Yogendra Singh Verma Alias Yogendra ... vs State Of U.P. Thru. Prin. Secy. Home Lko. ... on 22 August, 2025

Author: Saurabh Lavania

Bench: Saurabh Lavania

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

Neutral Citation No. - 2025:AHC-LKO:49429

Court No. - 11

Case :- CRIMINAL REVISION No. - 903 of 2025

Revisionist :- Yogendra Singh Verma Alias Yogendra Kumar Singh

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko. And Another

Counsel for Revisionist :- Himanshu Suryavanshi,Purnendu Chakravarty

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Lavania,J.

1. Shri Ashish Raman Mishra, Advocate, has put in appearance on behalf of opposite party no.2 by way of filing his Vakalatnama, which is taken on record.

2. Heard Shri Purnendu Chakravarty, who appeared along with Shri Himanshu Suryavanshi, learned counsel for the revisionist, Shri Ashish Raman Mishra, learned counsel for opposite party no.2, learned A.G.A. for the State and perused the material brought on record.

3. The present revision has been filed for the following main relief:-

> "WHEREFORE, it is most respectfully prayed that in the aforesaid facts and circumstances and grounds stated in this criminal revision, this Hon'ble Court may kindly be pleased to allow the Criminal Revision and quash/set aside the impugned order dated 24.07.2025 passed by the Ld. Court of Sessions Judge, Barabanki in Sessions Case No.1915 of 2025 alongwith all consequential proceedings arising out of

FIR No. 454 of 2023 under Section 323, 504, 354-B, 452, 307 IPC, PS: Kotwali Nagar, Barabanki with all consequential facts in the interest of justice."

4. Criminal Revision No. 896 of 2025 (Bhupendra Kumar Singh And 2 Others Versus State of U.P. and Others) filed by co-accused has been dismissed by this Court vide order dated 19.08.2025, which reads as under:-

"1. Shri Ashish Raman Mishra, Advocate, has put in appearance on behalf of opposite party no.2 by way of filing his Vakalatnama, which is taken on record.

2. Heard Shri Purnendu Chakravarty who appeared along with Shri Himanshu Suryavanshi, learned counsel for the revisionist, Shri Ashish Raman Mishra, learned counsel for opposite party no.2, learned A.G.A. for the State and perused the material brought on record.

3. By means of the present revision, the revisionist has assailed the order dated 24.07.2025 passed by Sessions Judge, Barabanki in Sessions Trial No.32263 of 2023, arising out of FIR No.454 of 2023, under Sections 323, 504, 307 I.P.C., P.S.- Kotwali Nagar, District- Barabanki.

4. Brief facts of the case are as under.

(i) On 19.04.2023 at about 14:50 hours an FIR was registered as FIR No.0454 of 2023 at P.S.- Kotwali, District - Barabanki, under Sections 323, 504, 354-Kha, 308 I.P.C..

(ii) After completion of investigation, the Investigating Officer (in short 'I.O.') submitted charge sheet against accused/revisionists/Prachi Verma @ Prachi Singh, Sushila Devi and Bhupendra Kumar Singh for the offence under Sections 323, 504, 307 I.P.C. and also against co-accused-Yogendra Singh Verma for the offence under Sections 323, 504, 307, 354-Kha, 452 I.P.C., P.S.- Kotwali, District- Barabanki.

(iii) It is to be noted that names of all the above named accused find place in the FIR.

(iv) It is also to be noted that the charge sheet which ought to have been brought on record has not been brought on record by the revisionists.

(v) After filing of charge sheet, an Application u/s 482 No.9699 of 2024 was filed. At this stage, on being asked, learned counsel for the revisionists says that this application was filed by Sushila Devi and Prachi Verma alias Prachi Singh. This Court taking note of the facts as indicated passed an order on 13.11.2024 and subsequently passed the order dated 25.11.2024 in which order dated 13.11.2024 has been referred. The order dated 25.11.2024 is extracted hereinunder.

"1. On 13.11.2024 following order was passed:-

"1. Heard.

2. The instant application has been filed by the applicants with prayer to quash the entire proceedings of Case No. 32263 of 2023 (State Versus Prachi Verma and others) arising out of Case Crime No. 454 of 2023 under Sections 323, 504, 307 I.P.C., Police Station - Kotwali Nagar, District - Barabanki pending in the court of learned Chief Judicial Magistrate, Court No. 18, Barabanki as well as impugned summoning order dated 18.12.2023 and charge-sheet no. 697 of 2023 dated 20.08.2023 under Sections 323, 504, 307 I.P.C. against the applicants filed by the Investigation Officer.

3. Learned counsel for the applicants submits that the applicants and respondent no.2 are neighbours and some quarrel was taken place between them. Thereafter, at the behest of some political leaders, the F.I.R. of the case was lodged by the complainant of the present case against the accused persons. The medico legal examination of the injured persons was conducted, in which, simple injury was found on the body of the alleged injured persons.

It is further submitted that name of one Ram Vilas Verma was entered in emergency register of Barabanki District Hospital of date 19.04.2023 at 3:15 P.M. at serial No. 12 bearing I.D. No. 21167. As complaint of pain was reported by Ram Vilas Verma as well as his B.P. was found 110/70 mmhg, he was referred to K.G.M.U. for examination.

Learned counsel for the applicants draws attention of the Court on the discharge slip of Ram Vilas Verma, in which, his I.D. No. is shown as 21168, however, in the emergency register of date 19.04.2023, again I.D. No. 21168 is mentioned at Serial No. 16 in the name of Ram Vilas Tripathi who was brought to emergency at 4:00 P.M. in unconscious condition and was referred to R.M.L./K.G.M.U., Lucknow.

It is next submitted that complainant of the present case is also a political leader who used influence and obtained some interpolation in the documents.

4. List this case on 25.11.2024 at 11:30 A.M.

5. Chief Medical Officer as well as Chief Medical Superintendent, Barabanki District Hospital shall ensure production of relevant emergency register of date 19.04.2023 with entries from 2:00 P.M. to 8:00 P.M. and shall also ensure production of relevant record related to discharge of Ram Vilas Verma whose name is mentioned at Serial No. 12 bearing I.D. No. 21167 in the emergency register of date 19.04.2023.

6. Till the next date of listing, no coercive steps be taken against the applicants.

7. On the next date, the parties present today shall again appear in person before this Court."

2. In pursuance of earlier order, Dr Sanjeev Kumar, the then Emergency Medical Officer, District Hospital Barabanki and Sri Ram Pratap Singh, Pharmacist, who is maintaining the record in the office of Chief Medical Officer, Barabanki are present along with relevant record.

3. A specific question was asked from Sri Ram Pratap Singh that as to why he came from the Hospital, then he replied that no ministerial staff was available and at present he is maintaining the record in the office of Chief Medical Officer, Barabanki, therefore, he came to the Court.

4. Counter affidavit filed by Sri Arun Sinha, learned counsel for complainant is taken on record.

5. Ten days' time is granted to learned counsel for applicants to file rejoinder affidavit.

6. List immediately thereafter.

7. The Chief Medical Officer, Barabanki shall also file counter affidavit explaining that how many Pharmacist are working in his office.

8. Original record produced before this Court is returned to the officer concerned.

9. The Officer present today need not appear again unless called for.

10. Interim order granted earlier shall continue to operate till the next date of listing."

(vi) Before proceeding further, it is to be mentioned at this stage that based upon the pendency of the Application u/s 482 No.9699 of 2024 and the order passed therein, it has been argued that the injury reports are manipulated and ought not to have relied upon while dealing with the application seeking discharge.

(vii) In response, this Court put a query to the learned counsel for the revisionists that as to whether this Court in the Application u/s 482 No.9699 of 2024 has passed any order based upon which the trial court was under obligation to ignore the injury reports on record

(viii) Learned counsel for the revisionist, in response to above, fairly submitted that no such order has been passed by this Court in Application u/s 482 No.9699 of 2024 and the said application is still pending.

(ix) The Magistrate taking note of the fact that the case is triable by court of Sessions, committed the matter to the Sessions Court and before the Sessions Court the case was registered as Session Case No.1915 of 2024 (State Vs. Prachi Verma & others).

(x) Before the Sessions Court, the applicants, who according to the learned counsel for the revisionists are on bail, preferred an application seeking discharge in terms of Section 250 B.N.S.S. (akin to Section 227 Cr.P.C.). This application is on record as Annexure No.1. The prayer of this application is relevant and being so the same is extracted hereinunder.

