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PUNJAB AND HARYANA HIGH COURT

Before: Manoj Bajaj, J.

Criminal Revision No.1418 of 2017 (O&M) Decided on: 23.06.2020

Narender Singh Petitioner

Versus

State of Haryana & others Respondents

Present:

Mr. Sanjiv Kumar Aggarwal, Advocate, for the petitioner.

Ms. Tanushree Gupta, AAG, Haryana.

Mr. Sanjay Vashisth, Advocate, for respondent Nos.2 & 3.

A. Code of Criminal Procedure, 1973 (2 of 1974), Section 211 -- Framing of charge – Prima-facie -- At the stage of framing of charges, the Court has to sift and weigh the prosecution material on record only for the limited purposes to find out if it, *prima-facie,* discloses the necessary ingredients to constitute the alleged offence against the accused and their involvement in the crime.

(Para 9)

B. Code of Criminal Procedure, 1973 (2 of 1974), Section 211 -- Indian Penal Code, 1860 (45 of 1860), Section 307 -- Attempt to murder – Framing of charge – Intention or knowledge – Prima facie -- Intention has to be absolute and specific and cannot be confused with the recklessness of the offender -- Unless and until this necessary ingredient is present, the charge u/s 307 IPC would not be made out -- Court has to satisfy itself that at least, *prima-facie,* the act by accused irrespective of its result was done with such intention or knowledge and under the circumstances, as mentioned in the section.

(Para 13)

C. Code of Criminal Procedure, 1973 (2 of 1974), Section 211 -- Indian Evidence Act, 1872 (1 of 1872), Section 45 -- Medical opinion -- Framing of charge -- Medical opinion given by a doctor is only a guiding factor for the Courts and the opinion does not carry a binding effect -- Courts are free to examine and evaluate the nature of injuries independently to arrive at a just conclusion.

(Para 15)

D. Code of Criminal Procedure, 1973 (2 of 1974), Section 211 -- Indian Penal Code, 1860 (45 of 1860), Section 307, 326 – Attempt to murder – Injury on head – Relevance of -- Merely because the injury was caused on the head, this alone would not be sufficient to charge for the offence punishable u/s 307 IPC -- Nowhere mentioned that the assailants had come with an intention to commit murder -- Nature of injury does not, *prima-facie,* make out an offence punishable u/s 307 IPC -- Considering the nature of the weapon (Spade/kassi) used while causing grievous hurt, a *prima-facie* case u/s 326 IPC would be made out for charge.

(Para 15,17)

E. Code of Criminal Procedure, 1973 (2 of 1974), Section 211 -- Indian Penal Code, 1860 (45 of 1860), Section 447 -- Criminal trespass – Joint land – Framing of charge – Partition suit is still pending and rights of co-sharers are yet to eb determined -- Land in question was described as joint -- Necessary ingredients to constitute the offence of criminal trespass punishable u/s 447 IPC are not made out.

(Para 16)

Cases referred:

1. Atma Singh Versus The State of Punjab, 1982(2) CLR 496.

2. Mohinder Singh and others Versus State of Punjab, 2012 (4) RCR (Criminal) 214.

3. Rajender Singh Versus State of Haryana, 2004(4) R.C.R. (Criminal) 662.

4. Sheru and another Versus State of Haryana, 2003(3) R.C.R. (Criminal) 506.

5. State of Punjab Versus Bant Singh, 1996(2) R.C.R. (Criminal) 135.

6. State of Punjab Versus Anil Kumar, 1996(1) R.C.R. (Criminal) 273.

7. Mohinder Singh and others Versus State of Punjab, 2012(4) R.C.R. (Criminal) 214.

8. Jai Narain Mishra and others Versus The State of Bihar, 1972 AIR (SC) 1764.

9. Central Bureau of Investigation Versus K. Narayana Rao, 2012(4) R.C.R. (Criminal) 601.

10. P. Vijayan Versus State of Kerala and another, 2010(1) R.C.R. (Criminal) 826.

11. Sajjan Kumar Versus Central Bureau of Investigation, 2010(4) R.C.R. (Criminal) 382.

12. Gangabhavani Versus Rayapati Venkat Reddy and others, 2013(15) SCC 298.

JUDGMENT

MANOJ BAJAJ, J. –

1. Petitioner-Narender Singh has preferred this revision petition to challenge the order dated 10.01.2017 passed by the Additional Sessions Judge, Kurukshetra, whereby his application for framing the charge against respondent Nos.2 and 3 for commission of offences punishable under Sections 307 and 447 IPC in the cross-case arising out from FIR No.111 dated 03.05.2016, under Sections 307, 506, 34 IPC and Section 27 Arms Act, 1959, Police Station, Ladwa, District Kurukshetra, was dismissed.

