

Mohd. Sardar Dara and Others Vs C.B.I., Chandigarh

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: May 23, 2006

Acts Referred: Penal Code, 1860 (IPC) â€” Section 307, 323, 326

Citation: (2006) 17 CriminalCC 1026

Hon'ble Judges: Rajive Bhalla, J

Bench: Single Bench

Advocate: Baldev Singh, with Mr. Sudhir Sharma and Mr. Dinesh Goyal, for the Appellant; Rajan Gupta, Standing Counsel, for the CBI, for the Respondent

Final Decision: Dismissed

Judgement

Rajive Bhalla, J.

This order shall dispose of Crl.R. Nos. 1078 and 1316 of 2005, as both petitions arise from the same FIR and impugn the same order.

2. Prayer in the present petitions is for setting aside the order dated 7.4.2005. passed by the Additional Sessions Judge-cum-Special Judge,

Patiala, whereby charges have been framed, against the petitioners, under Sections 307,326/323/506/120-B/148 of the IPC.

3. Pursuant to a statement by Kewal Krishan Jindal, the complainant, FIR No.272, dated,26.8.2002 was registered, under Sections

324/323/506/379/148/149 of the IPC, at Police Station City Malerkotla, District Sangrur. The complainant thereafter filed Crl.Misc. No.44094-

M of 2002 praying therein that investigation into the aforementioned FIR be transferred from Punjab Police to the CBI. Vide order dated

20.5.2003, this Court entrusted investigation to the CBI. Upon conclusion of investigation, the CBI filed a final report indicting the petitioners. On

the basis of this report and vide the impugned order, dated 7.4.2005. the Additional Sessions Judge-cum-Special Judge. Patiala framed charges,

against the petitioners, under Sections 307.326/323/506/120-B/148 of the IPC.

4. Counsel for the petitioners contend that even a perfunctory appraisal of the final report, submitted by the CBI, would reveal that no offence, u/s

307 of the IPC, is made out. It is further contended that the medical examination of Kewal Krishan Jindal revealed 18 injuries but Dr.Sushil Jindal,

Senior Resident Doctor, Multi Organ Transplant Division, Sir Ganga Ram Hospital, Rajendra Nagar, New Delhi, who examined the complainant,

while working as a Junior Resident Doctor at CMC, Ludhiana, stated that injuries, on the person of Kewal Krishan Jindal, were not of the nature,

which could have caused his death. Dr.Sanjiv Goel. Medical Officer, Civil Hospital Malerkotla, who examined the complainant initially, also made

a similar statement. It is, thus, contended that the injuries, inflicted upon the complainant, do not disclose the commission of an offence, punishable

u/s 307 of the IPC, as no injury, dangerous to life, has been found, on the person of the complainant.

5. It is further argued that the trial Court was required to pass a detailed, reasoned order, disclosing reasons that led it to arrive at a conclusion that

the petitioners had, prima facie, committed an offence, u/s 307 of the IPC. As no reasons have been assigned, the order, framing charges, be set

aside. It is further contended that the complainant and the accused are all politicians, on opposite sides of the political spectrum and, thus, the entire

incident is based upon political vendetta. First version, put forth by the complainant, differs from the version now placed, before the trial Court. It

is, thus, prayed that the impugned order, framing charges against the petitioners, be quashed.

6. Counsel for the respondent, while rebutting arguments, raised by counsel for the petitioners, contends that the impugned order does not call for

any interference, as it does not suffer from any error of jurisdiction as would require interference, in the exercise of jurisdiction, u/s 401 of the

Cr.P.C. It is contended that on arrival at Civil Hospital, Malerkotla, the Senior Medical Officer constituted a board of three doctors, comprising of

Dr. Sanjiv Goyal, Dr. Sheetal Jain and Dr. Ritu Sethi to conduct a medico legal examination of the complainant. A total of 18 injuries were found

on the person of the complainant, caused by blunt and sharp edged weapons. As his condition was serious, the complainant was referred to

Christian Medical College, Ludhiana, where Dr. Sushil Jindal conducted a medico legal examination. The injuries clearly establish that grievous, as

well as simple injuries were inflicted upon the complainant. It is further contended that the evidence, on record, which includes the statements of the

complainant, as also the eye witnesses, and the medical evidence clearly reveals a murderous assault upon the complainant. The nature of the

attack, the number of persons involved, the manner in which the complainant was surrounded by the accused and injuries inflicted, are clearly

indicative of an intention to murder the complainant and, therefore, as all ingredients of Section 307 of the IPC have been satisfied, the trial Court

did not commit any illegality, while framing charges, u/s 307 of the IPC.

