

**IN THE HIGH COURT OF MADHYA PRADESH
AT J A B A L P U R
BEFORE**

JUSTICE ACHAL KUMAR PALIWAL

CRIMINAL REVISION No.654 OF 2017

BETWEEN:-

**RAJESH TIWARI S/O LATE SHRI BHAGWAN DAS,
AGED ABOUT 46 YEARS, R/O 586A ASHOKA GARDEN
BHOPAL (MADHYA PRADESH)**

....PETITIONER

(BY SHRI ANURAG GOHIL - ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH THR. P.S.
ASHOKA GARDEN BHOPAL (MADHYA
PRADESH)**
- 2. SAYYED SOYEB ALI S/O SAYYED AZAZ ALI 1101
IBRAHIMPURA MADINA HOTEL PS TALAIYA
BHOPAL (MADHYA PRADESH)**

... RESPONDENTS

***(SHRI DINESH PRASAD PATEL- DEPUTY GOVERNMENT
ADVOCATE AND SHRI KAPIL SHARMA- ADVOCATE FOR THE
OBJECTOR)***

Reserved on : 29.08.2023

Pronounced on : 04.09.2023

*This criminal revision having been heard and reserved for order,
coming on for pronouncement this day, Justice Achal Kumar Paliwal
pronounced the following:*

ORDER

The petitioner has filed this revision petition under Section 397/401 of Cr.P.C. against order dated 06.02.2017 passed by 14th Additional Sessions Judge, Bhopal, in Session Trial No. 1067/2016, whereby charges under Section 294, 323, 307, 506-B of IPC and Section 25 (1-B) (b) of Arms Act have been framed against the petitioner.

2. Briefly facts relevant for the disposal of present revision are that complainant Sayyed Soyeb Ali lodged a report against the petitioner and other persons to the effect that on 30.09.2016, at about 8:30 pm, complainant along with his friend Rizwan were going on his Yama Fascino moppet to meet Rizwan's friend Furkhan from Jahangirabad to Prabhat Chauraha and when they reached 80 feet road near Bharat Gas Agency, the driver of the car, which was going ahead of them, suddenly applied brakes, Rizwan also tried to apply brakes but their bike hit the back of the car. Petitioner Rajesh Tiwari, whom complainant already recognizes, got down from the car, came to them and while abusing said that if you do not know how to drive, then, why do you drive? Thereafter, one sardar and other person came and both of them also started abusing them and beat Rizwan with fists. When complainant tried to save Rizwan, they started assaulting him with fists. Thereafter, petitioner Rajesh Tiwari started abusing in anger and assaulted Rizwan on his neck and head with a knife. When complainant went to intervene, his right hand got injured by the knife. When complainant and Rizwan started running from there, then, petitioner Rajesh Tiwari chased them and assaulted Rizwan on his back with knife.

3. On the basis of narration of above facts, FIR No.0542/2016 under Sections 294, 324, 308, 506, 34 of IPC, was registered at PS Ashoka Garden, Bhopal against petitioner & other persons & after investigation, charge sheet under Sections 294, 324, 307, 326, 506, 34 of IPC was filed against petitioner & other persons.

Submissions of Learned Counsel for petitioner:-

4. Grounds taken by the petitioner in revision petition and submissions made by learned counsel for the petitioner and reliance placed by petitioner upon *Sarju Prasad Vs. State of Bihar, AIR 1965 SC 843* reveal that petitioner has primarily challenged the impugned order with respect to framing of charge under Section 307 of IPC on the ground that in CT scan report, no abnormality has been found in the brain of injured Rizwan, as per query report/medical report of Chirayu Hospital, injuries sustained by injured Rizwan are not grievous in nature neither they are life threatening in nature and injuries are simple in nature. It is also urged that charge sheet under Section 307 of IPC has been filed only on the basis of Rizwan's affidavit and last report of Chirayu Hospital. It is also urged that in view of **Sarju Prasad (supra)**, prima facie offence under Section 307 of IPC is not made out. In this connection, learned counsel for the petitioner has also referred to observation of this Court while passing order in M.Cr.C. No. 19720/2016 on 03.01.2017 in connection with bail of petitioner. It is also contended that decisions in *Nirpat Vs. State of M.P. (Cr.R. No. 1084/2015) vide order dated 06.09.2017* and *State of M.P. Vs. Kanha @ Omprakash (Cr.A. No. 1589/2018) passed by Hon'ble Apex Court* & relied on by the complainant/objector, do not apply to the facts of

instant case as there are no gun shot injury in the instant case.

