

Sehdeo Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Jul-28-2003

Reported in : RLW2004(4)Raj2136; 2004(1)WLC240

Judge : H.R. Panwar, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 245 and 401; Indian Penal Code (IPC) - Sections 307

Appeal No. : S.B. Criminal Revision Petition No. 198 of 2002

Appellant : Sehdeo

Respondent : State of Rajasthan and ors.

Advocate for Def. : R.K. Soni, Public Prosecutor and; I.R. Chaudhary, Adv. for Respondent Nos. 2 to 4

Advocate for Pet/Ap. : G.R. Punia, Adv.

Disposition : Revision petition allowed

Judgement :

H.R. Panwar, J.

1. This criminal revision petition under Section 397/401 of the Code of Criminal Procedure (for short, 'the Code') is directed against the order dated 7.3.2002

passed by the Sessions Judge, Merla in Sessions Case No. 2/2002, whereby the learned Sessions Judge discharged the accused-respondents No. 2 to 4 from the offence under Section 307 of the Indian Penal Code (for short, 'IPC') remitted the case to the Court of the Additional Chief Judicial Magistrate, under Section 228 of the Code, for trial of the case in accordance with law as the other offences, to which accused-respondents are charged with, are not triable by the Court of Sessions. Aggrieved by the order of discharge of the accused-respondents from the offence under Section 307, IPC, the complainant has filed the instant revision petition.

2. I have heard learned counsel for the petitioner, learned Public Prosecutor for the State and the learned counsel for the accused-respondents. Perused the impugned order as also the record of the trial court.

3. It has been contended by the learned counsel for the petitioner that the learned Sessions Judge has committed an error in discharging the accused-respondents from the offence under Section 307 IPC inspite of the fact that injured Jagdish sustained an injury on occipital region of skull, which is a vital part of the body, he also contended that another injured Ramesh has sustained the injury on right temporal region of skull. Thus, both the injured persons suffered injuries at the hands of the accused-respondents on vital parts of the body. Likewise, injured Lala Ram sustained incised wound, measuring 6 x 1 x bone deep cut in bone presuits, on mendibular region on left side. The injury suffered by Jagdish resulted in the fracture of skull (occipital region) and opined by the doctor to be grievous in nature.

4. From the statement of the prosecution witnesses it is prima facie clear that the accused-respondents inflicted injuries on the person of the complainant party by lethal weapons with an intention to commit murder. Learned Public Prosecutor has supported the contention raised by the learned counsel for the petitioner. However, learned counsel for the accused-respondents contended that though the injuries inflicted on some of the injured persons were on skull and resulted in fracture of skull bone, but the same were not of the nature as would have been sufficient in the ordinary course of nature to cause death and as such the order

passed by the learned Sessions Judge discharging the accused-respondents from the offence under Section 307 IPC does not require any interference.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. From a careful scrutiny of the record of the trial court, the injury reports, reports of the Radiologist, X-ray plates etc., it is prima facie established that injured Jagdish suffered the injury on vital part of his body, i.e. occipital region of skull, which, on being X-rayed by the Radiologist, was found to be fracture of occipital region of skull. He Was immediately taken to hospital and the Bed Head Ticket shows that he was drowsy, pulse rates were down, he was vomiting, there was bleeding from nose and left ear. After referring from Merta Hospital, he was hospitalized at Ajmer Hospital for further treatment as his condition was not well. Another injured Lala Ram sustained incised wound, he too was bleeding from left ear. Thus, the injury suffered by Lala Ram was, also, grievous in nature as it resulted in a fracture. Injured Ramesh, apart from other injuries, also suffered injury on the temporal region of skull which is a vital part of the body.

6. Almost all the witnesses, in clear terms, have stated that the accused-respondents inflicted injuries with the deadly weapons with an intention to commit murder. The learned Sessions Judge discharged the accused-respondents for the offence under Section 307 IPC only on the ground that the doctor, who examined the injured persons, has not opined as to whether the injuries sustained by injured were sufficient in the ordinary course of nature to cause death. I am unable to accept the finding of the learned Sessions Judge for the reason that there is no such requirement that the injury cause to a victim by the accused must be of the nature that it would be sufficient in the ordinary course of nature to cause death. What Section 307 IPC says is 'whoever does nay 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...'

7. In *State of Maharashtra v. Balram Boma Patil and Ors.* (1), it is not essential that the bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often given 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.'

8. In *Prakash and Ors. v. State* (2), this Court held that to justify conviction under Section 307 IPC, it is not essential that bodily injury capable of causing death should have been inflicted. To say that the injuries are simple in nature, cannot be a ground to interfere at the stage of framing of charge. It cannot be Inferred that the accused had no intention to commit the murder. There are the questions to be decided during trial.

9. Learned counsel for the accused respondents contended that it is a State case and against the impugned order of discharge, the State has not chosen to file revision and the instant revision has been filed by the complainant, therefore, he contended that the instant revision petition by the complainant is not maintainable.

10. In *Harihar Chakravarty v. The State of West Bengal* (3), the Hon'ble Supreme Court held that the revisional jurisdiction of the High Court is not be lightly exercised when it is invoked by a private complainant.

11. However, the Court cannot refrain from doing its duty and abstain from interfering on the ground that a private complaint and not the State has invoked the revisional jurisdiction.

12. It is settled law that the revisional power of High Court under Section 401 Cr.P.C. is discretionary which has to be exercised to correct miscarriage of justice,

but whether or not there is jurisdiction to exercise or not to exercise such discretionary power, depends upon the facts and circumstances of each case. In *Jagnnath Choudhary v. Ramayan Singh* (4), the Supreme Court held that the object of revisional jurisdiction, as envisaged under Section 401 Cr.P.C. is to confer upon superior criminal courts a kind to paternal or supervisory jurisdiction, in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precaution or apparent harshness of treatment, which has resulted on the one hand in some injury to the due maintenance of law or on the other hand in some under served hardship to the individuals. Where the Court concerned does not appear to have committed any illegality or material irregularity or impropriety in passing the impugned judgment and order, the revision cannot succeed judgment and order, the revision cannot succeed. The jurisdictional sweep of the process of the High Court under the provisions of Section 401 Cr.P.C. is very much circumscribed. It is settled law that the revisional jurisdiction is not to be lightly exercised but only in exceptional situations where justice delivery system requires interference in order to do substantial justice and to correct manifest illegality or to prevent gross miscarriage of justice.

13. Keeping in view the settled proposition of law, the order impugned ex facie suffers from perversity and, therefore, in order to do substantial justice, interference of this Court is imperative.

14. In view of the aforesaid discussion, the instant revision is allowed and order impugned dated 7.3.2002, to the extent of discharging the accused-respondents from the offence under Section 307, IPC, is set-aside.