

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

ORDER

Jaggu @ Jagdish & Ors. Vs. State of Rajasthan

S.B.CRIMINAL REVISION NO. 985/2005
against the Order dated 27.10.2005 passed
by Additional Sessions Judge (Fast Track)
No.1, Bhilwara in Sessions case No.76/2005.

Date of Order : 28/04/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Anil Kaviraj for the petitioners.
Mr. J.P.S.Choudhary, public prosecutor for the State.

BY THE COURT:-

By the instant revision petition u/s 397/401 Cr.P.C., the accused petitioners have challenged the order dated 27.10.2005 passed by Additional Sessions Judge (Fast Track) No.1, Bhilwara (for short 'the trial court' hereinafter) in Sessions Case No. 76/05, whereby the trial court framed charges against the petitioners for the offences under Sections 147, 148, 452, 323, 323/149, 325, 325/149, 307, 307/149 and 427 IPC. Aggrieved by the order impugned, the accused petitioners have filed the instant revision petition.

I have heard learned counsel for the petitioners and public prosecutor for the State. Perused the order impugned and challan papers.

Learned counsel for the petitioners has confined his argument to the extent of challenging the order impugned framing charge for the offences u/s 307 and 307/149 IPC. However, the order impugned to the extent framing charges for the offences other than the offence u/ss 307 and 307/149 IPC has not been challenged.

It is contended by learned counsel for the petitioners that the injuries suffered by the injured persons are simple in nature and therefore, offence under Section 307 IPC is not made out.

Learned public prosecutor appearing for the non-petitioner State submits that the petitioners were armed with deadly weapons and caused as many as 15 injuries to injured Sardar Singh, out of which, as many as five injuries are on the skull i.e. vital part of the body, which shows that the petitioners caused the injuries with such an intention or knowledge, and under such circumstances that, if they by that act caused death, they would be guilty of murder, and therefore, according to

learned public prosecutor the offence under Section 307 IPC is prima-facie made out. The injured person was admitted to the hospital and underwent the long treatment. Another injured Mohan Singh also suffered five injuries, out of which, one is grievous in nature.

Injured Sardar Singh suffered as many as four injuries by sharp edged weapon i.e. incised wounds on skull. From the statements of injured persons, it is clear that the petitioners were armed with sword, axe, iron rod etc. and caused injuries to the injured persons with an intention to cause murder. Keeping in view, the evidence available on record as also repeated injuries caused by the petitioners on vital part of the body of injured Sardar Singh who alleged to have suffered five head injuries, merely because the injuries suffered by the injured persons are not capable of causing death, it cannot be a ground to say that prima-facie no offence u/ss 307 and 307/149 IPC is made out.

To construe the offence under Section 307 IPC, it is not the requirement that the injury capable of causing death should have been inflicted. I am fortified with the view taken by Hon'ble Supreme Court in catena of decisions in Sarju Prasad Vs. State of Bihar, AIR 1965 SC 843; State of Maharashtra Vs.

Balram Bama Patil & Ors., (1983) 2 SCC 28; Girja Shankar Vs. State of U.P., JT 2004 (2) SC 140, Bappa alias Babu Vs. State of Maharashtra, AIR 2004 SC 4119; R.Prakash Vs. State of Karnataka (2004) 9 SCC 27 and in Vasant Vithu Jadhav Vs. State of Maharashtra (2004) 9 SCC 31.

In R. Prakash Vs. State of Karnataka (supra), the Hon'ble Supreme Court held that intend coupled with some overt act in execution thereof is sufficient for constituting an offence under Section 307 IPC. The Apex Court further held as under :-

"It is sufficient to justify a conviction under Sec.307 if there is present an intend coupled with some overt act in execution thereof. It is not essential that 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 the act of the accused and its result, if any. The Court has to see whether the act, irrespective of its result was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, it is not correct to acquit an accused of the charge under Sec.307 IPC merely because the injuries inflicted on the victim were in the nature of a simple hurt."

Keeping in view the decisions of Hon'ble Supreme Court and the fact that out of the 15 injuries caused to injured

Sardar Singh, five injuries are on vital part of the body i.e. Skull and out of these five injuries on the skull, four injuries have been caused by sharp edged weapon and therefore, at this stage it cannot be said that the petitioners had no intention or knowledge that if they by that act caused death, they would be guilty of murder. In the circumstances, therefore, there is ground to presume that the petitioners have committed the offence under Sections 307 and 307/149 IPC apart from the other offences for which they have been charged.

