body. A deep stab wound caused on stomach/abdomen is capable of causing death. Hence, *prima facie* it can be inferred that applicant has caused this injury to complainant with intention or knowledge of above facts.

6. The Supreme Court in the case of ***Ratan Singh Vs. State of M.P., AIR 2010 SC 597*** in pars 6 and 7 has held that :-

"6.It is sufficient to justify a conviction under Section 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. 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. Therefore, an accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt.

7. This position was highlighted in State of Maharashtra v. Balram Bama Patil and Ors. (1983 (2) SCC 28) : (AIR 1983 SC305), Girija Shanker v. State of Uttar Pradesh (2004 (3) SCC 793) : (2004 AIR SCW 810), R. Parkash v. State of Karnataka (JT 2004 (2) SC348) : (2004 AIR SCW 815) and State of M. P. v. Saleem alias Chamaru and Anr. (2005 (5) SCC 554) : (2005 AIR SCW 3511) and, State of Madhya Pradesh v. Imrat and Anr., 2008 (11) SCC 523 : (2008 AIR SCW 4993)”

7. It is settled law that at the stage of framing of charge, the probative value of material on record cannot be gone into. There may be discrepancy regarding time of examination of complainant at both hospitals but it could be explained during trial by prosecution. At this stage, the defence of applicant/accused or the documents relating to counter FIR lodged by applicant cannot be looked into. Hon'ble Supreme Court in the case of **Sanghi Brothers (Indore) Pvt.Ltd. Vs. Sanjay Choudhary, AIR 2009 SC 9** has held that if there is *prima facie* suspicion about commission of offence and involvement of accused found from evidence collected during investigation then the charge can be framed against the accused. In **Ashish Chaddha Vs. Smt. Asha Kumari, AIR 2012 SC 431** it is held that High Court in its revisional jurisdiction cannot apprise the evidence. It is the trial court which has to decide whether evidence on record is sufficient to make out a *prima facie* case against the accused so as to frame

charge against him. Pertinently, even the trial court cannot conduct roving and fishing inquiry into evidence. It has only to consider whether the evidence collected by the prosecution discloses *prima facie* case against the accused or not.

8. In the present case, perusing evidence collected by prosecution and also considering the injury caused by knife on vital part of the complainant, the strong suspicion arises against the applicant for commission of offence under section 307 of IPC, therefore, the learned Sessions Judge has rightly framed the charge against the applicant under sections 294, 307 of the Indian Penal Code and section 25(1-B)(b) of the Arms Act. There is no illegality in the impugned order.

9. It is also made clear that the observations made in this order regarding facts of the case is not binding upon the trial court.

10. The revision is, therefore, dismissed.

(ANURAG SHRIVASTAVA)
JUDGE

TG/-