"10. 307

307

"

(xi) From the aforesaid prayer sought, it is apparent that the discharge application was moved only with regard to the offence under Section 307 I.P.C. and not for the other offences.

(xii) A perusal of the para 5 of the affidavit of this application as also the submissions of learned counsel for the revisionists indicates that the application seeking discharge for the offence under Section 307 I.P.C. was moved on the basis of the fact(s)/grounds which are as under.

(a) Injuries sustained by the injured persons, who were examined by Dr. Sanjay Kumar, were simple in nature.

(b) There was overwriting/manipulation in the Medical Register of Emergency Room of District Hospital, Barabanki.

(c) As per Medical Register of Emergency Room of District Hospital, Barabanki, entry at Serial No.12 regarding I.D. No.21167, 3:15 P.M. indicates that Ram Vilas Verma was discharged after taking note of the fact that he sustained simple injuries and the name of this very injured finds place at serial no.16, I.D. No.21168 4:00 P.M. which indicates that he was unconscious and referred to RML/KGMU, Lucknow.

(d) The injury report does not support the contents of the FIR as it was lodged promptly at 14:50 hours and the incident was of 12 noon, and the injury report indicates that the injury could be sustained before 12 hours. The prayer is to interfere in the matter.

5. Shri Ashish Raman Mishra, learned counsel for opposite party no.2 and learned A.G.A. opposed the present application. It is stated that to attract the offence under Section 307 I.P.C. even injury is not required what to say about the nature of injury and only intention has to be gathered. To ascertain the intention, the evidence is required and the trial court could conclude in the manner after taking note of the evidence adduced by the parties during trial before the trial court which includes the evidence of the accused applicants/revisionists herein and accordingly, no interference is required in the matter.

6. It is further submitted that the manipulation if any in Medical Register is also required to be considered during trial and at this stage, i.e. the stage of seeking discharge, no observation or finding on this aspect of the case is required to be given by the trial court.

7. It is further submitted that the injured persons, namely, Ram Vilas Verma and Smt. Sushila Verma and also the victim/Priya Verma supported the story of the prosecution and it is settled proposition that the statement/testimony of the injured witness/victim has greater evidential value and the same could be ignored in exceptional circumstances by the trial court after assessing the evidence of parties at the stage of pronouncement of judgment. In this regard reference is to the judgment passed in the case of State of M.P. vs. Mansingh, (2003) 10 SCC 414; Jarnail Singh v. State of Punjab, (2009) 9 SCC 719; Balraje @ Trimbak v. State of Maharashtra, (2010) 6 SCC 673; Abdul Sayeed vs. State of M.P., (2010) 10 SCC 259; State of U.P. vs. Naresh, (2011) 4 SCC 324; Laxman Singh vs. State of Bihar (Now Jharkhand) (2021) 9 SCC 191; Balu Sudam Khalde and another vs. State of Maharashtra, 2023 SCC OnLine SC 355.

8. It is also submitted that from a perusal of statement of Dr. Alankar Kumar Gupta, Gastro Surgeon, Chandan Hospital, Lucknow (Annexure No.6), would indicate that injured/Ram Vilas Verma sustained serious/grievous injury as this injured was operated for treating the damage caused to his small intestine by the accused and this aspect of the case is also evident from Annexure No.8 to the instant application, which is copy of case summary of injured/Ram Vilas Verma.

9. It is also stated that FIR is not encyclopedia and only placing reliance on the same conclusion should not be drawn on issue related to offence under Section 307 I.P.C.

10. In rebuttal, Shri Chakravarty, learned counsel for the revisionists stated as under.

(i) The injuries/nature of injuries ought to have been considered while dealing with the application seeking discharge after taking note of various provisions of Indian Penal Code, i.e. Section 319 to Section 338 and other sections which include Section(s) 307 and 308 I.P.C.

(ii) It is also stated that without ultrasound of abdomen, how the Doctor could conclude that small intestine has been damaged and no findings with regard to the grievous injuries have been recorded by the concerned Doctor.

(iii) The trial court erred in law and fact both in not considering the statement(s) of the injured witnesses in its true spirit.

11. Considered the aforesaid and perused the record.

12. The present case relates to Section 307 I.P.C. and for coming to the conclusion as to whether the trial court has rightly rejected the application seeking discharge only with regard to offence under Section 307 I.P.C. it would be appropriate to refer Section 307 IPC as also the some pronouncements on the issue.

13. Section 307 I.P.C. 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 imprisonment for life, or to such punishment as is hereinbefore mentioned.

Attempts by life convicts.--When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death.

Illustrations

(a) A shoots at Z with intention to kill him, under such circumstances that, if death ensued, A would be guilty of murder. A is liable to punishment under this section.

(b) A, with the intention of causing the death of a child of tender years, exposes it in a desert place. A has committed the offence defined by this section, though the death of the child does not ensue.

(c) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section, and, if by such firing he wounds Z, he is liable to the punishment provided by the latter part of the first paragraph of this section.

(d) A, intending to murder Z, by poison, purchases poison and mixes the same with food which remains in A's keeping; A has not yet committed the offence in this section. A places the food on Z's table or delivers it to Z's servants to place it on Z's table. A has committed the offence defined in this section.'

14. In State of Maharashtra v. Balram Bama Patil [State of Maharashtra v. Balram Bama Patil, (1983) 2 SCC 28 : 1983 SCC (Cri) 320], Hon'ble Apex Court held that it is not necessary that a bodily injury sufficient under normal circumstances to cause death should have been inflicted :

"9. ... To justify a conviction under this section it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in this section. An attempt in order to be criminal need not

> be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.
>
> (emphasis supplied)"

15. In State of M.P. v. Saleem [State of M.P. v. Saleem, (2005) 5 SCC 554 : 2005 SCC (Cri) 1329], Hon'ble Apex Court held thus :

> "13. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. The section makes a distinction between the act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, an accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt.
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> (emphasis supplied)"

16. In Jage Ram v. State of Haryana [Jage Ram v. State of Haryana, (2015) 11 SCC 366 : (2015) 4 SCC (Cri) 425], Hon'ble Apex Court held that to establish the commission of an offence under Section 307, it is not essential that a fatal injury capable of causing death should have been inflicted :

> "12. For the purpose of conviction under Section 307 IPC, the prosecution has to establish (i) the intention to commit murder; and (ii) the act done by the accused. The burden is on the prosecution that the accused had attempted to commit the murder of the prosecution witness. Whether the accused person intended to commit murder of another person would depend upon the facts and circumstances of each case. To justify a conviction under Section 307 IPC, it is not essential that fatal injury capable of causing death should have been caused. Although the nature of injury actually caused may be of assistance in coming to a finding as to the intention of the accused, such intention may also be adduced from other circumstances. The intention of the accused is to be gathered from the circumstances like the nature of the weapon used, words used by the accused at the time of the incident, motive of the accused, parts of the body where the injury was caused and the nature of injury and severity of the blows given, etc."

17. In State of Maharashtra v. Kashirao, (2003) 10 SCC 434, the Hon'ble Apex Court identified the essential ingredients for the applicability of the section. The relevant extract is as below:

> "The essential ingredients required to be proved in the case of an offence under Section 307 are:

> (i) that the death of a human being was attempted;
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> (ii) that such death was attempted to be caused by, or in consequence of the act of the accused; and
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> (iii) that such act was done with the intention of causing death; or that it was done with the intention of causing such bodily injury as : (a) the accused knew to be likely to cause death; or (b) was sufficient in the ordinary course of nature to cause death, or that the accused attempted to cause death by doing an act known to him to be so imminently dangerous that it must in all probability cause (a) death, or (b) such bodily injury as is likely to cause death, the accused having no excuse for incurring the risk of causing such death or injury."

18. Hon'ble Apex Court in Om Prakash v. State of Punjab, 1961 SCC OnLine SC 72, as far back as 1961, observed the constituents of the Section, having referred to various judgments of the Privy Council, as under:

> "a person commits an offence under Section 307 when he has an intention to commit murder and, in pursuance of that intention, does an act towards its commission irrespective of the fact whether that act is the penultimate act or not. It is to be clearly understood, however, that the intention to commit the offence of murder means that the person concerned has the intention to do certain act with the necessary intention or knowledge mentioned in Section 300. The intention to commit an offence is different from the intention or knowledge requisite for constituting the act as that offence. The expression "whoever attempts to commit an offence" in Section 511, can only mean "whoever : intends to do a certain act with the intent or knowledge necessary for the commission of that offence". The same is meant by the expression "whoever does an act with such intention or knowledge and under such circumstances that if he, by that act, caused death, he would be guilty of murder" in Section 307. This simply means that the act must be done with the intent or knowledge requisite for the commission of the offence of murder. The expression "by that act" does not mean that the immediate effect of the act committed must be death. Such a result must be the result of that act whether immediately or after a lapse of time."