It is settled law that at the stage of framing of charge, the trial court is not required to meticulously examine and marshal the material available on record as to whether there is sufficient material against the accused which would ultimately result in conviction. The Court is prima-facie required to consider whether there is sufficient material against the accused to presume the commission of the offence. Even strong suspicion about commission of offence is sufficient for framing the charge, the guilt or innocence of the accused has to be determined at the time of conclusion of trial after evidence is adduced and not at the stage of framing of the charge and, therefore, at the stage of framing of charge, the Court is not required to undertake an elaborate enquiry for the purpose of sifting and weighting the material. I am fortified with my view

by a catena of decisions of Hon'ble Supreme Court in Kanti Bhadra Shah & Anr. Vs. State of West Bengal, 2000 (1) SCC 722, State of Bihar Vs. Ramesh Singh, AIR 1977 SC 2018, Umar Abdul Sakoor Sorathia Vs. Intelligence officer, Narcotic Control Bureau, 1999 Cr.LR (SC) 499, Superintendent & Remembrancer of Legal Affairs, West Bengal Vs. Anil Kumar Bhunja & Ors., AIR 1980 SC 52 and in Stree Atyachar Virodhi Parishad Vs. Dilip Nathumal Chordia & Anr. 1989 (1) SCC 715.

In view of the aforesaid discussion, I do not find any merit in the revision petition. The revision petition is accordingly dismissed.

(H.R.PANWAR),J.

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In Kanti Bhadra Shah & Anr. Vs. State of West Bengal, 2000 (1) SCC 722, the Hon'ble Supreme Court held as under:-

"If the Trial Court decides to frame a charge, there is no legal requirement that he should pass an order specifying the reasons as to why he opts to do so. Framing of charge itself is prima-facie order that the Trial Judge has formed the opinion, upon considering the police report and other documents and after hearing both sides, that there is ground for presuming that the accused has committed the offence concerned. It was further held that there is no legal requirement that the Trial Court should write an order showing the reasons for framing a charge, why should the already burdened Trial Courts be further burdened with such an extra work. The time has reached to adopt all possible measures to expedite the Court procedures and to chalk out measures to avert all roadblocks causing avoidable delays."

In State of Bihar Vs. Ramesh Singh, AIR 1977 SC 2018, the Hon'ble Supreme Court held that at the stage of framing of

charge the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused.

In *Umar Abdul Sakoor Sorathia Vs. Intelligence officer, Narcotic Control Bureau*, 1999 Cr.LR (SC) 499, the Hon'ble Supreme Court held that at the stage of framing charge, the Court is not expected to go deep into the probative value of the materials on record. If on the basis of materials on record the Court could come to the conclusion that the accused would have committed the offence, the Court is obliged to frame the charge and proceed to the trial.

In *Superintendent & Remembrancer of Legal Affairs, West Bengal Vs. Anil Kumar Bhunja & Ors.*, AIR 1980 SC 52, the Hon'ble Supreme Court held that at the stage of framing of charges, the truth, veracity and effect of the judgment which the prosecution proposes to adduce are not to be meticulously

judged. The standard of test, proof and judgment which is to be applied finally before finding an accused guilty or otherwise is not exactly to be applied at the stage of framing the charge. Even on the basis of a strong suspicion founded on materials before it, the Court can form a presumptive opinion regarding the existence of factual ingredients constituting the offence alleged and in that event be justified in framing the charges against the accused in respect of the commission of the offence alleged to have been committed by them.

In *Stree Atyachar Virodhi Parishad Vs. Dilip Nathumal Chordia & Anr.* 1989 (1) SCC 715, the Hon'ble Supreme Court has observed that Court should be loth in interfering at the stage of framing of charge against the accused. Self restraint on the part of the High Court should be the real unless there is glaring injustice.

In view of the above settled legal principles, it is clear that at the stage of framing of charge, the trial court is not required to meticulously examine and marshal the material available on record as to whether there is sufficient material against the accused which would ultimately result in conviction. The Court is prima-facie required to consider whether there is sufficient material against the accused to presume the

commission of the offence. Even strong suspicion about commission of offence is sufficient for framing the charge, the guilt or innocence of the accused has to be determined at the time of conclusion of trial after evidence is adduced and not at the stage of framing of the charge and, therefore, at the stage of framing of charge, the Court is not required to undertake an elaborate enquiry for the purpose of sifting and weighting the material.

In the circumstances, therefore, I do not find any error, illegality or perversity in the order impugned framing charge dated 25.2.2005. No case for interference is made out. The revision petition is dismissed accordingly. Stay application also stand dismissed.

In this view of the matter, I do not find any error, illegality or perversity in the order impugned framing charge. The revision petition lacks merit and is accordingly dismissed. Stay application also stands dismissed.

(H.R.PANWAR),J.

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