

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

Cr. Rev. no. 84/2006

Date of Decision: 01.01.2010

Shakeel Ahmad

Vs. Fida Hussain & Ors

Coram:

HON'BLE MR. JUSTICE SUNIL HALI, JUDGE.

Appearing Counsel:

For the Petitioner(s): Mr. Sunil Sethi, Sr. Advocate, with Mr. Vikas Abrol, Advocate.

For the Respondent(s) Mr. O. P. Thakur, Advocate.

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| i) | Whether to be reported in
Press, Journal/Media | : | Yes/No |
| ii/ | Whether to be reported in
Digest/Journal | : | Yes/No |
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This Criminal Revision has been filed against order dated 17.10.2006 passed by learned Additional Sessions Judge, Ramban, whereby the respondents have been directed to be tried under Sections 323/325/326/341/34 RPC, holding that no offence under Section 307 RPC is made out against them. The Challan, accordingly, has been directed to be transferred to the Court of Munsiff, Judicial Magistrate 1st Class, Ramban, for disposal of the case under law.

Mr. Sethi, learned Senior counsel, appearing for the petitioner submits that the petitioner, who is an employee of the Forest Department, while on his way to attend his official duty

on 11th of July, 2006, was attacked by the respondents with iron rods and lathies. This was with a criminal intention to kill the petitioner as there was some old enmity between the parties with regard to a piece of land. It is stated that on account of the said attack the petitioner sustained multiple injuries and remained hospitalized for about three weeks and underwent a surgery also. In this regard, reliance has been placed on the medical certificate issued by the Registrar, Surgical Unit-6, SMHS Hospital Srinagar, copy whereof has been placed on record.

It is further stated that Challan against the respondents was filed before the Court of learned Additional Sessions Judge Ramban, under Sections 307/323/325/345 RPC but the learned Court, without appreciating the facts and the nature of injuries, as reflected in the medical certificate issued by the authority concerned, has committed a legal error in discharging the respondents for offence under Section 307 RPC by order impugned. It is stated that while framing the charge, the learned trial Court should not have only relied upon the opinion of the doctor regarding sufficiency of the injuries to cause death but should have also taken into consideration the evidence and circumstances which only suggested that the intention of the respondents was to kill the petitioner.

I have heard the learned counsel for the parties.

It is not in dispute that while framing charge if there is reasonable suspicion that the accused has committed the offence, then he is required to be put to trial. However, the courts will not act as Post Office. It is required to peruse the record and come to a prima facie opinion that there are sufficient grounds for framing the charge against the accused. The case of the petitioner is that the trial Court has discharged the accused under Section 307 RPC solely on the basis of the report of the doctor who has examined the petitioner-complainant and has not taken into consideration the circumstantial evidence which suggested that intention of the respondents was to kill the complainant. There is no dispute that the statements of the eye witnesses cannot be over looked by relying exclusively on the report of the expert evidence. However, the nature of the injuries which are inflicted on the body of the complainant can only be confirmed by the medical evidence. The nature of the injuries will reveal the weapon of offence used which can only be gathered from the injuries which have been inflicted on the complainant.

In the present case the trial Court has, after examining the report of the doctor, discharged the accused persons for offence under Sections 307 RPC and charged them under



Sections 323/325/326/341/34 RPC. According to the report of the doctor, injuries no. 1 to 5 are simple in nature whereas injury no. 6 is grievous injury.

I, therefore, do not find any reason to interfere with the well reasoned order of the trial Court.

The revision petition has no force. It is, accordingly, dismissed.

(SUNIL HALI)
Judge

JAMMU:
01.01.2010
Anil Raina, Secy.