7. I have heard learned counsel for the parties and perused the record.

8. A meeting of all Municipal Councillors of Municipal Council, Malerkotla, was called to elect a President. The complainant, alongwith his group,

went to the office of the Municipal Council and raised an objection that the Sub Divisional Magistrate could not preside over the meeting. As this

objection was not recorded in the proceedings, the complainant and his group walked out in protest. The complainant sent his car to drop the lady

members to their respective houses. Thereafter, the complainant and Mohd. Halim Ruruki, Municipal Councillor, emerged from the main gate of

the premises. Comrade Dev Raj Verma arrived on a scooter, to pick up his wife. The complainant informed him that his wife had already left. The

complainant was about to sit on Comrade"s scooter, when Mohd. Sardar Dara, former President of the Municipal Council, Malerkotla, Shakil son

of Ruldu armed with a knife, Yasin (a) Ghugi son of Rahimdin armed with an iron chain, Shakil son of Latif and 4 to 5 other persons armed with

iron chains suddenly rushed towards the complainant. Dara exhorted them to catch hold of the complainant and not let him get away alive, as he

would otherwise approach the High Court. Shakil son of Ruldu attacked the complainant with a knife. The complainant bent forward to save

himself but the knife hit him on his left shoulder. Shakil shouted that he would kill the complainant. Thereafter. Shakil son of Latif hit the

complainant on his eyes and nose. Ghugi threw an iron chain around the complainant"s neck and pulled him to the ground. The petitioner was

thereafter dragged some distance, beaten and kicked repeatedly. While the complainant was lying on the ground, the accused inflicted blows with

iron chains to his back and legs. They tore his clothes and stripped him, took away his clothes, a mobile, cash amounting to Rs. 12,000/- and

important documents. While the complainant was lying on the ground, Shakil son of Latif kicked him in the chest and abdomen and thereafter left

saying that as the complainant had died, their task was complete.

9. These in sum and substance, are the allegations, narrated by the complainant in his statement, made before the police, pursuant whereto the

present FIR was lodged. The injuries, suffered by the complainant, as disclosed in the medico legal report (Annexure P-3), and as reproduced by

counsel for the petitioner, read as follows :-

1. Contusion 5.5 cm x 7 cm dark red coloured over left side of face, including upper and lower eye lids, unable to open the left eye associated

with a lacerated injury 2 cm x 2 cm over medial part of upper part of nose and the part is swollen. Advised eye specialist opinion and X-ray face

and nose.

2. Ligature marks 22 cm x 0.75 cm size encircling the right side, front and left side of the neck missing at the back. Sand particles present. Advised

X-ray.

3. Contusion of 32 cm x 2 cm associated with laceration on left part of the contusion and 10cm long, contusion is present across the middle part of

back of the chest. Bleeding present, area tender advised the X-ray chest.

4. Contusion 19 cm x 2 cm red coloured, associated with laceration, over lower part of back of chest extending from left side to right side advised

the X-ray chest.

5. Contusion 30 cm x 3 cm red coloured present on the lower part of back of chest going downwards upto tip of left post superior iliac spine,

advised the X-ray.

6. Contusion 36 cm x 2 cm red coloured right side back of the chest running downwards towards the lower part of right axilla extending towards

front of abdomen advised X-ray.

7. Incised injury 12cm long associated with contusion along the line of the incised injury of size of 12 cm x 2 cm over the left side upper part back

of chest 4 cm away from the left shoulder joint advised X-ray.

8. Abrasion of red colour 10 cm x 7.5 cm over right side back of chest including upper part of posterior surface of right upper arm 6 cm below the

tip of right shoulder joint;

9. Bruise oval shaped 13 cm x 7.5 cm over right side and upper part of back of chest, red coloured, tenderness present, advised X-ray.

