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Court : Rajasthan

Decided On : Nov-12-1986

Reported in : 1987(1)WLN206

Judge : Inder Sen Israni, J.

Appeal No. : S.B. Cr. Revision Petition No. 181 of 1986

Appellant : Pradeep Kumar

Respondent : State of Rajasthan

Judgement :

Inder Sen Israni, J.

1. Heard learned Counsel for the parties.
2. This is a revision petition under Section 397/401 Cr. PC against the order dated 4-6-1986, passed by the learned Sessions Judge, Tonk, in Criminal Case No. 15/86, whereby he ordered to frame the charge against the accused petitioner under Section 307 I.P.C.
3. The brief facts giving rise to this revision petition are that on 11-3-1986, a FIR was lodged at Police Station, Malpura, by the injured Ismail, in which he alleged that he was sitting with one Naresh at his video shop in Malpura. He had friendly relations with Naresh. While he was closing the door of video room at about 8.30

p.m. Pradeep accused appellant came and caused a knife blow on his neck. On the basis of this information a case under Section 307 I.P.C. was registered and after investigation the police submitted a challan against the accused petitioner under Section 307 I.P.C. in the court of learned CJM who committed the accused petitioner for trial to the court of Sessions Judge, under Section 307 I.P.C.

4. The learned Sessions Judge, on 4-6-1986, has framed the charge against the accused petitioner under Section 307 I.P.C.

5. The contention of the learned Counsel for the petitioner is that neither in the FIR nor in the statement of the injured Ismail, recorded under Section 161 Cr. P.C. there is any allegation that the accused petitioner wanted to cause death of the injured Ismail, by causing blow with knife. It has also been stated by the injured that there was no enmity between them and there was no quarrel at the time of incident. It has also been pointed out by the learned Counsel for the petitioner that the injury report itself it shows that the injury caused is simple in nature which is 1-1/2' x 1/4' x 1/2'. The Doctor, has also not opined in his report that the injury was sufficient to cause death. It is, therefore, urged that in these circumstances, learned Session Judge, has drawn conclusion without any basis from the record that if the accused petitioner had caused the injury with little more force it could have been dangerous to life.

6. On the other hand, learned Public Prosecutor has urged that the accused petitioner has used knife which is a sharp edged weapon and the learned trial court has rightly framed the charge under Section 307 IPC.

7. My attention has been drawn to the case of this court, Kajod v. Ramu and Ors. 1984 RCC 167. In this case, learned Sessions Judge, discharged the accused person for the offence under Section 307 I.P.C. and sent the case of trial to the learned Magistrate for other offences which are triable by the learned Magistrate. It was contended in this case that the accused person inflicted serious and grave injury on 4 persons and looking to the nature of injuries a case was clearly made out under Section 307 I.P.C. It was further submitted that one of the injuries found on Bhagwan Singh, was fracture of the skull bones and this grievous injury clearly showed that the offence was of Section 307 I.P.C. It was also held by this court

that the intention of the accused person was not to kill any persons but was to take forcible possession of the house occupied by Kajod and for that purpose to inflict injury on the persons who might come in their way to fulfil this object. It was also clear from the prosecution case that the accused persons were armed with sharp edged weapons, but no injury dangerous to life is alleged to have been inflicted on any one of the injured person by sharp edged weapons. Only one injury on Bhagwan Singh has been shown to be grievous and the same was also inflicted by blunt weapon, on this account, it cannot be said that accused had intention to cause death. Keeping in view the other facts and circumstances of the case, it cannot be said that case was made out under Section 307 I.P.C. It was, therefore, held that prima-facie no charge is made out under Section 307 I.P.C. My attention has also been drawn to the case of Munhsi Ram v. The State of Rajasthan, 1977 RCC 244. In this case, the injury was caused on the head by the axe the depth of which was 1/4'. It was held that it shows that enough force was not used by the assailant while inflicting the said injury to the injured. This circumstance leads the court to infer that the assailant never intended to cause death to the injured. It was also to be noted that only one injury was inflicted by the appellant. In this circumstance, the conviction under Section 307 I.P.C. cannot be sustained. Therefore, the appellant was acquitted for the charge under Section 307 I.P.C. and was convicted for the offence under Section 324 I.P.C. and was sentenced to one year RI.

8. In this case, even though the accused petitioner used knife but had caused only simple injury on the injured Ismail. The depth of this injury is also 1/4'. He also caused only one injury, therefore, in these facts and circumstances of the case, it cannot be inferred that the accused petitioner had any intention of causing such a grievous injury which could be dangerous to the life of the injured person.

9. I am, therefore, of the opinion that charge under Section 307 I.P.C. cannot be sustained and the accused petitioner is liable to be charged under Section 324 I.P.C. The revision petition is, therefore, allowed as indicated above.