5. Learned counsel for the petitioner has also submitted that scribe of FIR has lodged FIR under Section 308 of IPC without any inquiry etc. On 04.10.2016, petitioner was in jail when FIR relating to threat allegedly given by the petitioner has been registered. Hence, on the basis of above, it is urged that learned trial Court has erred in framing the charge under Section 307 of IPC against the petitioner. Therefore, revision be allowed and petitioner be discharged with respect to offence under Section 307 of IPC.

Submissions of Learned Counsel for Respondent as well as learned counsel for the objector:-

6. Learned Deputy Government Advocate for the State as well as learned counsel of the objector has submitted that injured Rizwan has sustained injuries on the neck etc. with knife which is vital part of the body and knife has been recovered from the petitioner. It is also urged that another case has been registered against the petitioner with respect to threatening given by the petitioner to withdraw the instant case and FIR has been registered with respect to same. It is also submitted that petitioner has caused more than one injury and has also caused injury after chasing. This shows the intention of petitioner to commit murder. In this connection decisions in *Nirpat Vs. State of M.P. (Cr.R. No. 1084/2015) vide order dated 06.09.2017* and *State of M.P. Vs. Kanha @ Omprakash (Cr.A. No. 1589/2018)* passed by Hon'ble Apex Court has been relied upon. Learned trial Court has not committed any error in framing the charge under Section 307 of IPC. Therefore, present revision petition is liable to be dismissed.

Basic Ingredients/Necessary requirements for constituting offence u/s 307 of IPC:-

7. Before discussing & examining the facts of the case, it would be appropriate to refer the basic/fundamental ingredients/requirements necessary in law to constitute the offence u/s 307 of IPC. Hon'ble apex court in ***Jage Ram Vs. State of Haryana, (2015)11 SCC 366***, has held as under:-

“12.. For the purpose of conviction under Section 307 IPC, prosecution has to establish (i) the intention to commit murder and (ii) the act done by the accused. The burden is on the prosecution that accused had attempted to commit the murder of the prosecution witness. Whether the accused person intended to commit murder of another person would depend upon the facts and circumstances of each case. To justify a conviction under Section 307 IPC, it is not essential that fatal injury capable of causing death should have been caused. Although the nature of injury actually caused may be of assistance in coming to a finding as to the intention of the accused, such intention may also be adduced from other circumstances. The intention of the accused is to be gathered from the circumstances like the nature of the weapon used, words used by the accused at the time of the incident, motive of the accused, parts of the body where the injury was caused and the nature of injury and severity of the blows given etc.”

8. In ***State of Maharashtra Vs. Balram Bama Patil, (1983) 2 SCC 28***, Hon'ble apex court held that it is not necessary that a bodily

injury sufficient under normal circumstances to cause death should have been inflicted:

*“9...To justify a conviction under this section 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 an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted.** What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in this 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.”*

(Emphasis supplied)

9. In *State of M.P. Vs. Saleem, (2005) 5 SCC 554*, Hon’ble apex court has held as under:-

“13.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.***

(Emphasis supplied)

10. Hon'ble apex court in **para 16** of *The State of Madhya Pradesh VS. Kanha @ Omprakash, (2019) 3 SCC 605* has held that the lack of forensic evidence to prove grievous or a life threatening injury cannot be a basis to hold that section 307 is inapplicable. This proposition of law has been elucidated by a two judge bench of this court in *Pasupuleti Siva Ramakrishna Rao Vs. State of Andhra Pradesh, (2014) 5 SCC 369:-*

*“18. There is no merit in the contention that the statement of Medical Officer that there is no danger to life unless there is dislocation or rupture of the thyroid bone due to strangulation means that the accused did not intend, or have the knowledge, that their act would cause death. The circumstances of this case clearly attract the second part of this Section since the act resulted in injury No.5 which is a ligature mark of 34 cm x 0.5 cm. **It must be noted that Section 307 IPC provides for imprisonment for life if the act causes ‘hurt’. It does not require that the hurt should***

be grievous or of any particular degree. The intention to cause death is clearly attributable to the accused since the victim was strangled after throwing a telephone wire around his neck and telling him he should die. We also do not find any merit in the contention on behalf of the appellant that there was no intention to cause death because the victim admitted that the accused were not armed with weapons. Very few persons would normally describe the Thums-up bottle and a telephone wire used as weapons. That the victim honestly admitted that the accused did not have any weapons cannot be held against him and in favour of the accused.”

(Emphasis supplied)

11. In ***State of M.P. Vs. Kashiram, (2009) 4 SCC 26***, Hon’ble apex court has held as under:-

“13. 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.”