(Emphasis supplied)

19. In Hari Mohan Mandal v. State of Jharkhand, (2004) 12 SCC 220, the Hon'ble Apex Court holds that the nature or extent of injury suffered, are irrelevant factors for the conviction under this section, so long as the injury is inflicted with animus. It has been held:

> "10. ...To justify a conviction under this section, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to

> the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. ...What the court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.
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> 11. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. If the injury inflicted has been with the avowed object or intention to cause death, the ritual nature, extent or character of the injury or whether such injury is sufficient to actually causing death are really factors which are wholly irrelevant for adjudging the culpability under Section 307 IPC. The section makes a distinction between the act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, it is not correct to acquit an accused of the charge under Section 307 IPC merely because the injuries inflicted on the victim were in the nature of a simple hurt."

20. In the case of State of M.P. vs. Kashiram & Ors. (2009 4 SCC 26), the scope of intention for attracting conviction under Section 307 IPC was elaborated and it was held as under:-

> "13. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. The section makes a distinction between the act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, an accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt.
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> 14. This position was highlighted in State of Maharashtra v. Balram Bama Patil, (1983) 2 SCC 28, Girija Shanker v. State of U.P. (2004) 3 SCC 793 and R. Prakash v. State of Karnataka (2004) 9 SCC 27.
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> 16. Whether there was intention to kill or knowledge that death will be caused is a question of fact and would depend on the facts of a given case. The circumstances that the injury inflicted by the accused was simple or minor will not by itself rule out application of Section 307 IPC. The determinative question is the intention or knowledge, as the case may be, and not the nature of the injury."

21. In Surinder Singh v. State (UT of Chandigarh), (2021) 20 SCC 24 : 2021 SCC OnLine SC 1135, the Hon'ble Apex Court holds as under:

> "A. Whether the guilt of the appellant under Section 307 IPC has been proved beyond reasonable doubt?
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> 19. Before we advert to the factual matrix or gauge the trustworthiness of the witnesses, it will be beneficial to brace ourselves of the case law qua the essential conditions, requisite for bringing home a conviction under Section 307 IPC. In State of M.P. v. Saleem [State of M.P. v. Saleem, (2005) 5 SCC 554 : 2005 SCC (Cri) 1329] , this Court, while re-appreciating the true import of Section 307 IPC held as follows : (SCC pp. 559-60, paras 12-13) "12. To justify a conviction under this section, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.
>
> 13. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. The section makes a distinction between the act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, an accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt."

(emphasis supplied)

20. These very ingredients have been accentuated in some of the later decisions, including in State of M.P. v. Kashiram [State of M.P. v. Kashiram, (2009) 4 SCC 26 : (2009) 2 SCC (Cri) 40] , Jage Ram v. State of Haryana [Jage Ram v. State of Haryana, (2015) 11 SCC 366 : (2015) 4 SCC (Cri) 425] and State of M.P. v. Kanha [State of M.P. v. Kanha, (2019) 3 SCC 605 : (2019) 2 SCC (Cri) 247] .

21. It is by now a lucid dictum that for the purpose of constituting an offence under Section 307 IPC, there are two ingredients that a court must consider, first, whether there was any intention or knowledge on the part of the accused to cause death of the victim, and, second, such intent or knowledge was followed by some overt actus rea in execution thereof, irrespective of the consequential result as to whether or not any injury is inflicted upon the victim. The courts may deduce such intent from the conduct of the accused and surrounding circumstances of the offence, including the nature of weapon used or the nature of injury, if any. The manner in which occurrence took place may enlighten more than the prudential escape of a victim. It is thus not necessary that a victim shall have to suffer an injury dangerous to his life, for attracting Section 307 IPC.

22. It would also be fruitful at this stage, to appraise whether the requirement of "motive" is indispensable for proving the charge of attempt to murder under Section 307 IPC.

23. It is significant to note that "motive" is distinct from "object and means" which innervates or provokes an action. Unlike "intention", "motive" is not the yardstick of a crime. A lawful act with an ill motive would not constitute an offence but it may not be true when an unlawful act is committed with best of the motive. Unearthing "motive" is akin to an exercise of manual brain-mapping. At times, it becomes Herculean task to ascertain the traces of a "motive".

24. This Court has time and again ruled : (Bipin Kumar Mondal case [Bipin Kumar Mondal v. State of W.B., (2010) 12 SCC 91 : (2011) 2 SCC (Cri) 150] , SCC p. 97, para 23) "23. ... that in case the prosecution is not able to discover an impelling motive, that could not reflect upon the credibility of a witness proved to be a reliable eyewitness. Evidence as to motive would, no doubt, go a long way in cases wholly dependent on circumstantial evidence. Such evidence would form one of the links in the chain of circumstantial evidence in such a case. But that would not be so in cases where there are eyewitnesses of credibility, though even in such cases if a motive is properly proved, such proof would strengthen the prosecution case and fortify the court in its ultimate conclusion. But that does not mean that if motive is not established, the evidence of an eyewitness is rendered untrustworthy."

(emphasis supplied) [See : Shivaji Genu Mohite v. State of Maharashtra [Shivaji Genu Mohite v. State of Maharashtra, (1973) 3 SCC 219 : 1973 SCC (Cri) 214] and Bipin Kumar Mondal v. State of W.B. [Bipin Kumar Mondal v. State of W.B., (2010) 12 SCC 91 : (2011) 2 SCC (Cri) 150]]

25. We are thus of the considered opinion that whilst motive is infallibly a crucial factor, and is a substantial aid for evincing the commission of an offence but the absence thereof is, however, not such a quintessential component which can be construed as fatal to the case of the prosecution, especially when all other factors point towards the guilt of the accused and testaments of eyewitnesses to the occurrence of a malfeasance are on record."

22. Paras 8 and 9 of the judgment in the case Sivamani and another Vs. State represented by Inspector of Police, Vellore Taluk Police Station, Vellore District, reported in [2023] 14 S.C.R. 849 referred by Shri Chakravarty, are as under.

"ANALYSIS, REASONING AND CONCLUSION:

8. Section 307, IPC 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 imprisonment for life, or to such punishment as is hereinbefore mentioned.

Attempts by life convicts.--When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death.

Illustrations

(a) A shoots at Z with intention to kill him, under such circumstances that, if death ensued, A would be guilty of murder. A is liable to punishment under this section.

(b) A, with the intention of causing the death of a child of tender years, exposes it in a desert place. A has committed the offence defined by this section, though the death of the child does not ensue.

(c) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section, and, if by such firing he wounds Z, he is liable to the punishment provided by the latter part of the first paragraph of this section.

(d) A, intending to murder Z, by poison, purchases poison and mixes the same with food which remains in A's keeping; A has not yet committed the offence in this section. A places the food on Z's table or delivers it to Z's servants to place it on Z's table. A has committed the offence defined in this section.'

9. In State of Madhya Pradesh v. Saleem, (2005) 5 SCC 554, the Court held that to sustain a conviction under Section 307, IPC, it was not necessary that a bodily injury capable of resulting in death should have been inflicted. As such, non-conviction under Section 307, IPC on the premise only that simple injury was inflicted does not follow as a matter of course. In the same judgment, it was pointed out that '...The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section.' The position that because a fatal injury was not sustained alone does not dislodge Section 307, IPC conviction has been reiterated in Jage Ram v. State of Haryana, (2015) 11 SCC 366 and State of Madhya Pradesh v. Kanha, (2019) 3 SCC 605. Yet, in Jage Ram (supra) and Kanha (supra), it was observed that while grievous or life-threatening injury was not necessary to maintain a conviction under Section 307, IPC, 'The intention of the accused can be ascertained from the actual

> injury, if any, as well as from surrounding circumstances. Among other things, the nature of the weapon used and the severity of the blows inflicted can be considered to infer intent."

23. Relevant paras of the judgment passed in the case of Shoyeb Raja Vs. State of Madhya Pradesh and others, reported in 2024 SCC OnLine SC 2624 , referred by Shri Chakravarty are as under.

