

(2012) 02 CHH CK 0059

Chhattisgarh High Court

Case No: Criminal Revision No. 354 of 2011

Laxman Lalwani

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision: Feb. 22, 2012

Acts Referred:

- Penal Code, 1860 (IPC) - Section 279, 307, 326, 337, 338

Citation: (2012) CriLJ 2871

Hon'ble Judges: Pritinker Diwaker, J

Bench: Division Bench

Advocate: Adil Minhaj, for the Appellant; Arvind Dubey, Panel Lawyer and Y.C. Sharma, for State, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Pritinker Diwaker, J.

In the present revision filed by the complainant, challenge is to the legality, validity and propriety of the order impugned dated 2-4-11 (Annexure A/1) passed by the Additional Sessions Judge, Balod, district Durg in S. T. No. 36/08 whereby the learned Court below has framed charge u/s 326/34 of the Indian Penal Code against the respondents No. 2 & 3. Brief facts of the case are that on 10-1-2007, complaint case was filed by the applicant against the respondents 2 & 3 alleging that on 13-7-2005, respondent No. 2 Ashok Kumar had asked him to accompany him for having dinner at Balood Gehan Dhaba and they proceeded towards the Dhaba in a Maruti Car owned by respondent No. 2. It is alleged that on the way respondent No. 3 Rajkumar Tolani also accompanied them. Further case of the applicant is that he had his meals at Balood Gehan Dhaba along with respondents 2 & 3 and in an isolated place, near Jagtara Mandir, respondent No. 2 requested him to stop the vehicle saying that he had to ease himself and when he got down for the same, respondent No. 1 assaulted him with some sharp edged weapon from his backside

and number of injuries were caused to him as a result of which he fell down and became unconscious. It is further alleged that after about 14-15 days of the incident, at Ram Krishna Surgical Hospital, Raipur, the applicant regained consciousness, but on account of the grievous injuries sustained by him, he lost his memory and was under treatment for about five months. He has alleged that during this period he regained his memory and came to know that in the incident, he sustained number of injuries and there was 50 stitches on his head, his right ear was amputated. He has also alleged that in the incident, his eardrum was also damaged and likewise, on account of injury on his right eye, it turned blackish. It is alleged that on recovery and after regaining his memory, he came to know about the fact that initially he was hospitalized in the Christian Hospital, Dhamtari by respondent No. 2 himself who tried to dub the incident as an accident and lodged the report. The complainant had further stated that he never met with an accident as shown by respondent No. 2 and in fact respondent No. 2 had assaulted him with an intention to cause his death and respondent No. 3 was also one of those involved in the conspiracy. It has also been alleged that after partial recovery, on 23-4-2006 and 24-4-2006, the complaint was made by the applicant to the higher officers and to the Home Ministry. The complainant has also alleged that despite his complaint, offence under Sections 279, 337 & 338 of the Indian Penal Code was registered against respondent No. 2 whereas registration of the said offence against him was not in accordance with law and the police had offered undue protection to him. It has also been alleged that by resorting to conspiracy, attempt was made by respondent Nos. 2 & 3 to kill him and therefore they be punished in accordance with law. In support of his complaint, the applicant had examined himself, his wife Deepa Lalwani (complainant's witness No. 2), Tejram Sahu (complainant's witness No. 3), Rakesh Ratlani (complainant's witness No. 4), son Ajay Kumar Lalwani (complainant's witness No. 5), Dr. Roshan Upadhyay (complainant's witness No. 6), Kanhaiya Lal Lalwani (complainant's witness No. 7), Dr. Sunil Kalda (complainant's witness No. 8), Dr. Kamlesh Kumar Dhruv (complainant's witness No. 9), Vijay Agrawal, Additional Superintendent of Police (complainant's witness No. 10) conducted the enquiry, Dr. Sandeep Dave (complainant's witness No. 11), Vikas Lalwani (complainant's witness No. 12) and Dr. S.M. Madhariya (complainant's witness No. 13). All the witnesses of the applicant were duly cross-examined by respondents No. 2 & 3. After considering the complaint and the evidence as adduced by the complainant, the Court below vide impugned order dated 2-5-2011 has framed the charge u/s 326/34, IPC against respondents 2 & 3, thereafter the matter has been remanded to the trial Court for trial.

