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Court : Rajasthan

Decided On : Mar-17-2008

Reported in : 2008CriLJ3687; RLW2008(3)Raj2440

Judge : Mohammad Rafiq, J.

Appellant : Ram Kishore

Respondent : State and ors.

Advocate for Pet/Ap. : Shri. Girish Khandelwal

Disposition : Petition allowed

Judgement :

Mohammad Rafiq, J.

1. This revision petition is directed against the order dated 20.12.2007 passed by the learned Additional District Judge, Laxmangarh, District, Alwar whereby the accused respondents were discharged of the offence under Section 308 and the matter was remanded to the Court of Additional Chief Judicial Magistrate, Laxmangarh for their trial for rest of the offences, namely-under Section 341, 323 and 325 of IPC.

2. Shri Girish Khandelwal, learned Counsel for the petitioner has argued that the trial Court has committed an illegality in discharging the accused respondents of

the offences under Section 308 IPC. In doing so, the learned Court below has not attached due importance to the opinion of the doctor wherein he stated that fracture of the skull could be dangerous to life. Such an opinion was required to be analyzed in the light of the fact that injury No. 1 sustained by the injured Ram Kishore was not only opined to be grievous in nature but on being subjected to X-ray examination was also found to be a fracture. Learned Court although has considered the submission of Rakesh and Lekhraj recorded Under Section 161, but has virtually ignored the statement of injured Ram Kishore and that of the other three witnesses, 'namely Prem Prakash, Laxman and Tunda. All of them have consistently stated that accused Manoj was armed with an iron pipe and caused the head injury on the person of the injured Ram Kishore and another accused Kailash was having lathi and caused injury on his shoulder which also was eventually found to be fracture. While citing the provisions of Section 308 IPC, learned Counsel argued that according to the aforesaid provision if an accused is found to be having mere knowledge, not necessarily the intention, of the fact that he by his' act would cause death of the injured, he would be guilty of culpable homicide not amounting to murder. In order to buttress his arguments, learned Counsel relied on the judgment of Sunil Kumar v. N.C.T. of Delhi and Ors. : (1998)8SCC557 .

3. Per contra, Shri Bhagyamal Sharma, learned Counsel appearing for the accused respondents argued that mere fact that the injury No. 1 sustained by the injured Ram Kishore was found to be grievous in nature would not be sufficient to bring his act within the purview of Section 308 IPC. Learned Counsel submitted that even after this injury was found to be a fracture, the Medical Officer has not given conclusive opinion of the fact that it was sufficient in the ordinary course of nature to have caused death of the injured. It was argued that in the subsequently given opinion by the Medical Officer on 16.10.2007, he has not given any definite opinion about the head injury, but only additionally stated that in the event of the head injury being found to be fracture, it could be dangerous to life. No significance can be attached to such opinion because the Medical Officer has advised that further opinion on this aspect should be taken from the neurosurgeon, which was done by the prosecution. Learned Counsel for respondents cited the judgment of this Court in Mohanlal and Ors. v. State AIR 1961 Rajasthan

24 (V 48 C 10) and that of the Supreme Court in Niranjana Singh Karam Singh Punjabi, Advocate v. Jitendra Bhimraj Bijaya and Ors. (1990) 4 SCC 76 and argued that at the time of framing of charges, the Court was merely required to see that there was sufficient ground for proceeding against the accused for offence Under Section 308 IPC and in doing so, total effect of the evidence has to be seen. It was therefore not imperative for the court below to discuss entire other evidence of the matter.

4. I have given my thoughtful consideration to the arguments advanced by learned Counsel for the parties, perused the impugned order and also the cited precedents.

5. Careful study of the impugned order indicates that the learned court below was conscious of the opinion given by the Medical Officer on 16.10.2007. The learned court below was also cognizant of the fact that the head injury suffered by the injured Ram Kishore was grievous in nature and resulted into fracture of left temporal bone. Learned Court also took into consideration the statements of two witnesses namely Rakesh and Lekhraj recorded Under Section 161 Cr.P.C. who do not appear to have supported the prosecution version. Learned Counsel for the petitioner has cited the statements of other four eye witnesses, namely Ram Kishore, the injured himself, Prem Prakash, Laxman and Turida. All these four witnesses are consistent in asserting that the accused respondent Manoj was having iron pipe and caused the head injury on the person of Ram Kishore. They are also consistent in their statement that the fracture of shoulder sustained by Ram Kishore was caused by accused respondent Kailash with lathi. In the face of this evidence, the view taken by the learned trial Court that the Medical Officer has not given conclusive opinion about the nature of the injury, whether or not it was capable of causing his death and that the prosecution did not proceed to call for the opinion of neurosurgeon in spite of being advised by the said Medical Officer, is a question, answer of which would determine the fate of this petition. The Supreme Court in Niranjana Singh, supra had laid down the guidelines to be followed by the trial Court at the time of framing of the charge. The Supreme Court in the aforesaid case clearly held that Section 227 of the Code of Criminal Procedure casts a duty on the Court to apply its mind to the material on record and