> "5. The Additional Sessions Judge, Seoni, framed charges under Sections 294, 332/34 and 307/34 IPC. Such framing of charge by order dated 17th September, 2019 was challenged before the High Court in Criminal Revision No. 4805 of 2019, whereby vide order dated 21st January, 2020 the same was set aside on the ground that the documents made part of the record were not supplied to the accused. The matter was remanded for framing of charge afresh.
>
> 6. It is in this backdrop, that the order impugned before the High Court came to be passed. Regarding Section 307, the order records:--
>
> "In this way in the said medical report, based on the circumstances arising as a result of future aspects, keeping in view, the possibilities, it has been mentioned that if pressure was applied on the scratch marks present in the mouth, nose and throat it could have caused obstruction of the respiratory tract. The said possibility is dependent on that if the accused had committed further acts of the above type, there was a possibility that the windpipe could have been blocked. It has not been said in the report that the injury caused by the accused or the act done by them was likely to result in the death of the complainant. In the above situation, prima facie there is no basis for offence under Section 307 IPC against the accused."

In respect of the other allegations and alleged crimes, it was observed:--

> "As far as the allegations of other crimes against the accused are concerned, the First Information Report has been filed by the complainant to the effect that he was the Chairman of the Waqf Committee in District Seoni, then during his official duty he went to the Mosque to settle the dispute. There, the accused abused and beat him and pressed his mouth, nose and neck. In the above situation, prima facie there are grounds for crime under Sections 294 and 334 read with 34 of the Penal Code, 1860 against all the accused....."

x x x x x x

11. Let us at this stage, consider the law as laid down by this Court in respect of this section, as also that of Section 34 IPC, given that there are a total of eight respondents (accused) before the court.

11.1 In State of Maharashtra v. Kashirao, the Court identified the essential ingredients for the applicability of the section. The relevant extract is as below:

> "The essential ingredients required to be proved in the case of an offence under Section 307 are:
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> (i) that the death of a human being was attempted;
>
> (ii) that such death was attempted to be caused by, or in consequence of the act of the accused; and
>
> (iii) that such act was done with the intention of causing death; or that it was done with the intention of causing such bodily injury as : (a) the accused knew to be likely to cause death; or (b) was sufficient in the ordinary course of nature to cause death, or that the accused attempted to cause death by doing an act known to him to be so imminently dangerous that it must in all probability cause (a) death, or (b) such bodily injury as is likely to cause death, the accused having no excuse for incurring the risk of causing such death or injury."

11.2 This Court in Om Prakash v. State of Punjab, as far back as 1961, observed the constituents of the Section, having referred to various judgments of the Privy Council, as under:

> "a person commits an offence under Section 307 when he has an intention to commit murder and, in pursuance of that intention, does an act towards its commission irrespective of the fact whether that act is the penultimate act or not. It is to be clearly understood, however, that the intention to commit the offence of murder means that the person concerned has the intention to do certain act with the necessary intention or knowledge mentioned in Section 300. The intention to commit an offence is different from the intention or knowledge requisite for constituting the act as that offence. The expression "whoever attempts to commit an offence" in Section 511, can only mean "whoever : intends to do a certain act with the intent or knowledge necessary for the commission of that offence". The same is meant by the expression "whoever does an act with such intention or knowledge and under such circumstances that if he, by that act, caused death, he would be guilty of murder" in Section 307. This simply means that the act must be done with the intent or knowledge requisite for the commission of the offence of murder. The expression "by that act" does not mean that the immediate effect of the act committed must be death. Such a result must be the result of that act whether immediately or after a lapse of time."

(Emphasis supplied) 11.3 Hari Mohan Mandal v. State of Jharkhand holds that the nature or extent of injury suffered, are irrelevant factors for the conviction under this section, so long as the injury is inflicted with animus. It has been held:

> "10. ...To justify a conviction under this section, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to

> the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. ...What the court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.
>
> 11. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. If the injury inflicted has been with the avowed object or intention to cause death, the ritual nature, extent or character of the injury or whether such injury is sufficient to actually causing death are really factors which are wholly irrelevant for adjudging the culpability under Section 307 IPC. The section makes a distinction between the act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, it is not correct to acquit an accused of the charge under Section 307 IPC merely because the injuries inflicted on the victim were in the nature of a simple hurt."

(Emphasis supplied) 11.4 The principle governing the application of Section 34 has been captured thus in Chhota Ahirwar v. State of M.P. "24. Section 34 is only attracted when a specific criminal act is done by several persons in furtherance of the common intention of all, in which case all the offenders are liable for that criminal act in the same manner as the principal offender as if the act were done by all the offenders. This section does not whittle down the liability of the principal offender committing the principal act but additionally makes all other offenders liable. The essence of liability under Section 34 is simultaneous consensus of the minds of persons participating in the criminal act to bring about a particular result, which consensus can even be developed at the spot as held in Lallan Rai v. State of Bihar [Lallan Rai v. State of Bihar, (2003) 1 SCC 268 : 2003 SCC (Cri) 301]. There must be a common intention to commit the particular offence. To constitute common intention, it is absolutely necessary that the intention of each one of the accused should be known to the rest of the accused."

11.5 Sanjiv Khanna J., writing for the Court in Krishnamurthy v. State of Karnataka, encapsulated, succinctly its field of operation as under:

> "26. Section 34 IPC makes a co-perpetrator, who had participated in the offence, equally liable on the principle of joint liability. For Section 34 to apply there should be common intention between the co-perpetrators, which means that there should be community of purpose and common design or prearranged plan. However, this does not mean that co-perpetrators should have engaged in any discussion, agreement or valuation. For Section 34 to apply, it is not necessary that the plan should be prearranged or hatched for a considerable time before the criminal act is

> performed. Common intention can be formed just a minute before the actual act happens. Common intention is necessarily a psychological fact as it requires prior meeting of minds. In such cases, direct evidence normally will not be available and in most cases, whether or not there exists a common intention has to be determined by drawing inference from the facts proved. This requires an inquiry into the antecedents, conduct of the co-participants or perpetrators at the time and after the occurrence. The manner in which the accused arrived, mounted the attack, nature and type of injuries inflicted, the weapon used, conduct or acts of the co-assailants/perpetrators, object and purpose behind the occurrence or the attack, etc. are all relevant facts from which inference has to be drawn to arrive at a conclusion whether or not the ingredients of Section 34IPC are satisfied. We must remember that Section 34IPC comes into operation against the co-perpetrators because they have not committed the principal or main act, which is undertaken/performed or is attributed to the main culprit or perpetrator..."

(Emphasis supplied) x x x x

13. It is well recognized that intention may not always be proved by hard evidence and instead may be required to be inferred from the facts and circumstances of the case. If the doctor who conducted the examination posits the possibility of throttling, then under what circumstances, without rigorous cross-examination, could it be concluded that the injuries sustained were simple? That apart, even if the injuries were taken as simple, the extent of the injuries, as observed supra in Hari Mohan Mondal, are not relevant, if the intent is present. We are not in agreement with the learned Courts below that intent was absent, as the Doctor's report itself records throttling to be reasonably suspected.

14. The third criterion as in Kashirao (supra) could also arguably be met. Whether or not it is met, is a matter of determination at trial. The question of intention to kill or the knowledge of death in terms of Section 307, IPC is a question of fact and not one of law.

15. This Court's scope of interference under Article 136 of the Constitution of India is well established. Reference made be made to Mathura Prashad v. State of M.P. It was held as below:

> "9. This Court in Balak Ram v. State of U.P. [(1975) 3 SCC 219, 227 : 1974 SCC (Cri) 837] held that the powers of the Supreme Court under Article 136 of the Constitution are wide but in criminal appeals, this Court does not interfere with the concurrent findings of fact save in exceptional circumstances. The scope of interference by this Court under Article 136 of the Constitution of India in a case of concurrent findings of fact arose in Arunachalam v. P.S.R. Sadhananthan [(1979) 2 SCC 297 : 1979 SCC (Cri) 454] wherein this Court has held that:
>
> "Article 136 of the Constitution of India invests the Supreme Court with a plentitude of plenary appellate power over all Courts and Tribunals in India. The power is plenary in the sense that there are no words under Article 136 itself qualifying that

> power. But, the very nature of the power has led the Court to set limits to itself within which to exercise such power..."