2. Contention of Shri Minhaj, counsel for the applicant is that from the complaint, the statements of the witnesses in particular that of Dr. Kamlesh Kumar Dhruv (complainant's witness No. 9) and the medical report of the complainant, prima facie offence u/s 307, IPC is made out and the Court below has erred in law in not framing the charge u/s 307, IPC. He submits that the Court below has arrived to a

particular conclusion that the statements of the witnesses are not contradictory to each other and from the evidence it is clear that the complainant was assaulted with a sharp edged weapon, he was treated for a long period in the hospital and therefore the offence u/s 326/34, IPC is made out. It has been argued that the Court below has erred in law in not framing the charge u/s 307/34 of the Indian Penal Code by assigning a reason that in the statement of the complainant it is not stated that the injuries were caused with an intention to cause death. He submits that in the complaint and in his Court statement, the applicant has categorically stated that the injuries were caused to him with an intention to cause his death and once the injuries have been found to be grievous in nature and dangerous to his life, the Court below ought to have framed charge u/s 307/34 of the Indian Penal Code against the accused persons.

3. Opposing the arguments as made by Shri Minhaj, it has been argued by Shri Sharma, counsel for respondent Nos. 2 & 3 that as the Court below has prima facie found the ingredients of Section 326/34, IPC against the respondents, has rightly framed the charge under this Section. He submits that while considering the point of intention, the Court below has considered all the aspects of the case in particular that of the statements of the complainant/applicant and the other witnesses and the conclusion drawn by the Court below, is strictly in accordance with law. It has been argued that even the offence u/s 326/34, IPC is not made out because the incident was in fact an outcome of accident where while driving the vehicle, the applicant has sustained injuries for which a criminal case was also registered against the respondents No. 2 under Sections 279 and 338, IPC in which he was acquitted by the trial Court. Shri Sharma submits that there is absolutely no evidence on record to show that the injuries were caused by respondent No. 2 with an intention to cause the death of the applicant and therefore under no stretch of imagination the offence u/s 307/ 34, IPC can be framed against respondent Nos. 2 & 3. It has also been argued that to make the offence graver and to falsely implicate the respondents No. 2 & 3, a false story has been given by the applicant/complainant.

4. State counsel appearing for respondent No. 1 submits that looking to the facts and circumstances of the case, the evidence, statement of the applicant and his medical report, the Court below ought to have framed charge u/s 307/34, IPC against the respondents No. 2 & 3.

5. Heard counsel for the parties and perused the record. In the complaint (Annexure A/2), the applicant has categorically stated in paras 9 & 15 that with an intention to cause his death, respondent No. 2, has assaulted him and respondent No. 3 was also one of the conspirator. Further in his Court statement in para 8, it has been stated by the applicant that just with an intention to commit murder, he was assaulted by respondent No. 2. The medical report of the complainant has been duly supported by Dr. Kamlesh Kumar Dhruv (complainant's witness No. 9) and in his Court statement he has categorically stated that the complainant had suffered

following four injuries.

(i) Deep incised wound over right side of face with muscle bleed and visible arterial twiz. Extending from right cheek up to sub-mastoid region Approx. 10 cm. x 4 cm. Profuse active bleed.

(ii) Amputated right ear from its base and pinna is lacerated.

(iii) Rt. eye blackening with its sub conjunctivital haemorrhage.

(iv) Crociate triradiate 1/w. over the scalp at middle of the vertex 5 cm. x 3 cm. x 5 cm. Active bleed.

He has further opined that the injury No. 1 was dangerous to life and the injury No. 2 was grievous whereas injury No. 3 & 4 were also dangerous to life. In para 6, this witness has also stated that had there been a delay of half an hour in hospitalization of the patient his life would have been in danger.

6. Considering the complaint, statement of the complainant and statement of Dr. Kamlesh Kumar Dhruv, prima facie offence u/s 307/34, IPC is clearly made out against respondents No. 2 & 3. It is a settled position of law that at the stage of framing of charge, probative value of the statement cannot be gone into, which would come to be decided at the closure of the trial. At the stage of framing of the charge, the Court has to consider the material with a view to find out if there is ground for presuming that the accused has committed the offence or that there is not sufficient ground for proceeding against him and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction.

7. In the case in hand, as stated earlier, based on the statement of the complainant and that of Dr. Kamlesh Kumar Dhruv, the Court below ought to have framed the charge against the respondents No. 2 & 3 u/s 307/34, IPC. In view of this, the order of the Court below is set aside. Learned Additional Sessions Judge is directed to frame charge u/s 307/34, IPC against the respondents No. 2 & 3 and then to proceed with the matter.

Revision is accordingly, allowed.

It is made clear that any observation made by this Court will not come in the way of the Court below to decide the case on merits.