if on examination of the record, the Court does not find sufficient ground for proceeding against the accused, it must discharge him. On the other hand if after such consideration and hearing the Court is satisfied that a prima facie case is made out against the accused, it must proceed to frame a charge as required by Section 228 of the Code. At the stage of framing of charge, the Court is merely required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value, disclose the existence of all the ingredients constituting the alleged offence. The Court may for this limited purpose sift the evidence, but at that stage it is not required to marshal the evidence with a view to separating the grain from the chaff. The Supreme Court in an earlier judgment in *Union of India v. Prafulla Kumar Sama* 2 : 1979 CriLJ154 , that under Section 227 of the Code, the Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before him, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial. The Supreme Court in *Superintendent & Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja* : 1979 CriLJ1390 . made somewhat similar observations when it held that the standard of test, proof and judgment to be applied finally before finding the accused guilty or otherwise, is not exactly to be applied at the stage of Section 227 and 228 of the Code of Criminal Procedure. At that stage, even a very strong suspicion founded upon materials before the Magistrate, which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged, may justify the framing of charge against the accused in respect of the commission of that offence.

6. In the light of the settled proposition of law as noticed above, the trial Court in the instant case was required to evaluate the weight of the evidence as against the requirement of law to make an offence of Section 308 IPC. It was required to examine whether even if further opinion of the neurosurgeon was not obtained by the prosecution, was still there sufficient material to justify the framing of the charge Under Section 308 IPC? In other words, the Court was required to see whether (i) the opinion expressed by the Medical Officer that injury No. 1 sustained

by the injured Ram Kishore was grievous in nature, (ii) that the injury No. 1 suffered by the said injured was on x-ray examination found to be fracture of the left temporal bone of the skull (iii) that the opinion of the Medical Officer that in the event of such injury being found to be fracture of the head it could be dangerous to life and (iv) the corroborating statements of four witnesses recorded Under Section 161 Cr.P.C. referred to above, did not impel the Court to frame the charge Under Section 308 IPC, more particularly when the investigation agency in its report filed Under Section 173 found such charge prima facie proved against them. At that stage, the trial Court was not expected to have taken note of the statements of prosecution witnesses namely Rakesh and Lekhraj recorded Under Section 161, who did not support the prosecution version and at the same time, to completely ignore the statement of other four prosecution witnesses who supported the prosecution case, so as not to charge the accused of offence Under Section 308 of IPC. In fact, in the judgment of this Court in Mohan Lal cited by the learned Counsel the coordinate bench of this Court took the view that serious head injuries with fracture of the skull bone would justify the framing of charge under Section 308 IPC. The learned Counsel for the respondents however would distinguish that judgment by arguing that was a case where there were multiple injuries on head and in the instant case, there is only one, but that argument cannot be appreciated because in appropriate cases, framing of charge Under Section 308 IPC may be justified even in the absence of an injury as held by the Supreme Court in Sunil Kumar, supra wherein it was observed that offence punishable Under Section 308 IPC postulates doing of an act with such intention or knowledge and under such circumstances that if one by that act caused death, he would be guilty of culpable homicide not amounting to murder. But here, in the instant case, there is though one injury which is grievous leading to fracture of left temporal bone of the skull which the Medical Officer opined, could be dangerous to life. The matter should have been therefore allowed to go for trial so as to enable the prosecution to adduce evidence in support of its case Under Section 308 IPC to prove the same. Even otherwise, it is trite law that opinion of the Medical expert is not by itself conclusive of the matter on which such opinion is expressed. Such opinion can be relied upon by the prosecution in aid of the other evidence produced by it in support of its case. In that event, the trial Court, in my view, was not justified in

completely ignoring such evidence in the form of four statements for limited purpose of framing the charge and on the contrary, relying on the evidence of the other witnesses who in their statements Under Section 161 did not support the prosecution case while discharging the accused Under Section 308 of IPC.

In view of what has been discussed above, the impugned order passed by the trial Court cannot be sustained in law and is therefore set aside. The revision petition is accordingly allowed. Consequences to follow.

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