

**Krishan Kant Vs. Dilip Kumar and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/472811](http://sooperkanoon.com/472811)

**Court :** Allahabad

**Decided On :** Jan-20-1984

**Reported in :** 1984CriLJ1003

**Judge :** R.K. Shukla, J.

**Appellant :** Krishan Kant

**Respondent :** Dilip Kumar and ors.

**Judgement :**

ORDER

**R.K. Shukla, J.**

1. This revision arises out of the order dated 21.11.1981 of the Vth Additional District & Sessions Judge, Allahabad in Sessions Trial No 289 of 1981 State v. Dilip Kumar Singh and Ors. by which the learned Sessions Judge has transferred this case to the Chief Judicial Magistrate, Allahabad for trial on the ground that the offence is under Section 326, I.P.C. and not one under Section 307. I.P.C.

2. The brief facts of the case are that on 15.12.1979 at about 7.30 a.m. Dilip Kumar, opposite party No. 1 aimed with a S.B.B.L. Gun, Sri Prakash, opposite party No. 2 armed with a D.B.B.L. Gun, Rajendra Prasad, opposite party No. 3 armed with a country-made pistol and opposite parties Nos. 4 to 12 armed with lathis surrounded Captain Uma Kant, the brother of the applicant, and Rajendra

Prasad, the opposite party No. 3, instigated others to assault and kill him due to previous enmity regarding some land. On this instigation Dilip Kumar and Sri Prakash, opposite parties Nos. 1 and 2 fired their guns at Captain Uma Kant, who sustained gun shot injuries on his chest, neck and other parts of his body. On the alarm Hari Kant and other prosecution witnesses came for intervention and Hari Kant also received lathi injuries. Thereafter the applicant lodged a first information report at about 8.30 a.m. on the same day. A case was registered and after due inquiry a charge-sheet was submitted under Sections 147, 148, 149, 323 and 307, I.P.C. against the opposite parties Nos. 1 to 12. The Chief Judicial Magistrate, Allahabad committed the case to the Court of Session under Sections 147, 148, 307 and 323, I.P.C.

3. After the committal the State case (Sessions Trial No. 289 of 1981) was transferred to the Court of Sri S.L. Adarsb, Vth Additional Sessions Judge, Allahabad. The learned Sessions Judge instead of framing charges under Sections 147, 148, 149 and 307, I.P.C. transferred the case to the Chief Judicial Magistrate with the observation that no case under Section 307, I.P.C. is made out and it is a case under Section 326, I.P.C. Aggrieved by the. said order the complainant has filed this revision in this Court.

4. The learned Counsel for the opposite parties has raised a preliminary objection to the effect that the revision application by the complainant is not legally maintainable and he relied on *Kanhaiya v. Kashi Nath Tewari* 1979 All Cri R 54 : 1979 Cri LJ 409 in support of his contention. Relying on *Thakur Ram v. State of Bihar* : 1966 CriLJ700 , it has been held in the above mentioned case of *Kanhaiya* that in a case, which proceeds on police report, private party has no locus standi. Criminal law should not be used as an instrument of wreaking private vengeance by an aggrieved party against the person who, according to that party, had caused injury to it. Barring a few exceptions, in criminal matters the party who is treated as an aggrieved party is the State which is the custodian to the, social interest of the community at large and so it is for the State to take all the steps necessary for bringing the person who has acted against the social interest of the community to book.

5. There can be no denial that in cases initiated on police reports it is the State, who is the aggrieved party and ordinarily a complainant has no locus standi to come to Court. But an order like the one under consideration in this revision is clearly perverse and causes miscarriage of justice, hence, requires interference by the High Court. In the case of Bhagwan Singh v. State of U.P. 1983 All Cri C 347 and Gajadharsingh v. Mahesh Chandra 1981 All Cri C 66 (SOC) : AIR 1981 NOC 206 it has been held that if there is manifest error on point of law causing miscarriage of justice this Court would not hesitate in exercising its revisional powers even at the instance of a private party. It is not usual for the High Court to entertain revisional application filed by the complainant direct but after it has been admitted it must be disposed of on merits.

6. After going through the first information report, injury report and the judgment of the learned Sessions Judge I feel that the learned Sessions Judge has committed a grave error in not framing a charge under Section 307, I.P.C. and quashing the committal order passed by the Magistrate and sending the case to the Chief Judicial Magistrate to try it under Section 326, I.P.C. There is a clear allegation in, the first information report that gun shots were fired on the exhortation of Rajendra. Prasad to kill, Dr. A.V.V. Rao, Medical Officer in charge, Officers Ward, Military Hospital, Allahabad found three injuries on the body of Captain Uma Kant out of which two are gun shot injuries and the third injury is a lacerated wound on the base of neck right side. The medical report clearly indicates that there are gun shot injuries in the upper portion of the chest right side. Wounds of entry are (7) in number of size of 1 cm., each in an area of 10 cm. The medical officer has observed that the injuries are grievous in nature.

7. A bare perusal of Section 307, I.P.C. would show that the reasons given by the learned Sessions Judge for not framing charge under Section 307, I.P.C. against the accused are not tenable. He wrongly minimised the scope of Section 307, I.P.C. which reads as under:

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.

8. For the purpose of constituting an offence under Section 307, I.P.C. two ingredients are required, first, an evil intent or knowledge, and, second an act done. To justify a charge under this section it is not necessary that bodily injury capable of causing death should have been inflicted. Although the nature of injuries 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 often, in such cases, be ascertained without any reference at all to the actual wounds. The scope of Section 307, I.P.C. has been very well interpreted by the Supreme Court in the latest case of State of Maharashtra v. Balram Bama Patil : 1983 CriLJ331 in the following words:

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.

The High Court, in our opinion, was not correct in acquitting the accused of the charge under Section 307, I.P.C. merely because the injuries inflicted on the victims were in the nature of a simple hurt. Therefore, that part of the judgment of

the High Court acquitting the accused Nos. 1, 2 and 11 of the offence under Section 307, I.P.C. cannot be sustained and must be set aside.

9. the other cases cited by the learned Counsel for the opposite parties are distinguishable on facts and are not relevant for the decision of this case.

10. While considering the question of framing charge in a case committed to the Court of Session, the Sessions Judge is to consider the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution, has to decide whether prima facie there is an offence which is exclusively triable by the Court of Session, and if it is so, he has to frame charge accordingly and Proceed with the trial. At that stage the Sessions Judge is not required to consider the pros and cons of the matter and weigh the evidence as if he was conducting a trial. This principle was laid down by the Supreme Court in Union of India v. Prafulla Kumar : 1979 CriLJ154 . The learned Additional Sessions Judge should have approached the question of framing the charge under Section 307, I.P.C. in this case from this stand point, and considered the material accordingly. The framing of charge in this manner does not debar the trial Judge from coming to the conclusion later, on that a lesser offence is made out on the evidence on the record.

11. Before parting with this case I would like to clarify that the above discussion shall not be taken as an expression of any opinion on the merits of the case either way, and the same will be decided by the learned trial Judge himself.

12. In the result, the revision is allowed. The order, dated 21.11.1981 of Vth Additional Sessions Judge, Allahabad is set aside and it is directed that the case be tried by him according to law and in the light of the observations made above.