

The State of Maharashtra Vs. Gulam Rasool Dawood Malvi and Others

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Court : Mumbai

Decided On : Mar-23-1998

Reported in : 1998(5)BomCR384

Judge : Vishnu Sahai, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 397; [Indian Penal Code \(IPC\), 1860](#) - Sections 307 and 326

Appeal No. : Criminal Revision Application No. 52 of 1997

Appellant : The State of Maharashtra

Respondent : Gulam Rasool Dawood Malvi and Others

Advocate for Def. : Gulam Rasool, ;A.P. Mundargi and ;Prakash Nair, Advs.

Advocate for Pet/Ap. : I.S. Thakur, A.P.P.

Judgement :

ORDER

Vishnu Sahai, J.

1. Rule. Rule made returnable forthwith with consent of the learned Counsel for respondents Nos. 1, 3, and 4. Learned Counsel for respondent No. 2 is absent. Counsel for the respondents waive service.

2. By this Application, the State of Maharashtra has impugned the Order dated 20th November, 1996, passed by the learned Additional Chief Metropolitan Magistrate, 2nd Court, Mazgaon, Bombay, in Case No. 95/P/96 allowing the application preferred by the respondents praying therein that the case may not be committed to the Court of Sessions as no offence under section 307 I.P.C. is made out.

3. I have heard Mr. I.S. Thakur for the State of Maharashtra and Mr. A.P. Mundargi for Respondents Nos. 1, 3 and 4. Mr. Gulam Rasool, learned Counsel for respondent No. 2 is absent.

4. The impugned order is founded on the premise that although the injuries to the victim were caused by lethal weapons, like chopper and knife, but inasmuch as they were inflicted on non-vital parts of his body, and the fractures related to those parts of the body, no offence under section 307 I.P.C. was made out and only one under section 326 I.P.C. could be said to have been made out.

5. In my view, the impugned order is not sustainable in law and deserves to be set aside. For determining the question whether an offence falls under section 307 I.P.C., the primary question to be considered is whether there was an intention to commit the murder of the victim. In the instant case, there was evidence that the assault was directed on the face of the victim and when he tried to save it, the blows landed on non-vital parts of his body. This shows, that at this stage, it cannot be prima facie said that the respondents did not intend to commit the murder of the victim.

It is true that such an averment is not made in the F.I.R. But the F.I.R. is not an encyclopedia.

The Supreme Court in the decision reported in : 1965 CriLJ766 Sarju Prasad, appellant v. State of Bihar, respondent, has, in para six of the judgment, observed thus:-

'..... 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.'

6. I feel it pertinent to point out that at the stage of considering the question whether the case should be committed, to Court of Sessions the learned Magistrate should not enter into a thread-bare analysis of the entire material, as has been done in the instant case. What he has to see is whether a prima facie case is made out or not. It was therefore, erroneous on the part of the Magistrate, to assess the evidence in detail.

7. For the said reasons, in my view, the impugned order passed by the Court below is not sustainable in law and has to be set aside.

8. In the result, this application is allowed. Rule is made absolute. The impugned order is quashed and set aside and the Court below is directed to proceed with the case in accordance with law.

I make it clear that the observations made by me in this order are only relevant to the disposal of the present criminal application.

Office is directed to send a copy of this order, within two weeks to the Court of the concerned Magistrate.

9. Application allowed.