



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Revision Petition No. 188/2026

1. Amin Khan S/o Rahim Khan, Aged About 64 Years, R/o Ladabas Police Station Didwana District Didwana Kuchaman
2. Mohammed Imran S/o Mohammed Yunus, Aged About 22 Years, R/o Vijay Nagar Road Ladabas Police Station Didwana District Didwana Kuchaman
3. Mohammed Mujahid S/o Rahmat Ali, Aged About 23 Years, R/o Khatiya Basni Tehsil Didwana District Didwana Kuchaman

----Petitioners

Versus

State Of Rajasthan, Through Pp

----Respondent

Connected with

S.B. Criminal Revision Petition No. 189/2026

Amin Khan S/o Rahim Khan, Aged About 64 Years, R/o Ladabas Police Station Didwana District Didwana Kuchaman

----Petitioner

Versus

1. State Of Rajasthan, Through Pp
2. Yusuf S/o Rahim, Ladabas Police Station Didwana District Didwana Kuchaman
3. Arif S/o Yusuf, Ladabas Police Station Didwana District Didwana Kuchaman
4. Dilshad S/o Yusuf, Ladabas Police Station Didwana District Didwana Kuchaman
5. Zibran S/o Yusuf, Ladabas Police Station Didwana District Didwana Kuchaman

----Respondents

For Petitioner(s) : Mr. Dinesh Kumar Ojha
For Respondent(s) : Mr. N.S. Chandawat,Dy.G.A.

HON'BLE MR. JUSTICE FARJAND ALI

Order

Reportable-

10/02/2026

Grievance in S.B. Criminal Revision Petition No.

188/2026-

1. By way of filing the instant revision petition under Section 438 of the BNSS, the petitioner has assailed the legality and propriety of the order dated 17.12.2025 passed by the learned Additional District & Sessions Judge, Didwana in Session Case No. 03/2023 arising out of FIR No. 24/2022 (State v. Amin & Ors.), whereby the learned trial Court has framed charges against the petitioner for the offences under Sections 148, 341, 323, 323/149, 325, 325/149, 326, 326/149, 308, 308/149, 504 and 504/149 of the IPC.

Grievance in S.B. Criminal Revision Petition No.

189/2026-

2. By way of filing the instant revision petition under Section 438 of the Bharatiya Nagarik Suraksha Sanhita, the petitioner has assailed the legality and correctness of the order dated 17.12.2025 passed by the learned Additional District and Sessions Judge, Didwana in Session Case No. 14/2024 arising out of FIR No. 23/2022, State v. Yusuf & Ors., whereby the learned trial Court, while framing charges,

failed to frame charge under Section 308 of the Indian Penal Code against the accused/respondents.

FACTS IN BRIEF

3. Both the present revision petitions arise out of the same incident dated 23.01.2022, which resulted in registration of two FIRs, namely FIR No. 24/2022 and FIR No. 23/2022, at the concerned Police Station. The incident reflects a classic case of case and counter-case, wherein both sides have alleged assault and attempted culpable homicide against each other. FIR No. 24/2022 culminated in Session Case No. 03/2023, whereas FIR No. 23/2022 culminated in Session Case No. 14/2024.
4. Vide separate but contemporaneous orders dated 17.12.2025 passed by the learned Additional District & Sessions Judge, Didwana, charges were framed in both matters. In S.B. Criminal Revision Petition No. 188/2026, the petitioners (who are accused in FIR No. 24/2022) challenge the framing of charges including Section 308 IPC. In Revision Petition No. 189, the petitioner (complainant in FIR No. 23/2022) assails the refusal of the learned trial court to frame charge under Section 308 IPC against the accused persons in that cross-case.
5. Since both petitions arise from the same transaction and involve overlapping factual matrix, they are being decided by

this common order to avoid conflicting findings and to advance the cause of judicial propriety.

OBSERVATIONS

I. Nature of the Case – “Case and Counter-Case”

Jurisprudence

6. The present matter is a paradigmatic illustration of what criminal jurisprudence recognises as a “case and counter-case”, both emanating from a singular transaction dated 23.01.2022. Such situations arise when two rival factions, involved in the same occurrence, lodge separate FIRs against each other alleging aggression and criminality on the part of the opposite side. The substratum of both cases remains the same occurrence, though the narrative, attribution of culpability, and claimed role of participants differ. It is trite and well embedded in criminal law that when two FIRs arise out of the same incident, each representing a competing and adversarial version, the investigative machinery and the judicial process must approach both with equal fairness, neutrality and independence. The investigation in such matters must be insulated from bias or presumption in favour of either side, because both versions are, at the threshold, only allegations awaiting judicial scrutiny. The existence of cross-cases is itself indicative of a mutual confrontation, and therefore, the law requires heightened

judicial circumspection to ensure that the process does not tilt unfairly in favour of one faction.

