

**(2017) 03 MP CK 0044**

**MADHYA PRADESH HIGH COURT**

**Case No:** 193 of 2011

Vipin & others

APPELLANT

Vs

State of M.P.

RESPONDENT

**Date of Decision:** March 23, 2017

**Acts Referred:**

- Code of Criminal Procedure, 1973, Section 397, Section 401 - Calling for records to exercise powers of revision - High Courts powers of revision
- Indian Penal Code, 1860

**Hon'ble Judges:** S.K.Awasthi

**Bench:** Single Bench

**Advocate:** Rajesh Shukla, R. K. Awasthi

**Final Decision:** Disposed Of

**Judgement**

1. The applicants have preferred this criminal revision under Section 397 / 401 of Cr.P.C., being aggrieved by the order dated 28.01.2011 passed by IV Additional Sessions Judge, Bhind in Sessions Trial No. 327/2010, whereby the Court below has framed charges against the applicants for commission of offence punishable under Section 452, 147, 307 / 149 and 323 / 149 (two counts) of IPC .

2. The brief facts of the case are that on 21.01.2010 at about 12 O'clock when complainant has reached his house after casting the vote, the accused persons came together and used filthy languages with the complainant. Thereafter accused Premnarayan with intention to kill gave blow of Pharsa on the head of Ashish, accused Kaushal and Ramkishore gave blow by means of lathi which caused injuries on the leg of Ashish. Other accused persons also caused injuries to Ashish. Report was lodged by the complainant Ashish at crime No. 14/2010 under Sections

452, 294, 147, 148, 323 of IPC has been registered. After due investigation charge sheet has been filed. Learned trial Court has framed the charges under Sections 452, 147, 307 / 149 and 323/149 (two counts). Being aggrieved by the same, the applicants have preferred this revision application.

3. Learned counsel for the applicants submits that the order passed by the trial Court is illegal and trial Court has not considered that there is no injury was found on the body of the injured Ashish by any sharp cutting object. According to the medical report, injuries have been caused by hard and blunt object.

4. The injured person was advised for X-ray but no X-ray report was produced before the trial Court and there is no opinion of the doctor that the injury was life threatening. In such circumstances, *prima facie* it cannot be said that the injury sustained by the injured Ashish is sufficient to cause death, therefore, the charges under Section 307 of 307/34 of IPC is not made out.

5. On the contrary, the learned counsel for the respondent/State submits that the impugned order is based on the material placed on record with the charge-sheet. Thus, no interference is called for.

6. Having considered the rival submissions and perused the documents placed on record, this Court is of the opinion that framing of charges for offences punishable under Section 307 / 149 of IPC is improper for the reasons that firstly, the injury though is on the vital part of the body and dangerous to life but it is not clear that on what basis the doctor reached on such opinion because it appears that Ashish Dubey has received one incise wound on scull measuring 2x1x1 inch and X-ray has been advised of this injury but no X-ray report is available on record so without getting X-ray report or CT scan report the opinion of the doctor cannot be accepted. Except this injury all injuries sustained to Ashish Dubey found to be simple in nature. As per the medical report of injured Jai Prakash Dubey, it is found that he has received swelling and abrasion on the shoulder, chest and back and these injuries have been reported to be caused by hard and blunt object and if the applicants had intention to commit murder, then despite having opportunity to inflict repeated injuries they did not do so.

7. Looking to the nature of injuries and the facts and circumstances of the case, I find that *prima facie* charges under Section 307 and 307 / 149 is not made out against the applicant.

8. Taking this view of matter, the revision petition is allowed in part. As the ingredients for the offence punishable under Section 307 and 307 / 149 of IPC are not satisfied and the ingredients of offences punishable under Sections 294, 148, 452 323, 323 / 149, 324 and 324 / 149 of IPC *prima facie* are made out, accordingly, the applicants/accused are discharged from the offence under Section 307 and 307 / 149 of IPC. It is however made clear that the trial against the applicants/accused shall continue further for the offences under Sections 294, 148, 452 323, 323 / 149,

324 and 324 / 149 of IPC.

9. The revision petition stands disposed of to the extent indicated above.

10. A copy of this order be sent to the trial Court for information and compliance.