2. According to the final report submitted by police, respondent Nos.2 and 3 were involved in commission of offences punishable under Sections 323, 325 and 34 IPC and the trial Court, as such, framed the charges against them.

3. The facts, in brief, leading to the revision petition are as under:-

(i) On the basis of the statement of Pritpal Singh son of Gurdayal Singh, FIR No.111 dated 03.05.2016, under Sections 307, 506,

34 IPC and Section 27 Arms Act, 1959 was registered against Narender Singh and Gurdev Singh. As per the allegations, the complainant and his three brothers, namely, Narender Singh, Rajpal Singh and Harpal Singh were having joint land, which was partitioned for cultivation. Narender Singh was having land at Badshami-Radour road and complainant requested him to give the share in the land adjoining the road and against that, he (complainant) was ready to give the share in the land situated on the back side. On 02.05.2016, complainant sent a message to his brother Narender Singh through the village Chowkidar and asked him not to cultivate the land of his share and they should talk about partition of the land. However, Gurdev Singh son of Narender Singh declined the request and further conveyed that they would continue to cultivate the land and complainant may do whatever he wishes to. The complainant again sent his son Charanjit Singh to Gurdev Singh, however, the result remained the same. As per the allegations, the complainant released the water of tubewell in the disputed land and after half an hour, Narender Singh along with his son Gurdev Singh armed with weapons came to their fields, where complainant along with his sons Charanjit Singh and Sarvjit Singh was present. Narender Singh and his son Gurdev Singh got annoyed and Narender Singh exhorted that they be taught a lesson for releasing the water in the land. Thereafter, Gurdev Singh fired at Charanjit Singh from his licensed revolver with an intention to kill and it hit the left side of his neck, who fell down. Again Gurdev Singh fired two shots at Sarvjit Singh and hit on his chest and left thigh respectively and he also fell down. Upon raising alarm by complainant, the assailants fled away while firing in the air. Upon these broad allegations, above FIR was registered for commission of offences of attempt to murder, criminal intimidation and Arms Act.

(ii) On the next day, a cross version was recorded on the statement of Gurdev Singh son of Narender Singh against Charanjit Singh and Sarvjit Singh, both sons of Pritpal Singh, wherein they were indicted for the offences punishable under Sections 323, 325 and 34 IPC. In the cross version, it was alleged by Gurdev Singh that his father was having joint land with his uncles in the area of Village Niwarsi and Kheri Dabdalan. The land was joint which was partitioned for the purposes of cultivation. The land approximately 7½ acres situated on the road going from Kheri Dabdalan to Radour Yamunanagar was in their (complainant and his father) possession and was being cultivated for the last 13 years. It was narrated that on the previous day, i.e., 02.05.2016, they had cultivated the land for sowing sugar-cane crop and his uncle Pritpal Singh was asking for his share in the said fields in exchange to the land situated on the back side and the proposal was refused by them. According to him, the complainant and his father Narender Singh went to the fields in Kheri Dabdalan where his uncle Pritpal Singh, his sons Charanjit

Singh and Sarvjit Singh were watering the cultivated land from the tubewell. The complainant closed the naka and diverted the water to the vacant field. Upon this, Pritpal Singh and his sons started abusing and told that they would take their share in the land. The accused were asked not to abuse, however, Charanjit Singh, who was holding a spade (kassi) gave a blow on the head of his father, who fell down and turned unconscious. Thereafter, Sarvjit Singh took the spade from Charanjit Singh and hit on the head of complainant, whereas Pritpal Singh gave a stick blow on his back. An alarm was raised and the offenders did not leave and, therefore, in self-defence, Gurdev Singh fired from his licensed revolver and caused injuries upon the assailants.