In recognition of these self-imposed, long-standing, and justified limitations, interference is to be made, more so, when a Court, in arriving at its findings has acted perversely or otherwise improperly. [See : State of Madras v. A. Vaidyanatha Iyer] This has been the consistently adopted position till date. [See : Shahaja alias Shahajan Ismail Mohd. Shaikh v. State of Maharashtra]

16. In view of the above discussion, given that the minor nature of injuries is not sufficient reason to not frame a charge under Section 307 IPC, as per the law laid down by this Court, the judgment impugned, passed in Criminal Revision No. 3125 of 2021 dated 23rd November, 2023, is set aside. Accordingly, the appeal is allowed. The concerned Trial Court is directed to have the Respondents stand trial for all the offences for which charges have been framed, as also Section 307. The trial shall proceed on its own merits, as per law, uninfluenced by the observations hereinabove which were for the limited purpose of testing the propriety of the impugned order. The same shall be expedited.

24. The above judgments of Hon'ble Apex Court leads to the conclusion that proof of grievous or life-threatening hurt is not a sine qua non for the offence under Section 307 of the Penal Code. The intention of the accused can be ascertained from the actual injury, if any, as well as from surrounding circumstances. Among other things, the nature of the weapon used and the severity of the blows inflicted can be considered to infer intent.

25. The Apex Court has held that for conviction under Section 307 IPC the intention to cause death is also required to be proved along with the injuries inflicted.

26. For the purpose of conviction under Section 307 IPC, prosecution has to establish (i) the intention to commit murder and (ii) the act done by the accused. The burden is on the prosecution that accused had attempted to commit the murder of the prosecution witness. Whether the accused person intended to commit murder of another person would depend upon the facts and circumstances of each case. To justify a conviction under Section 307 IPC, it is not essential that fatal injury capable of causing death should have been caused. Although the nature of injury actually caused may be of assistance in coming to a finding as to the intention of the accused, such intention may also be adduced from other circumstances. The intention of the accused is to be gathered from the circumstances like the nature of the weapon used, words used by the accused at the time of the incident, motive of the accused, parts of the body where the injury was caused and the nature of injury and severity of the blows given etc.

27. For the conviction under Section 307 IPC more importance has been given to mens rea or the intention than the actus reus or the actual act itself. The attempt should arise out of a specific intention or desire to murder the victim. The nature of the weapon used, the manner in which it is used, motive for the crime, severity of the blow, the part of the body where the injury is inflicted is all taken into consideration to determine the intention.

28. From the aforesaid above referred judgments, it is apparent that the injury is not required. It is the intention which is required and intention would be gathered by the trial court only after adducing the evidence by the counsel for the parties and not at the stage of discharge. With regard to the principles settled by the Hon'ble Apex Court while dealing with the discharge application, this Court also finds appropriate to take note of the principles settled in the various pronouncements.

29. The Hon'ble Apex in the case of Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460 has observed as under:-

> 17. Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the "record of the case" and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the section exists, then the court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case. There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is the expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code.
>
> 18. It may also be noticed that the revisional jurisdiction exercised by the High Court is in a way final and no inter court remedy is available in such cases. Of course, it may be subject to jurisdiction of this Court under Article 136 of the Constitution of India. Normally, a revisional jurisdiction should be exercised on a question of law. However, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. Basically, the power is required to be exercised so that justice is done and there is no abuse of power by the court. Merely an apprehension or suspicion of the same would not be a sufficient ground for interference in such cases.
>
> 19. At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage. We may refer to the well-settled law laid down by this Court in State of Bihar v. Ramesh Singh [(1977) 4 SCC 39 : 1977 SCC (Cri) 533] : (SCC pp. 41-42, para 4) "4. Under Section 226 of the

Code while opening the case for the prosecution the Prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage the duty of the court to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has to pass thereafter an order either under Section 227 or Section 228 of the Code. If 'the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing', as enjoined by Section 227. If, on the other hand, 'the Judge is of opinion that there is ground for presuming that the accused has committed an offence which (b) is exclusively triable by the court, he shall frame in writing a charge against the accused', as provided in Section 228. Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But 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 not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the court should proceed with the trial or not. If the evidence which the Prosecutor proposes to adduce to prove 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. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under Section 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section 227."

30. Subsequently, the ambit and scope of Section 227 Cr.P.C. as well as parameters regarding exercise of jurisdiction under Section 227 Cr.P.C. came to be considered by a three Judges Bench of Supreme Court in Tarun Jit Tejpal Vs. State of Goa and Another, 2019 SCC OnLine SC 1053, wherein Court concluded as under in paragraphs 8 and 9:-

> 8. Now, so far as the prayer of the appellant to discharge him and the submissions made by Shri Vikas Singh, learned Senior Advocate on merits are concerned, the law on the scope at the stage of Sections 227/228 CrPC is required to be considered.
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> 8.1. In N. Suresh Rajan [State of T.N. v. N. Suresh Rajan, (2014) 11 SCC 709 : (2014) 3 SCC (Cri) 529 : (2014) 2 SCC (L&S) 721] this Court had an occasion to consider in detail the scope of the proceedings at the stage of framing of the charge under Sections 227/228 CrPC. After considering earlier decisions of this Court on the point, thereafter in paras 29 to 31 this Court has observed and held as under : (SCC pp. 721-23) "29. We have bestowed our consideration to the rival submissions and the submissions made by Mr Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.
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> 30. Reference in this connection can be made to a recent decision of this Court in Sheoraj Singh Ahlawat v. State of U.P. [Sheoraj Singh Ahlawat v. State of U.P., (2013) 11 SCC 476 : (2012) 4 SCC (Cri) 21] , in which, after analysing various decisions on the point, this Court endorsed the following view taken in Onkar Nath Mishra v. State (NCT of Delhi) [Onkar Nath Mishra v. State (NCT of Delhi), (2008) 2 SCC 561 : (2008) 1 SCC (Cri) 507] : (Sheoraj Singh Ahlawat case [Sheoraj Singh Ahlawat v. State of U.P., (2013) 11 SCC 476 : (2012) 4 SCC (Cri) 21] , SCC p. 482, para 15) '15. ... "11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the

ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence." (Onkar Nath case [Onkar Nath Mishra v. State (NCT of Delhi), (2008) 2 SCC 561 : (2008) 1 SCC (Cri) 507] , SCC p. 565, para 11).'

31. Now reverting to the decisions of this Court in Sajjan Kumar [Sajjan Kumar v. CBI, (2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371] and Dilawar Balu Kurane [Dilawar Balu Kurane v. State of Maharashtra, (2002) 2 SCC 135 : 2002 SCC (Cri) 310] , relied on by the respondents, we are of the opinion that they do not advance their case. The aforesaid decisions consider the provision of Section 227 of the Code and make it clear that at the stage of discharge the court cannot make a roving enquiry into the pros and cons of the matter and weigh the evidence as if it was conducting a trial. It is worth mentioning that the Code contemplates discharge of the accused by the Court of Session under Section 227 in a case triable by it; cases instituted upon a police report are covered by Section 239 and cases instituted otherwise than on a police report are dealt with in Section 245. From a reading of the aforesaid sections it is evident that they contain somewhat different provisions with regard to discharge of an accused:

31.1. Under Section 227 of the Code, the trial court is required to discharge the accused if it 'considers that there is not sufficient ground for proceeding against the accused'. However, discharge under Section 239 can be ordered when 'the Magistrate considers the charge against the accused to be groundless'. The power to discharge is exercisable under Section 245(1) when, 'the Magistrate considers, for reasons to be recorded that no case against the accused has been made out which, if unrebutted, would warrant his conviction'.

31.2. Sections 227 and 239 provide for discharge before the recording of evidence on the basis of the police report, the documents sent along with it and examination of the accused after giving an opportunity to the parties to be heard. However, the stage of discharge under Section 245, on the other hand, is reached only after the evidence referred in Section 244 has been taken.