12. In this connection, I would also like to refer the decision in ***S.K.Khaja Vs. The State of Maharashtra, 2023 LiveLaw (SC) 715***. In

this case, when injured was trying to catch & get hold of the accused, he tried to assault the injured on his head by a gupti. However, injured while avoiding the blow on his head, got injury on his right shoulder. In above factual scenario, Hon'ble apex held as under:-

“8. As rightly submitted by the learned counsel appearing on behalf of the respondent-State, merely because the injuries sustained by the complainant-Mohammad Khan Pathan (PW-2) were very simple in nature, that would not absolve the appellant accused from being convicted for the offence under Section 307 of IPC. What is important is an intention coupled with the overt act committed by the appellant/accused. In the instant case, it was proved by cogent evidence that the appellant/accused had tried to assault the complainant-Mohammad Khan Pathan (PW-2) with Gupti and that too on his head. Though the complaint received injury on his right shoulder while avoiding blow on his head, from the blunt part of the Gupti, such an overt act on the part of the appellant/accused would be covered by the offence punishable under Section 307 of the IPC.”

13. Hon'ble apex court in para 6 of ***Sarju Prasad Vs. State of Bihar, AIR 1965 SC 843 (3-judge Bench)*** has held that therefore, the mere fact that the injury actually inflicted by the appellant did not cut any vital organ of Shankar Prasad is not by itself sufficient to take the act out of the purview of section 307 of IPC.

14. Thus, it is well settled principle of law that nature of the injury/actual injury sustained, is not the sole criteria to determine whether the offence u/s 307 of IPC is made out or not. Summarizing

the law on the subject, Hon'ble apex court in *The State of Madhya Pradesh VS. Kanha @ Omprakash* (supra) in para 11 has held as under:-

“.....The above judgments of this court lead us to the conclusion that proof of grievous or life threatening hurt is not a sine qua non for the offence under 307 of the Penal Code. The intention of the accused can be ascertained from the actual injury, if any, as well as from surrounding circumstances. Among other things, the nature of the weapon used & the severity of the blows inflicted can be considered to infer intent.”

Legal Principles applicable in regard to framing of charge/an application seeking discharge:-

15. Hon'ble Apex Court in *M.E. Shivalingamurthy Vs. Central Bureau of Investigation, (2020) 2 SCC 768*, after referring to (2011) 14 SCC 608, *State of A.P. V. Obulapuram Mining Co. (P) Ltd., (2010) 2 SCC 398*, *P. Vijayan V. State of Kerala, (2005) 1 SCC 568*, *State of Orissa V. Debendra Nath Padhi. (2002) 2 SCC 135*, *Dilawar Balu Kurane v. State of Maharashtra, (1995) 4 SCC 181*, *State of J &K V. Sudarshan Chakkar, (1979) 3 SCC 4*, *Union of India Vs. Prafulla Samal*, has held as under:-

“17. This is an area covered by a large body of case law. We refer to a recent judgment which has referred to the earlier decisions, viz., P. Vijayan v. State of Kerala and another (2010) 2 SCC 398 and discern the following principles:

17.1. If two views are possible and one of them gives rise to suspicion only as distinguished from grave suspicion, the Trial Judge would be empowered to discharge the accused.

17.2. The Trial Judge is not a mere Post Office to frame the charge at the instance of the prosecution.

17.3. The Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding. Evidence would consist of the statements recorded by the Police or the documents produced before the Court.

17.4. If the evidence, which the Prosecutor proposes to adduce to 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 offence, then, there will be no sufficient ground for proceeding with the trial".

17.5. It is open to the accused to explain away the materials giving rise to the grave suspicion.

17.6. The court has to consider the broad probabilities, the total effect of the evidence and the documents produced before the court, any basic infirmities appearing in the case and so on. This, however, would not entitle the court to make a roving inquiry into the pros and cons.

17.7. At the time of framing of the charges, the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution, has to be accepted as true. viii. There must exist some materials for entertaining the strong suspicion which can form the basis for drawing up a charge and refusing to discharge the accused.

17.8. There must exist some materials for entertaining the strong suspicion which can form the basis for drawing up a charge and refusing to discharge the accused.

*18. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged under Section 227 of the Cr.PC (See **State of J & K v. Sudershan Chakkar (1995) 4 SCC**). The expression, "the record of the case", used in Section 227 of the Cr.PC, is to be understood as the documents and the articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. At the stage of framing of the charge, the submission of the accused is to be confined to the material produced by the Police (See*

State of Orissa v. Debendra Nath Padhi (2005) 1 SCC 568).

28. It is here that again it becomes necessary that we remind ourselves of the contours of the jurisdiction under Section 227 of the Cr.PC. The principle established is to take the materials produced by the prosecution, both in the form of oral statements and also documentary material, and act upon it without it been subjected to questioning through cross-examination and everything assumed in favour of the prosecution, if a scenario emerges where no offence, as alleged, is made out against the accused, it, undoubtedly, would enure to the benefit of the accused warranting the Trial Court to discharge the accused.