(iii) After recording of the above versions, the investigation was carried out and according to the pleadings in the revision petition, the final report under Section 173 Cr.P.C. was submitted before the Court of competent jurisdiction, whereby Narender (petitioner) and his son (Gurdev Singh) were challaned for commission of offences under Sections 307, 506, 34 IPC and Section 27 Arms Act, 1959, whereas respondent Nos.2 and 3 (sons of Pritpal Singh) were sent to face trial for commission of offences punishable under Sections 323, 325 and 34 IPC. Since the offence under Section 307 IPC was triable by Court of Sessions, therefore, the matter was committed to the said Court and the cross-version also followed the FIR case for trial. It was at this stage, the petitioner moved an application for framing the charges against respondent Nos.2 and 3 for the offences punishable under Sections 307 and 447 IPC in addition to Sections 323, 325 and 34 IPC. The trial Court, after considering the material on record and hearing the parties, proceeded to dismiss the application and framed the charges against accused-respondent Nos.2 and 3 under Sections 323, 325 and 34 IPC, vide order dated 10.01.2017. The petitioner is aggrieved against this order and has invoked the revisional jurisdiction of this Court.

4. Learned counsel for the petitioner has argued that the facts and circumstances of the case clearly indicate that respondent Nos.2 and 3 entered the fields of the petitioner and caused serious injuries on his head with a spade. He further submitted that the injury caused on the vital part of the body resulted into fracture of the skull and the nature of the wound was incised. According to him, the opinion given by the doctor that the injury in question was caused with a blunt weapon, was incorrect and to substantiate his argument, the attention of the Court was invited to the statement of Dr.Amit Sharma, Medical Officer, CHC Ladwa recorded in the departmental proceedings, wherein it was mentioned that, in fact, the injury was caused by a sharp edged weapon and not by a blunt weapon as opined by him earlier while recording MLR No.AS/LAD/16/331 dated 02.05.2016. It is pointed out by him that the opinion given by the doctor was apparently wrong, therefore, he was proceeded against departmentally, wherein the doctor admitted this material difference.

5. Mr. Sanjiv Kumar Aggarwal, learned counsel for the petitioner has argued that the petitioner remained admitted in the hospital for about 18 days and, therefore, *prima-facie,* charge under Sections 307 and 447 IPC is made out against respondent Nos.2 and 3 and they deserve to be charged accordingly. During the course of hearing, learned counsel also produced copy of the order dated 04.08.2017 passed in Civil Revision No.4832 of 2017, whereby the order of injunction granted against Pritpal Singh and others was not interfered by this Court in the revision brought by them. It was contended by him that the order clearly establishes the fact that the occurrence took place in the land possessed by the petitioner. Reference was also made to the site plan prepared during investigation as well as the statement of injured Narender Singh recorded under Section 161 Cr.P.C. by the police on 18.05.2016. In support of his arguments, learned counsel for the petitioner has relied upon the judgments delivered in **Atma Singh Versus The State of Punjab, 1982(2) CLR 496, Mohinder Singh and others Versus State of Punjab, 2012 (4) RCR (Criminal) 214, Rajender Singh Versus State of Haryana, 2004(4) R.C.R. (Criminal) 662 and Sheru and another Versus State of Haryana, 2003(3) R.C.R. (Criminal) 506.** It has been prayed that the impugned order warrants interference and the appropriate charge including the offences under Sections 307 and 447 IPC deserves to be framed against the accused.

6. On the other hand, the prayer is opposed by Ms.Tanushree Gupta, learned State counsel as well as Shri Sanjay Vashisth, the learned counsel for respondent Nos.2 and 3. According to the prosecution, the petitioner had suffered only one injury on the head and the same would be covered under Section 320 IPC, i.e., grievous hurt. It has been argued by Mr. Vashisth that the partition proceedings between the parties are still pending and are yet to be finalised. He has further contended that the son of the petitioner was the aggressor, who had come at the spot with the licensed weapon and fired at respondent Nos.2 and 3. According to him, when the respondents exercised their right to private defence, the injury was suffered by the petitioner. It is further pointed out by him that the matter was thoroughly investigated by the police and the trial Court has carefully examined the material on record while arriving at a conclusion that, *primafacie,* a case under Sections 323, 325, 34 IPC was made out for framing of the charges against respondent Nos.2 and 3. In support of his contentions, learned counsel for respondent Nos.2 and 3 relied upon the judgments delivered in **State of Punjab Versus Bant Singh, 1996(2) R.C.R. (Criminal) 135, State of Punjab Versus Anil Kumar, 1996(1) R.C.R. (Criminal) 273, Mohinder Singh and others Versus State of Punjab, 2012(4) R.C.R. (Criminal) 214 and Jai Narain Mishra and others Versus The State of Bihar, 1972 AIR (SC) 1764.** According to him, the revision petition deserves to be dismissed.