31.3. Thus, there is difference in the language employed in these provisions. But, in our opinion, notwithstanding these differences, and whichever provision may be applicable, the court is required at this stage to see that there is a prima facie case for proceeding against the accused. Reference in this connection can be made to a judgment of this Court in R.S. Nayak v. A.R. Antulay [R.S. Nayak v. A.R. Antulay, (1986) 2 SCC 716 : 1986 SCC (Cri) 256] . The same reads as follows : (SCC pp. 755-56, para 43) '43. ... Notwithstanding this difference in the position there is no scope for doubt that the stage at which the Magistrate is required to consider the question of framing of charge under Section 245(1) is a preliminary one and the test of "prima facie" case has to be applied. In

spite of the difference in the language of the three sections, the legal position is that if the trial court is satisfied that a prima facie case is made out, charge has to be framed.' "

> (emphasis in original) 8.2. In the subsequent decision in S. Selvi [State v. S. Selvi, (2018) 13 SCC 455 : (2018) 3 SCC (Cri) 710] this Court has summarised the principles while framing of the charge at the stage of Sections 227/228 CrPC. This Court has observed and held in paras 6 and 7 as under : (SCC pp. 458-59) "6. It is well settled by this Court in a catena of judgments including Union of India v. Prafulla Kumar Samal [Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4 : 1979 SCC (Cri) 609] , Dilawar Balu Kurane v. State of Maharashtra [Dilawar Balu Kurane v. State of Maharashtra, (2002) 2 SCC 135 : 2002 SCC (Cri) 310] , Sajjan Kumar v. CBI [Sajjan Kumar v. CBI, (2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371] , State v. A. Arun Kumar [State v. A. Arun Kumar, (2015) 2 SCC 417 : (2015) 2 SCC (Cri) 96 : (2015) 1 SCC (L&S) 505] , Sonu Gupta v. Deepak Gupta [Sonu Gupta v. Deepak Gupta, (2015) 3 SCC 424 : (2015) 2 SCC (Cri) 265] , State of Orissa v. Debendra Nath Padhi [State of Orissa v. Debendra Nath Padhi, (2003) 2 SCC 711 : 2003 SCC (Cri) 688] , Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya [Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya, (1990) 4 SCC 76 : 1991 SCC (Cri) 47] and Supt. & Remembrancer of Legal Affairs v. Anil Kumar Bhunja [Supt. & Remembrancer of Legal Affairs v. Anil Kumar Bhunja, (1979) 4 SCC 274 : 1979 SCC (Cri) 1038] that the Judge while considering the question of framing charge under Section 227 of the Code in sessions cases (which is akin to Section 239 CrPC pertaining to warrant cases) 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; where the material placed before the court discloses grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing the charge; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his rights to discharge the accused. The Judge 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 statements and the documents produced before the court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the materials as if he was conducting a trial.
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> 7. In Sajjan Kumar v. CBI [Sajjan Kumar v. CBI, (2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371] , this Court on consideration of the various decisions about the scope of Sections 227 and 228 of the Code, laid down the following principles : (SCC pp. 376-77, para 21) '(i) The Judge while considering the question of framing the charges under Section 227 CrPC 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.' "

8.3. In Mauvin Godinho [Mauvin Godinho v. State of Goa, (2018) 3 SCC 358 : (2018) 2 SCC (Cri) 63 : (2018) 1 SCC (L&S) 591] this Court had an occasion to consider how to determine prima facie case while framing the charge under Sections 227/228 CrPC. In the same decision this Court observed and held that while considering the prima facie case at the stage of framing of the charge under Section 227 CrPC 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.

8.4. At this stage the decision of this Court in Stree Atyachar Virodhi Parishad [Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia, (1989) 1 SCC 715 : 1989 SCC (Cri) 285] is also required to be referred to. In that aforesaid decision this Court had an occasion to consider the scope of enquiry at the stage of deciding the matter under Sections 227/228 CrPC. In paras 11 to 14

observations of this Court in the aforesaid decision are as under : (SCC pp. 719-21) "11. Section 227 of the Code of Criminal Procedure having bearing on the contentions urged for the parties, provides:

> '227. Discharge.--If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.'

12. Section 228 requires the Judge to frame charge if he considers that there is ground for presuming that the accused has committed the offence. The interaction of these two sections has already been the subject-matter of consideration by this Court. In State of Bihar v. Ramesh Singh [State of Bihar v. Ramesh Singh, (1977) 4 SCC 39 : 1977 SCC (Cri) 533] , Untwalia, J., while explaining the scope of the said sections observed : [SCC pp. 41-42, para 4 : SCC (Cri) pp. 535-36 : SCR p. 259] '4. ... Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But 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.'

13. In Union of India v. Prafulla Kumar Samal [Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4 : 1979 SCC (Cri) 609] , Fazal Ali, J., summarised some of the principles : [SCC p. 9, para 10 : SCC (Cri) pp. 613-14 : SCR pp. 234-35] '(1) That the Judge while considering the question of framing the charges under Section 227 of the 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 had been made out.

(2) 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.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to

some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced 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 appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.'

14. These two decisions do not lay down different principles. Prafulla Kumar case [Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4 : 1979 SCC (Cri) 609] has only reiterated what has been stated in Ramesh Singh case [State of Bihar v. Ramesh Singh, (1977) 4 SCC 39 : 1977 SCC (Cri) 533] . In fact, Section 227 itself contains enough guidelines as to the scope of enquiry for the purpose of discharging an accused. It provides that 'the Judge shall discharge when he considers that there is no sufficient ground for proceeding against the accused'. The "ground" in the context is not a ground for conviction, but a ground for putting the accused on trial. It is in the trial, the guilt or the innocence of the accused will be determined and not at the time of framing of charge. The court, therefore, need not undertake an elaborate enquiry in sifting and weighing the material. Nor is it necessary to delve deep into various aspects. All that the court has to consider is whether the evidentiary material on record if generally accepted, would reasonably connect the accused with the crime. No more need be enquired into."

8.5. Applying the law laid down by this Court in the aforesaid decisions and considering the scope of enquiry at the stage of framing of the charge under Sections 227/228 CrPC, we are of the opinion that the submissions made by the learned counsel appearing on behalf of the appellant on merits, at this stage, are not required to be considered. Whatever submissions are made by the learned counsel appearing on behalf of the appellant are on merits are required to be dealt with and considered at an appropriate stage during the course of the trial. Some of the submissions may be considered to be the defence of the accused. Some of the submissions made by the learned counsel appearing on behalf of the appellant on the conduct of the victim/prosecutrix are required to be dealt with and considered at an appropriate stage during the trial. The same are not required to be considered at this stage of framing of the charge. On considering the material on record, we are of the opinion that there is more than a prima facie case against the accused for which he is required to be tried. There is sufficient ample material against the accused and therefore the learned trial court has rightly framed the charge against the accused and the same is rightly confirmed by the High Court. No interference of this Court is called for.

9. In view of the above and for the reasons stated above, the present appeal fails and as a result the appeal stands dismissed. Considering the fact that the allegations against the appellant of sexual abuse are very serious and affecting the dignity of a woman and is the most morally and physically reprehensible crime in a society, an assault on the mind and privacy of the victim and the trial for such offences is required to be decided and disposed of at the earliest and considering the fact that in the present case the learned trial court has framed the charge against the accused and the

incident is of 2013 and there is already a delay in concluding the trial because of the pending proceedings, we direct the learned trial court to conclude the trial at the earliest within a period of six months from the date of receipt of the order of this Court. All concerned are directed to cooperate with the trial court in the earlier disposal of the trial and within the stipulated time observed hereinabove."

31. In the case of State of Gujarat vs. Dilipsinh Kishorsinh Rao reported in 2023 SCC OnLine SC 1294, the Hon'ble Apex Court has observed as under:-

> "10. It is settled principle of law that at the stage of considering an application for discharge the court must proceed on an assumption that the material which has been brought on record by the prosecution is true and evaluate said material in order to determine whether the facts emerging from the material taken on its face value, disclose the existence of the ingredients necessary of the offence alleged. This Court in State of Tamil Nadu Vs. N. Suresh Rajan And Others (2014) 11 SCC 709 adverting to the earlier propositions of law laid down on this subject has held:
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> "29. We have bestowed our consideration to the rival submissions and the submissions made by Mr. Ranjit Kumar commend us. True it is that at the time of consideration of the applications for 12 discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage."

11. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged. The expression "the record of the case" used in Section 227 Cr.P.C. is to be understood as the documents and articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. The submission of the accused is to be confined to the material produced by the investigating agency.

12. The primary consideration at the stage of framing of charge is the test of existence of a prima-facie case, and at this stage, the probative value of materials on record need not be gone into. This Court by referring to its earlier decisions in the State of Maharashtra Vs. Som Nath Thapa (1996) 4 SCC 659 and the State of MP Vs. Mohan Lal Soni (2000) 6 SCC 338 has held the nature of evaluation to be made by the court at the stage of framing of the 14 charge is to test the existence of prima-facie case. It is also held at the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial.