7. It is well settled through long-standing judicial precedents that in matters involving cross-cases, certain procedural safeguards are not merely matters of convenience but are essential components of fair trial jurisprudence. In **Nathi Lal v. State of U.P.((1990) Supp SCC 145)**, the Hon'ble Supreme Court laid down the guiding principle that cross-cases arising out of the same occurrence should ordinarily be tried by the same Judge. The Court observed that both cases must be tried one after the other and that judgments, though separate, should be delivered on the same day, each case being decided strictly on the evidence adduced therein.
8. Similarly, in **Sudhir v. State of M.P.((2001) 2 SCC 688)**, the Apex Court reiterated that in case and counter-case situations, it is desirable that both matters be tried by the same Court so as to avoid conflicting findings and to ensure consistency in the appreciation of evidence.
9. These settled principles include:
 - Both versions must be investigated simultaneously and independently so that neither investigation influences or contaminates the other.
 - The reports of investigation, wherever practicable, should be placed before the competent Court at or around the same

time, so that the Court is apprised of the entire factual panorama.

- The trials should ordinarily be conducted by the same Court to ensure uniformity in appreciation of evidence.
- The recording of evidence should take place in close proximity of time so that the judicial mind retains continuity and coherence in assessing the testimonies.
- Judgments, though delivered through separate and distinct decisions in each case, should ideally be pronounced on the same day to obviate the possibility of conflicting conclusions.

These principles are not rigid technicalities but are evolved safeguards intended to preserve the integrity of adjudication where rival versions of the same incident compete for judicial acceptance.

10. Besides the above enumerated safeguards, an equally vital yet often understated aspect pertains to the judicial perception of the demeanour of witnesses. The law consciously entrusts the Presiding Judge with the authority and responsibility to observe, assess and record the demeanour of witnesses while deposing in Court. This statutory recognition is embodied in Section 280 of the Code of Criminal Procedure (Section 315 BNSS), which reads as under:

Section 280 – Remarks respecting demeanour of witness

When a presiding Judge or Magistrate has recorded the evidence of a witnesses, he shall also record such remarks (if any) as he thinks material respecting the demeanour of such witness whilst under examination.

11. The significance of this provision in cross-case trials cannot be overstated. A judicial officer, by virtue of physically interacting with the witnesses, observing their conduct, hesitation, confidence, body language, tone, spontaneity or evasiveness, gains insights which cannot be captured merely through the written transcript. In a situation where two rival versions of the same incident are placed before the Court, such first-hand judicial perception becomes instrumental in discerning the real aggressor and the true genesis of the occurrence. The procedure is designed so that the Court does not decide solely on what is mechanically recorded, but on the overall credibility emerging from the witness's presentation before the Court.

12. Equally significant is the expansive power conferred upon the Court under Section 165 of the Indian Evidence Act (Section 168 BSA) , which reads as follows:

165. Judge's power to put questions or order production.

The judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant ; and may order the production of any document or thing ; and neither the parties nor their agents shall be entitled to make any objection to any

such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any question:

Provided that the judgment must be based upon facts declared by this Act to be relevant and duly proved :

Provided also that this section shall not authorise any Judge to compel any witness to answer any question or to produce any document which such witness would be entitled to refuse to answer or produce under sections 121 to 131, both inclusive, if the question were asked or documents were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149; nor shall he dispense with primary evidence of any document , except in the cases hereinbefore excepted.

13. In case and counter-case situations, where two diametrically opposite narratives are presented by rival parties, the exercise of powers under Section 165 of the Evidence Act (Section 168 BSA) enables the Court to pierce through adversarial exaggerations and to clarify ambiguities. The Court is not confined to passively recording what is stated; rather, it is empowered to actively elicit truth, seek clarifications, and examine surrounding circumstances so as to render real and substantive justice. The adjudication, therefore, cannot rest merely on what is spoken and written, but must also consider attendant circumstances, conduct of parties, medical corroboration, and the overall probability of the case.