7. After hearing the learned counsel for the parties and going through the case file carefully, it appears that brothers, namely, Pritpal Singh and Narender Singh were at each other's throats for settling their respective shares in the joint land holdings and the litigation in the shape of partition suit amongst the co-sharers was pending. The dispute between the two brothers turned ugly and violence took place between both the brothers and their respective family members, wherein both sides received injuries.

8. During the course of hearing, it was not disputed by the learned

counsel for the parties that the occurrence was common and both sides had received the injuries. However, each one of them claimed to have exercised their right to private defence. Since the case is at the initial stage, therefore, it would not be appropriate for this Court to make any observation that who was out for the blood and who exercised the right to defend or otherwise it was a sudden fight between them. This aspect would be seen after evaluating the evidence of the parties, which is yet to be adduced before the trial Court. While framing charges, the Court is not to examine the material meticulously to ascertain, if the trial would end in conviction. At this stage, the Court is only to examine the record of the case to satisfy itself that there is enough material to proceed with the trial.

9. At this stage of framing of charges, the Court has to sift and weigh the prosecution material on record only for the limited purposes to find out if it, *prima-facie,* discloses the necessary ingredients to constitute the alleged offence against the accused and their involvement in the crime. Reference can be made to **Central Bureau of Investigation Versus K. Narayana Rao, 2012(4) R.C.R. (Criminal) 601,** wherein the law laid down in **P.Vijayan Versus State of Kerala and another, 2010(1) R.C.R. (Criminal) 826 and Sajjan Kumar Versus Central Bureau of Investigation, 2010(4) R.C.R. (Criminal) 382** was reiterated**.** The relevant portion of the judgment reads as under:-

> *"12. While considering the very same provisions i.e., framing of charges and discharge of accused, again in Sajjan Kumar (supra), this Court held thus:*
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> > *"19. It is clear that 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. The presumption of the guilt of the accused which is to be drawn at the initial stage is only for the purpose of deciding prima facie whether the court should proceed with the trial or not. If the evidence which the prosecution proposes to adduce proves the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.*
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> > *20. A Magistrate enquiring into a case under Section 209 Criminal Procedure Code is not to act as a mere post office and has to come to a conclusion whether the case before him is fit for commitment of the accused to the Court of Session. He is entitled to sift and weigh the materials on record, but only for seeing whether there is sufficient evidence for commitment, and not whether there is sufficient evidence for conviction. If there is no prima facie evidence or the evidence is totally unworthy of credit, it is the duty of the Magistrate to discharge the accused, on the other hand, if there is some evidence on which the conviction may reasonably be based, he must commit the case. It is also clear that in exercising jurisdiction under Section 227 Criminal Procedure Code, the Magistrate should not make a roving enquiry into the pros and cons of the matter and*

weigh the evidence as if he was conducting a trial.

Exercise of jurisdiction under sections 227 and 228 Criminal Procedure Code

21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge

(i) The Judge while considering the question of framing the charges under Section 227 Criminal Procedure Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to

suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

From the above decisions, it is clear that 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, in that event, it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. A judicial magistrate enquiring into a case under Section 209 of the Code is not to act as a mere post office and has to arrive at a conclusion whether the case before him is fit for commitment of the accused to the Court of Session. He is entitled to sift and weigh the materials on record, but only for seeing whether there is sufficient evidence for commitment, and not whether there is sufficient evidence for conviction. On the other hand, if the Magistrate finds that there is no prima facie evidence or the evidence placed is totally unworthy of credit, it is his duty to discharge the accused at once. It is also settled law that while exercising jurisdiction under Section 227 of the Code, the Magistrate should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial. This provision was introduced in the Code to avoid wastage of public time and to save the accused from unavoidable harassment and expenditure. While analyzing the role of the respondent herein (A-6) from the charge sheet and the materials supplied along with it, the above principles have to be kept in mind."