10. Contusion 8 cm x 7.5 cm red coloured oval shaped right back side of the chest close to mid line area tender advised X-ray.

11. Abrasion of 1.5 cm x 1.5 cm red coloured two in number 4 cm apart from each other present on posterior of right elbow advised X-ray.

12. Lacerated injury 7 cm x 3 cm lower part right palm extending to right wrist joint over lying skin peeled off, advised X-ray. Sand particles

present.

13. Lacerated injury 2 cm x 1 cm over posterior medial aspect over distal part of right thumb over lying skin peeled off. Advised X-ray. Sand

particles present.

14. Abrasion of 9 cm x 2.5 cm red coloured over posterior medial aspect over right forearm, 6.5 cm away from right elbow; joint advised X-ray.

15. Lacerated injury 2 cm x 2 cm over the palmar aspect of right thumb over distal part. Advised X-ray.

16. Abrasion 2 cm x 2 cm red coloured over front of right knee joint.

17. Contusion of 11 cm x 2 cm over upper part of left leg 3.5 cm below the left knee joint advised X-ray.

18. Bullae formations over an area of 12 cm x 2.5 cm four in number present over the lateral aspect of left thigh 6.5 cm above the left knee,

advised X-ray.

10. It would be appropriate to notice here that in the medico-legal report (Annexure P-4), the injuries found were eight in numbers. However,

subsequently, Dr. Sushil Jindal, who had recorded only eight injuries, submitted a clarification, with respect to the discrepancy in the two MLRs

and admitted that the person of the complainant bore 18 injuries.

11. The arguments, raised by counsel for the petitioners, that as the doctors, who examined the complainant, opined that the injuries, suffered by

him, were not sufficient to cause death, no offence, u/s 307 of the IPC was made out, in my considered opinion, merits rejection. Section 307 of

the IPC reads as follows :-

307. Attempt to murder. - Whoever does any 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; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such

punishment as is herein before mentioned.

12. Section 307 of the IPC punishes a person, who commits an act with intent or knowledge that if his act had reached fruition, he would be guilty

of murder. Intention or knowledge is the essence of the offence. Intention or mens rea is a state of mind, rarely established by direct evidence and,

thus, falls for determination, from the circumstances surrounding the commission of the offence. The nature of the weapon, the manner of the

assault, the nature of the injury, the site of the injury, the number of injuries, and the intensity of the attack etc. are some of the circumstances that

aid a Court in arriving at a conclusion. These circumstances are, however, not exhaustive but merely illustrative. The nature of the injury may

indicate intention, but in my considered opinion, cannot be the sole circumstance to draw an inference of intention or the absence thereof. Thus, an

essential ingredient for the commission of an offence, u/s 307 of the IPC is the doing of an act with intention or knowledge and under

circumstances sufficient to cause death.

13. The facts of the present case, when examined in the light of legal position, as discussed herein above, do not persuade me to hold that the trial

Court erred in framing charges, u/s 307 of the IPC. As noticed herein above, the accused surrounded the complainant. They were armed with

knives and iron chains. The complainant received 18 injuries in all, one of them being a knife blow, and suffered fractures. The iron chain was

thrown around his neck and he was dragged some distance, kicked and beaten with iron chains. It is also alleged that the accused repeatedly

shouted that they would kill the complainant. The opinion, by two doctors, that injuries caused were not dangerous to life, is an opinion and,

therefore, insufficient to hold that no offence, u/s 307 of the IPC, is made out that necessitated the framing of charges. The circumstances

surrounding the attack, its ferocity, the weapons used in the attack, the manner in which they were used, the large number of injuries on the person

of the complainant, in my considered opinion, are sufficient to charge the petitioners for commission of an offence, u/s 307 of the IPC.

14. In view of what has been stated above, I am of the considered opinion that the impugned order does not suffer from any error of jurisdiction or

such illegality, arbitrariness or perversity as would warrant interference, in. the exercise of jurisdiction, u/s 401 of the Cr.P.C. Consequently, the

present petitions are dismissed. It is, however, made clear that any expression of opinion, as to the facts of the present case, and the nature of the

offence, shall not be binding upon the trial Court, while considering the evidence to be adduced by the prosecution.