29. It is not open to the accused to rely on material by way of defence and persuade the court to discharge him.

30. However, what is the meaning of the expression “materials on the basis of which grave suspicion is aroused in the mind of the court’s”, which is not explained away? Can the accused explain away the material only with reference to the materials produced by the prosecution? Can the accused rely upon material which he chooses to produce at the stage?

31. In view of the decisions of this Court that the accused can only rely on the materials which are produced by the prosecution, it must be understood that the grave suspicion, if it is established on the materials, should be explained away only in terms of the materials made available by the prosecution. No doubt, the accused may appeal to the broad probabilities to the case to persuade the court to discharge him.”

Analysis of the case:-

16. Having set out the legal principles, as aforesaid, facts of the case will be examined in the light of above legal principles.

17. Perusal of documents attached with the charge sheet, especially FIR, medical documents, statements recorded under Section 161 of Cr.P.C. and recovery of knife from petitioner etc. reveal that petitioner has assaulted injured Rizwan and Sayyed Soyeb Ali with knife (*churri*)

and Rizwan has been assaulted with knife (*churri*) and injuries have been caused on the neck and head of Rizwan from knife and above parts of body are vital organs of a person. Further, it is also evident from above that after inflicting above injuries, petitioner has also caused injury on the back of Rizwan with knife (*churri*) after chasing him. Thus, petitioner has inflicted more than one injury on the person of Rizwan. Perusal of FIR also shows that with respect to above, FIR has been lodged immediately without any delay after the incident.

18. It is well established that at the time of framing of charge, only documents filed with the charge sheet are to be looked into & observations in a bail order are wholly irrelevant at the stage of framing of charge. There, is no requirement in law to make an inquiry before registering FIR.

19. From decisions referred in the preceding paras, it is evident that just because injury is simple in nature and it is not life threatening or dangerous to life, it cannot be said that no offence under Section 307 of IPC is made out/no charge under Section 307 of IPC can be framed. Instead, intention has to be gathered from the weapon used and part of body assaulted etc.

20. In this court's considered opinion, whether there was any intention to commit murder or not, that intention has to be gathered/inferred primarily from the weapon used & body part aimed at or assaulted i.e. whether it is vital organ of the body. Secondly, conduct of accused both before & after the incident & also during the incident, including words used by the accused during the incident, number of injuries, nature of injuries actually caused etc. may also be taken into consideration to determine above intention. But certainly, nature of injury actually caused

is neither a primary criteria nor sole criteria to determine the requisite intention as required for constituting an offence u/s 307 Of IPC.

21. In the instant case, knife allegedly used by the petitioner for committing the present offence has been recovered at the instance of petitioner. Hon'ble apex court in para 6 of **Sarju Prasad** (supra) has held that therefore, the mere fact that the injury actually inflicted by the appellant did not cut any vital organ of Shankar Prasad is not by itself sufficient to take the act out of the purview of section 307 of IPC. Therefore, **Sarju Prasad** (supra) does not help petitioner in any way.

22. Therefore, if documents attached with the charge sheet/facts of the instant case, as above, are examined in the light of above legal position with respect to ingredients/requirements necessary to constitute offence u/s 307 of IPC, along with law laid down by Hon'ble Apex Court in **M.E. Shivalingamurthy** (supra) with respect to scope & ambit of revision u/s397,401 of CrPC, I am of the considered opinion that learned trial Court has not committed any illegality/perversity in framing charge under Section 307 of IPC against the petitioner.

23. At this stage, I would also like to refer observations of Hon'ble apex court in **State Vs. R. Soundirarasu AIR 2022 SCC 4218**, which are as under:-

*“77. This Court in **Asian Resurfacing of Road Agency Pvt. Ltd. v. Central Bureau of Investigation, (2018) 16 SCC 299**, has held that interference in the order framing charges or refusing to discharge is called for in the rarest of rare case only to correct the patent error of jurisdiction.”*

24. Hence, considering the overall facts and circumstances of the case, this Court is of the considered opinion that the learned trial Court did not commit any illegality in framing charge under Section under Sections 307

of IPC against petitioner. Accordingly, instant revision petition filed by the petitioner is dismissed & the impugned order dated 06.02.2017 passed by 14th, Additional Sessions Judge, Bhopal in ST No. 1067/2016, is hereby affirmed.

25. Accordingly, this criminal revision is **disposed off**.

(ACHAL KUMAR PALIWAL)
JUDGE

L.R.