10. A perusal of the above clearly defines the scope of examination of prosecution material at the stage of framing of charge and, therefore, the citations relied upon by both the parties would not be helpful as in these cases, this Court or the Hon'ble Supreme Court examined the correctness and validity of the judgment of conviction after examining the testimonies of the prosecution witnesses recorded during trial.

11. The argument of the learned counsel for the petitioner in this case pertaining to offence under Section 307 IPC revolves around the nature of injury suffered by petitioner in the alleged occurrence, which took place on 02.05.2016. The said injury was described by Dr.Amit Sharma as "grievous" and "not dangerous to life". Apart from it, it was mentioned that the injury was caused by a blunt weapon which fractured the underline bone. The said opinion was given on 18.05.2016 on an application given by SI Prem Singh, Investigating Officer of the case, who had produced the CT Scan report of the patient along with the case summary prepared by Dr.Amit Sharma from Aarogyam Hospital, Kurukshetra.

12. The issue which erupts for consideration before this Court is that whether the injury suffered by petitioner would attract the offence punishable under Section 307 IPC? A bodily injury or hurt means interference in the health of a person by causing him pain, discomfort or disease and if the injury is caused by a person voluntarily, then it becomes punishable under Chapter-XVI of IPC, i.e., Offences affecting the human body. The prosecution of the offender would depend upon the severity of injury suffered by the victim. Since as per the prosecution as well as the order framing the charges, the nature of

injury suffered by the petitioner was grievous hurt, which is defined in Section 320 IPC, therefore, it would be appropriate to have a glance at the said definition. Section 320 IPC reads as under:-

> *"320. Grievous hurt.—The following kinds of hurt only are designated as "grievous":—*
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> *(First) — Emasculation.*
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> *(Secondly) —Permanent privation of the sight of either eye.*
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> *(Thirdly) — Permanent privation of the hearing of either ear,*
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> *(Fourthly) —Privation of any member or joint.*
>
> *(Fifthly) — Destruction or permanent impairing of the powers of any member or joint.*
>
> *(Sixthly) — Permanent disfiguration of the head or face.*
>
> *(Seventhly) —Fracture or dislocation of a bone or tooth.*
>
> *(Eighthly) —Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.*

13. It is not disputed by the learned counsel for the parties that the nature of injury suffered by petitioner is grievous in nature. Now, whether facts and circumstances would bring it within the ambit of the offence of attempt to murder need to be evaluated, for framing of charge. In order to test the argument of the learned counsel for the petitioner, it becomes relevant to note the necessary ingredients required to constitute an offence punishable under Section 307 IPC. The said section reads as under:-

> *"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 1[imprisonment for life], or to such punishment as is hereinbefore mentioned.*
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> *Attempts by life convicts.—[When any person offending under this section is under sentence of 1[imprisonment for life], he may, if hurt is caused, be punished with death.]"*

A reading of the above section would make it clear that existence of an intention or knowledge on the part of the offender becomes necessary while committing the crime. Intention is a state of mind where a person acts with an object to bring a particular consequence and, therefore, it is clear that the offender keeps in mind the preparation to commit the offence followed by the executing act to achieve the intended result. In other words, the intention has to be absolute and specific and cannot be confused with the recklessness of the offender. It is needless to observe that unless and until this necessary ingredient is present, the charge under Section 307 IPC would not be made out. Therefore, the Court has to satisfy itself that at least, *prima-facie,* the act by accused irrespective of its result was done with such intention or knowledge and under the circumstances, as mentioned in the section. To constitute the above offence, it may not be necessary that a bodily injury is actually caused to

the victim which may be sufficient under the ordinary circumstances to cause death, as the act alone coupled with the intention or knowledge is sufficient to complete the offence. There may be cases where no injury is suffered by the victim and the act done by the accused would fall within the ambit of the above section. The intention or knowledge is to be gathered from the facts of the case and other attending circumstances.

14. The argument of the learned counsel for the petitioner that the medical opinion given by the doctor was not correct, therefore, the trial Court wrongly proceeded to charge respondent Nos.2 and 3 for the offence punishable under Section 325 IPC, by ignoring the nature of the injury which was dangerous to life, has no merit, for the reason that the statement of the doctor recorded during the departmental proceedings, does not alter the opinion regarding the nature of injury. Dr.Amit Sharma only admitted the mistake regarding nature of the weapon used in the crime.

