

**Ballu Vs. Saether**

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**Court :** Rajasthan

**Decided On :** May-11-1992

**Reported in :** 1992(2)WLN14

**Judge :** M. Kapur, J.

**Appeal No. :** S.B. Criminal Revision Petition No. 137 of 1990

**Appellant :** Ballu

**Respondent :** Saether

**Disposition :** Petition allowed

**Judgement :**

**M. Kapur, J.**

1. An incident occurred on 21.8.1989, cross complaints were lodged. In the complaint of the present petitioner challan was filed and the learned Magistrate after considering the matter found that offence under Section 307 IPC was also made out. As it was triable by the court of Sessions it was committed to Sessions.

2. The learned Special Judge, Dacoity Affected Area, Bharatpur (Sessions Judge) heard the parties on the question of charge and held that no offence exclusively triable by the Court of Session was made out therefore the case was sent to the CJM with the direction to frame charges for offences under Sections 147, 323,

325, 149, read with Section 323 and 325 IPC. Against this order dated 9.7.1990 the complainant has preferred this revision.

3. The learned counsel for the petitioner has contended that there is fracture in the left frontal temporal region due to the head injury of Shriram and the doctor has given opinion that the injury is grievous and likely to cause death. On the basis of this report and also on the basis of the circumstances in which the incident took place it has been contended that charge under Section 307 IPC ought to have been framed.

4. The learned Counsel for the complainant has relied upon the case reported in Akbar v. State 1989 Cr.L.R. (Raj.) 402, in order to contend that at the time of framing of charge, the court should not consider whether it would result in conviction or acquittal, and at this stage the evidence should not be weighed insensitive balance. He has further placed reliance on the case reported in Radhey Shayam v. Kunj Behari : 1990 CriLJ669 , in which quashing of the charge by the trial court on the ground of the inadequacy of the evidence was set aside on the ground that at the stage of framing of the charge meticulous consideration of evidence and materials by the court was not required.

5. The learned counsel for the non-petitioners and the learned Public Prosecutor have contended that first of all that the doctor has merely given the opinion that the injury is likely to cause death but has not given the opinion that the injury is sufficient to cause death. In view of this it is stated that charge under Section 307 IPC would not be maintainable. It is contended that whether offence under Section 307 IPC would be made out or not would depend upon the intention and knowledge and the circumstances in which the injury was caused. According to him both the parties inflicted blows on each other and Shriram got injuries because he intervened.

6. The learned Counsel relied upon the case reported in Bhagirath and Ors. v. State of Rajasthan 1982 RCC 351, wherein it has been held that the intention referred to in Section 307 IPC cannot be inferred merely from the nature of the two injuries in the absence of proof of other circumstances, because intention to constitute an offence under section 307 IPC must precede the act and is to be

proved independently of the act. This was so decided in appeal against conviction. Another case relied upon is reported in Hari Kishan and Anr. v. Sukhbir Singh : 1989 CriLJ116 , wherein considering the circumstances whether the fight has arisen out of the sudden quarrel and cutting edge of ballam was not used, there could be no intention to commit murder and acquittal under Section 307 IPC was held to be proper.

7. I have considered the contentions raised on behalf of both the sides and examined the record. It can be said that at the stage of framing of charge evidence has not to be appreciated in meticulous manner and what is to be seen is whether the court can proceed against the accused for having committed a particular offence. The statements of the witnesses recorded under Section 161 Cr.P.C. and the injuries report as well as the opinion of the doctor are very relevant at the stage. The injuries in this case had been seen and the opinion of the doctor is also there. Even if the accused did not have the intention to go and do the act which could cause death, and circumstances show that there could be an attempt to commit culpable homicide. Looking to the circumstances and the injuries it can be said that the learned Sessions Judge has overlooked the situation wherein offence under Section 308 IPC could be said to be made out and as this offence is triable exclusively by the Court of Sessions the order of remand under Section 228 Cr.P.C. has to be set aside.

8. This petition is accepted. In addition to the charges directed to be framed by the Sessions Judge, charge under Section 308 IPC should also be framed and the matter should be decided by the Session Judge himself. Copy of this order along with the record be sent to the Sessions Judge Bharatpur.

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