13. The power and jurisdiction of Higher Court under Section 397 Cr.P.C. which vests the court with the power to call for and examine records of an inferior court is for the purposes of satisfying itself as to the legality and regularities of any proceeding or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in such proceedings. It would be apposite to refer to the judgment of this court in Amit Kapoor Vs. Ramesh 15 Chandra (2012) 9 SCC 460 where scope of Section 397 has been considered and succinctly explained as under:

> "12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.
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> 13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it 16 may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even framing of charge is a much advanced stage in the proceedings under the CrPC."

14. This Court in the aforesaid judgement has also laid down principles to be considered for exercise of jurisdiction under Section 397 particularly in the context of prayer for quashing of charge framed under Section 228 Cr.P.C. is sought for as under:

"27. Having discussed the scope of jurisdiction under these two provisions i.e. Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:

27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the 17 more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation 18 of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie."

15. The revisional court cannot sit as an appellate court and start appreciating the evidence by finding out inconsistency in the statement of witnesses and it is not legally permissible. The High Courts ought to be cognizant of the fact that trial court was dealing with an application for discharge."

32. In the case of Vishnu Kumar Shukla v. State of U.P., 2023 SCC OnLine SC 1582, the Hon'ble Apex Court has observed as under:-

> "15. Although the instant case pertains to Trial of Warrant-Cases by Magistrates and is a case instituted on a police report, meaning Sections 239-2409, CrPC are relevant, we also propose to glance at Section 24510, CrPC (concerning trial of warrant-cases by Magistrates apropos cases instituted otherwise than on police report), as also Sections 227-22811, CrPC, which pertain to Trial before a Court of Session.
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> 16. The extent of scrutiny permissible when an application for discharge is being considered has attracted this Court's attention on a number of occasions. It is appropriate to take note of the leading precedents on the subject. Insofar as Section 245, CrPC is concerned, the decision of this Court in Ajoy Kumar Ghose v. State of Jharkhand, (2009) 14 SCC 115 is instructive:
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> '19. The essential difference of procedure in the trial of warrant case on the basis of a police report and that instituted otherwise than on the police report is particularly marked in Sections 238 and 239 CrPC on one side and Sections 244 and 245 CrPC on the other. Under Section 238, when in a warrant case, instituted on a police report, the accused appears or is brought before the Magistrate, the Magistrate has to satisfy himself that he has been supplied the necessary documents like the police report, FIR, statements recorded under sub-section (3) of Section 161 CrPC of all the witnesses proposed to be examined by the prosecution, as also the confessions and statements recorded under Section 164 and any other documents which have been forwarded by the prosecuting agency to the court.
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> 20. After that, comes the stage of discharge, for which it is provided in Section 239 CrPC that the Magistrate has to consider the police report and the documents sent with it under Section 173 CrPC and if necessary, has to examine the accused and has to hear the prosecution of the accused, and if on such examination and hearing, the Magistrate considers the charge to be groundless, he would discharge the accused and record his reasons for so doing. The prosecution at that stage is not required to lead evidence. If, on examination of the aforementioned documents, he comes to the prima facie conclusion that there is a ground for proceeding with the trial, he proceeds to frame the charge. For framing the charge, he does not have to pass a separate order. It is then that the charge is framed under Section 240 CrPC and the trial proceeds for recording the evidence. Thus, in such trial prosecution has only one opportunity to lead evidence and that too comes only after the charge is framed.

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22. In the warrant trial instituted otherwise than the police report, the complainant gets two opportunities to lead evidence, firstly, before the charge is framed and secondly, after the framing of

the charge. Of course, under Section 245(2) CrPC, a Magistrate can discharge the accused at any previous stage of the case, if he finds the charge to be groundless.

23. Essentially, the applicable sections are Sections 244 and 245 CrPC since this is a warrant trial instituted otherwise than on police report. There had to be an opportunity for the prosecution to lead evidence under Section 244(1) CrPC or to summon its witnesses under Section 244(2) CrPC. This did not happen and instead, the accused proceeded to file an application under Section 245(2) CrPC on the ground that the charge was groundless.

24. Now, there is a clear difference in Sections 245(1) and 245(2) of CrPC. Under Section 245(1), the Magistrate has the advantage of the evidence led by the prosecution before him under Section 244 and he has to consider whether if the evidence remains unrebutted, the conviction of the accused would be warranted. If there is no discernible incriminating material in the evidence, then the Magistrate proceeds to discharge the accused under Section 245(1) CrPC.

25. The situation under Section 245(2) CrPC is, however, different. There, under subsection (2), the Magistrate has the power of discharging the accused at any previous stage of the case i.e. even before such evidence is led. However, for discharging an accused under Section 245(2) CrPC, the Magistrate has to come to a finding that the charge is groundless. There is no question of any consideration of evidence at that stage, because there is none. The Magistrate can take this decision before the accused appears or is brought before the court or the evidence is led under Section 244 CrPC. The words appearing in Section 245(2) CrPC "at any previous stage of the case", clearly bring out this position.

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36. The Magistrate has the power to discharge the accused under Section 245(2) CrPC at any previous stage i.e. before the evidence is recorded under Section 244(1) CrPC, which seems to be the established law, particularly in view of the decision in Cricket Assn. of Bengal v. State of W.B. [(1971) 3 SCC 239 : 1971 SCC (Cri) 446], as also the subsequent decision of the Bombay High Court in Luis de Piedade Lobo v. Mahadev Vishwanath Parulekar [1984 Cri LJ 513 (Bom)]. The same decision was followed by Kerala High Court in Manmohan Malhotra v. P.M. Abdul Salam [1994 Cri LJ 1555 (Ker)] and Hon'ble Justice K.T. Thomas, as the learned Judge then was, accepted the proposition that the Magistrate has the power under Section 245(2) CrPC to discharge the accused at any previous stage. The Hon'ble Judge relied on a decision of the Madras High Court in Mohd. Sheriff Sahib v. Abdul Karim Sahib [AIR 1928 Mad 129 (1)], as also the judgment of the Himachal Pradesh High Court in Gopal Chauhan v. Satya [1979 Cri LJ 446 (HP)].

37. We are convinced that under Section 245(2) CrPC the Magistrate can discharge the accused at any previous stage i.e. even before any evidence is recorded under Section 244(1) CrPC. In that view, the accused could have made the application. It is obvious that the application has been rejected by the Magistrate. So far, there is no difficulty.' (emphasis supplied)

17. Turning to Sections 239-240, CrPC, this Court held as under in Minakshi Bala v. Sudhir Kumar, (1994) 4 SCC 142:

> '6. Having regard to the fact that the offences, for which charge-sheet was submitted in the instant case and cognizance taken, were triable as a warrant case the Magistrate was to proceed in accordance with Sections 239 and 240 of the Code at the time of framing of the charges. Under the above sections, the Magistrate is first required to consider the police report and the documents sent with it under Section 173 CrPC and examine the accused, if he thinks necessary, and give an opportunity to the prosecution and the accused of being heard. If on such consideration, examination and hearing the Magistrate finds the charge groundless he has to discharge the accused in terms of Section 239 CrPC; conversely, if he finds that there is ground for presuming that the accused has committed an offence triable by him he has to frame a charge in terms of Section 240 CrPC.
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> 7. If charges are framed in accordance with Section 240 CrPC on a finding that a prima facie case has been made out -- as has been done in the instant case -- the person arraigned may, if he feels aggrieved, invoke the revisional jurisdiction of the High Court or the Sessions Judge to contend that the charge-sheet submitted under Section 173 CrPC and documents sent with it did not disclose any ground to presume that he had committed any offence for which he is charged and the revisional court if so satisfied can quash the charges framed against him. To put it differently, once charges are framed under Section 240 CrPC the High Court in its revisional jurisdiction would not be justified in relying upon documents other than those referred to in Sections 239 and 240 CrPC; nor would it be justified in invoking its inherent jurisdiction under Section 482 CrPC to quash the same except in those rare cases where forensic exigencies and formidable compulsions justify such a course. We hasten to add even in such exceptional cases the High Court can look into only those documents which are unimpeachable and can be legally translated into relevant evidence.
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> 8. Apart from the infirmity in the approach of the High Court in dealing with the matter which we have already noticed, we further find that instead of adverting to and confining its attention to the documents referred to in Sections 239 and 240 CrPC the High Court has dealt with the rival contentions of the parties raised through their respective affidavits at length and on a threadbare discussion thereof passed the impugned order. The course so adopted cannot be supported; firstly, because finding regarding commission of an offence cannot be recorded on the basis of affidavit evidence and secondly, because at the stage of framing of charge the Court cannot usurp the functions of a trial court to delve into and decide upon the respective merits of the case.' (emphasis supplied)

18. With great respect, we express our reservations in fully acceding to what has been stated above. If Paragraph 8 of Minakshi Bala (supra) is accepted as it is, the necessary concomitant would be that

despite examining the matter in detail, a Court would find its wings clipped to intercede. This would amount to forcing a person to stand trial, even when the overwhelming material points to his/her innocence. Obviously, the hands of a Court ought not to be tied down, and especially not by a higher Court, and moreso not against liberty. Paragraph 7 of Minakshi Bala (supra) does enable examining unimpeachable documents. We are conscious that Minakshi Bala (supra) has been followed in later decisions by the Court. However, we have chosen to survey the precedents further, and then decide on the road we wish to take13.