15. It is settled law that the medical opinion given by a doctor is only a guiding factor for the Courts and the opinion does not carry a binding effect. The Courts are free to examine and evaluate the nature of injuries independently to arrive at a just conclusion. Reference can be made to **Gangabhavani Versus Rayapati Venkat Reddy and others, 2013(15) SCC 298,** wherein the Hon'ble Supreme Court, while examining the judgment of conviction, opined about the significance and importance of the medical opinion and its binding effect with the following observations:-

> *"7. It is a settled legal proposition that where the evidence of the witnesses for the prosecution is totally inconsistent with the medical evidence or the evidence of the ballistics expert, it amounts to a fundamental defect in the prosecution case and unless it is reasonably explained may discredit the entire case of the prosecution. However, the opinion given by a medical witness need not be the last word on the subject. Such an opinion is required to be tested by the court. If the opinion is bereft of logic or objectivity, the court is not obliged to go by that opinion. After all an opinion is what is formed in the mind of a person regarding a particular fact situation. If one doctor forms one opinion and another doctor forms a different opinion on the same facts, it is open to the Judge to adopt the view which is more objective or probable. Similarly, if the opinion given by one doctor is not consistent or probable, the court has no liability to go by that opinion merely because it is given by the doctor. "It would be erroneous to accord undue primacy to the hypothetical answers of medical witnesses to exclude the eyewitnesses' account which had to be tested independently and not treated as the 'variable' keeping the medical evidence as the 'constant' ".*
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> *Where the eyewitnesses' account is found credible and trustworthy, a medical opinion pointing to alternative possibilities cannot be accepted as conclusive. The eyewitnesses' account requires a careful independent assessment and evaluation for its credibility, which should not be adversely prejudged on the basis of any other evidence, including medical evidence, as the sole touchstone for the test of such credibility.*
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> *8. Thus, the position of law in cases where there is a contradiction between medical evidence and ocular evidence stands crystallised to the effect that though the ocular testimony of a witness has greater*

evidentiary value vis-à-vis medical evidence, when medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence. However, where the medical evidence goes so far that it completely rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved."

Merely because the injury was caused on the head, this alone would not be sufficient to charge the respondents for the offence punishable under Section 307 IPC. The opinion given by doctor appears to be probable in the light of the provisions of Section 320 IPC and the alleged injury falls within its purview. Besides, the statements of Gurdev Singh and his injured father have no where mentioned that the assailants had come with an intention to commit murder. In these circumstances, the nature of injury does not, *prima-facie,* make out an offence punishable under Section 307 IPC.

16. Further, examining the stand of the learned counsel for the petitioner that the occurrence took place in the fields possessed by the petitioner is not worth acceptance at this stage, particularly when it is not disputed by him that the partition suit is still pending and the rights of the co-sharers are yet to be determined. Also, the order dated 04.08.2017 is temporary in nature, therefore, it may not be helpful to the cause of the petitioner, particularly when the statement of Gurdev Singh (son of the petitioner), whereupon the cross case was recorded, the land in question was described as joint. Similar is the stand of petitioner in his statement recorded under Section 161 Cr.P.C. Therefore, it is clear that the necessary ingredients to constitute the offence of criminal trespass punishable under Section 447 IPC are not made out.

17. Nevertheless, after examining the facts and circumstances of this case, this Court finds that the alleged injury suffered by petitioner was caused with a spade (kassi) and the weapon used in the crime is capable of causing death as well. This instrument though meant for agricultural purposes and is made of a strong hard long wooden handle, which is attached to a heavy metal plate with sharp edge. Thus, considering the nature of the weapon used while causing grievous hurt, a *prima-facie* case for commission of an offence punishable under Section 326 IPC would be made out and respondent Nos.2 and 3 deserve to be charged for the said offence, instead of Section 325 IPC.

18. Resultantly, without hesitation, it is held that the trial Court rightly declined the application made by the petitioner for framing of charge against respondent Nos.2 and 3 under Sections 307/447 IPC. However, in view of the above discussion, it is clear that instead of prosecuting respondent Nos.2 and 3 under Section 325 IPC, a *prima*-facie case is made out for their prosecution for an offence punishable under Section 326 IPC. Therefore, it is ordered that the trial Court shall frame the charge against respondent Nos.2 and 3, as noticed herein and shall proceed with the trial.

19. With the above observations, revision petition is disposed off.

Order accordingly.

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