19. In Rumi Dhar v. State of West Bengal, (2009) 6 SCC 364, this Court held that the Judge concerned with an application under Section 239, CrPC has to '... go into the details of the allegations made against each of the accused persons so as to form an opinion as to whether any case at all has been made out or not as a strong suspicion in regard thereto shall subserve the requirements of law.'

20. In State of Tamil Nadu v. N Suresh Rajan, (2014) 11 SCC 709, it was observed notwithstanding the difference in language of Sections 227 and 239, CrPC, the approach of the Court concerned is to be common under both provisions. The principles holding the field under Sections 227 and 228, CrPC are well-settled, courtesy, inter alia, State of Bihar v. Ramesh Singh, (1977) 4 SCC 39; Union of India v. Prafulla K Samal, (1979) 3 SCC 4; Stree Atyachar Virodhi Parishad v. Dilip N Chordia, (1989) 1 SCC 715; Niranjan Singh Karam Singh Punjabi v. Jitendra B Bijjaya, (1990) 4 SCC 76; Dilawar B Kurane v. State of Maharashtra, (2002) 2 SCC 135; Chitresh K Chopra v. State (Government of NCT of Delhi), (2009) 16 SCC 605; Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460; Dinesh Tiwari v. State of Uttar Pradesh, (2014) 13 SCC 137; Dipakbhai Jagdishchandra Patel v. State of Gujarat, (2019) 16 SCC 547; and State (NCT of Delhi) v. Shiv Charan Bansal, (2020) 2 SCC 290. We need only refer to some, starting with Prafulla K Samal (supra), where, after considering Ramesh Singh (supra), K P Raghavan v. M H Abbas, AIR 1967 SC 740 and Almohan Das v. State of West Bengal, (1969) 2 SCR 520, it was laid down as under:

> '10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:
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> (1) That the Judge while considering the question of framing the charges under Section 227 of the 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.
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> (2) 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.
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> (3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion

against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced 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 appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.' (emphasis supplied)

21. In Niranjan Singh Karam Singh Punjabi (supra), this Court was alive to reality, stating that '... it cannot be expected even at the 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.' If a view gives rise to suspicion, as opposed to grave suspicion, the Court concerned is empowered to discharge the accused, as pointed out in Sajjan Kumar v. Central Bureau of Investigation, (2010) 9 SCC 368. The Court, in Dinesh Tiwari (supra) had reasoned that if the Court concerned opines that there is ground to presume the accused has committed an offence, it is competent to frame a charge even if such offence is not mentioned in the Charge Sheet. As to what is 'strong suspicion', reference to Dipakbhai Jagdishchandra Patel (supra) is warranted, where it was explained that it is '... the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence.'

22. In a recent judgment viz. State of Gujarat v. Dilipsinh Kishorsinh Rao, 2023 INSC 894, this Court held:

'7. It is trite law that application of judicial mind being necessary to determine whether a case has been made out by the prosecution for proceeding with trial and it would not be necessary to dwell into the pros and cons of the matter by examining the defence of the accused when an application for discharge is filed. At that stage, the trial judge has to merely examine the evidence placed by the prosecution in order to determine whether or not the grounds are sufficient to proceed against the accused on basis of charge sheet material. The nature of the evidence recorded or collected by the investigating agency or the documents produced in which prima facie it reveals that there are suspicious circumstances against the accused, so as to frame a charge would suffice and such material would be taken into account for the purposes of framing the charge. If there is no sufficient ground for proceeding against the accused necessarily, the accused would be discharged, but if the court is of the opinion, after such consideration of the material there are grounds for presuming that accused has committed the offence which is triable, then necessarily charge has to be framed.

8. At the time of framing of the charge and taking cognizance the accused has no right to produce any material and call upon the court to examine the same. No provision in the Code grants any right to the accused to file any material or document at the stage of framing of charge. The trial court has to apply its judicial mind to the facts of the

case as may be necessary to determine whether a case has been made out by the prosecution for trial on the basis of charge-sheet material only.

9. If the accused is able to demonstrate from the charge-sheet material at the stage of framing the charge which might drastically affect the very sustainability of the case, it is unfair to suggest that such material should not be considered or ignored by the court at that stage. The main intention of granting a chance to the accused of making submissions as envisaged under Section 227 of the Cr. P.C. is to assist the court to determine whether it is required to proceed to conduct the trial. Nothing in the Code limits the ambit of such hearing, to oral hearing and oral arguments only and therefore, the trial court can consider the material produced by the accused before the I.O.

10. It is settled principle of law that at the stage of considering an application for discharge the court must proceed on an assumption that the material which has been brought on record by the prosecution is true and evaluate said material in order to determine whether the facts emerging from the material taken on its face value, disclose the existence of the ingredients necessary of the offence alleged. ...

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11. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged. The expression "the record of the case" used in Section 227 Cr. P.C. is to be understood as the documents and articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. The submission of the accused is to be confined to the material produced by the investigating agency.

12. The primary consideration at the stage of framing of charge is the test of existence of a prima-facie case, and at this stage, the probative value of materials on record need not be gone into. This Court by referring to its earlier decisions in the State of Maharashtra v. Som Nath Thapa, (1996) 4 SCC 659 and the State of MP v. Mohan Lal Soni, (2000) 6 SCC 338 has held the nature of evaluation to be made by the court at the stage of framing of the charge is to test the existence of prima-facie case. It is also held at the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial.' (emphasis supplied)

23. On a careful conspectus of the legal spectrum, juxtaposed with our view on the facts and merits expressed hereinbefore, we are satisfied that there is no suspicion, much less strong or grave suspicion that the appellants are guilty of the offence alleged. It would be unjustified to make the appellants face a full-fledged criminal trial in this backdrop. In an appeal dealing with the refusal of the High Court to quash an FIR under Section 482, CrPC albeit, this Court, while setting aside the judgment impugned therein and quashing that FIR, took the view that '...the Appellants are to be protected against vexatious and unwarranted criminal prosecution, and from unnecessarily being

put through the rigours of an eventual trial. The protection against vexatious and unwanted prosecution and from being unnecessarily dragged through a trial by melting a criminal proceeding into oblivion, either through quashing a FIR/Complaint or by allowing an appeal against an order rejecting discharge or by any other legally permissible route, as the circumstances may be, in the deserving case, is a duty cast on the High Courts. The High Court should have intervened and discharged the appellants. But this Court will intervene, being the sentinel on the qui vive."

33. Taking note of the aforesaid facts of the case including statement(s) on record of injured person, namely, Ram Vilas Verma and Smt. Sushila Verma as also the pronouncements related to dealing with the statement of an injured as also with the application seeking discharge, referred above, and also the statement of Dr. Alankar Kumar Gupta and also the case summary of injured/Ram Vilas Verma, at this stage, it cannot be said that offence under Section 307 I.P.C. against the revisionist is not made out and therefore this Court is of the view that while passing the order dated 24.07.2025 the court dealing with case has not committed any illegality as the same has been passed after taking note of the facts and evidence collected during investigation and being so no interference is required in this order.

34. For the reasons aforesaid, this revision has no force. Accordingly, the present revision is dismissed. Cost made easy."

5. The case of the present revisionist is similar to the revisionist of Criminal Revision No. 896 of 2025 and therefore, this Court is not inclined to take different view. Accordingly, the present revision is also dismissed. Cost made easy.

Order date: - 22.08.2025 Jyoti/-