14. Thus, the conjoint operation of Section 280 CrPC (Section 315 BNSS) and Section 165 of the Evidence Act (Section 168 BSA) strengthens the rationale that cross-

cases should ideally be tried by the same judicial officer, who, having observed the demeanour and assessed both rival versions in their entirety, is best positioned to render a just and balanced determination.

15. The rationale underlying the above principles is both simple and profound. When two narratives arise from the same occurrence, they are often mirror images, each portraying the other side as aggressor. The truth in such circumstances cannot be ascertained in isolation. It emerges only through comparative and composite judicial scrutiny of both versions. If the cases are examined independently by different fora or at distant points of time, there exists a tangible risk that appreciation of evidence may become fragmented, resulting in incongruous findings.
16. Criminal jurisprudence is fundamentally anchored in the quest for truth. The objective of a criminal trial is not to secure conviction at all costs, nor to vindicate one faction, but to arrive at a just and fair determination of culpability. Therefore, in cross-cases, the comparative evaluation of ocular testimony, medical evidence, motive, genesis of occurrence and surrounding circumstances becomes indispensable. Only a holistic examination can reveal whether one side was the aggressor, whether there was mutual assault, or whether the incident unfolded differently from both projected versions.

II. Whether Common Trial is Necessary When Forums Differ

17. An important jurisprudential issue arises in situations where one of the cross-cases discloses offences exclusively triable by the Court of Sessions, whereas the counter-case involves offences triable by a Magistrate. This procedural divergence of forum introduces complexity in the administration of justice. The question that arises is whether both cases should proceed before their respective statutory forums independently, or whether they should be consolidated before the Court competent to try the graver offence. The Supreme Court in **Sudhir v. State of M.P. (supra)** clarified that even if one case is triable by the Magistrate, it can be committed to the Sessions Court so that both matters are tried together.

18. The guiding principle in resolving such situations is not merely one of procedural convenience or docket management. Rather, it is rooted in substantive justice and fairness of trial. The law seeks to avoid:

- Conflicting findings by different Courts arising from the same incident;
- Selective or compartmentalised appreciation of evidence;
- The possibility of miscarriage of justice due to divergent conclusions regarding the genesis of occurrence or the identity of the aggressor.

If two Courts, acting independently, assess overlapping evidence without the benefit of comparative scrutiny, there exists a real risk that one Court may hold a particular party to be the aggressor while the other Court may reach an inconsistent conclusion. Such incongruity would not only undermine public confidence in the justice delivery system but would also compromise the foundational requirement of fairness.

19. Where one case involves a graver offence exclusively triable by the Court of Sessions, such as an offence under Section 308 IPC or any other offence falling within the exclusive jurisdiction of the Sessions Court and the counter-case involves comparatively lesser offences triable by a Magistrate, prudence and judicial discipline dictate that both matters should be tried by the same forum, namely the Court of Sessions. The reason is that the Court of Sessions possesses broader jurisdictional competence and is legally empowered to try both categories of offences. Consolidating both cases before the higher forum ensures uniform appreciation of evidence and coherent adjudication of the entire transaction.

20. Such a course is not only prudent but legally permissible and jurisprudentially sound. The statutory framework contemplates that:

- A Magistrate is empowered to commit a case to the Court of Sessions at any stage of inquiry or trial if it appears that the

matter ought to be tried by the Sessions Court, reflecting the principle akin to Section 323 of the CrPC.(Section 362 BNSS)

- The Court of Sessions is fully competent to try offences which are otherwise triable by a Magistrate, and its jurisdiction is not curtailed in that regard.
- Conversely, a Magistrate cannot assume jurisdiction over offences exclusively triable by the Court of Sessions.

Thus, from a structural standpoint, the Court of Sessions stands as the forum capable of comprehensively adjudicating both cases without jurisdictional impediment.

21. Therefore, in cross-cases arising from the same incident, the forum competent to try the graver offence naturally becomes the appropriate and logical forum for both matters. This approach ensures that the entire spectrum of allegations, injuries, roles attributed to parties, and attendant circumstances are examined by a single judicial mind. Such consolidation fosters consistency, prevents duplication of judicial effort, and safeguards against contradictory verdicts. It also reinforces the perception of fairness, as both factions are subjected to adjudication under identical judicial scrutiny. Furthermore, consolidation before a single Court ensures that the learned Judge gets the opportunity to observe both sides, to evaluate the witnesses of both factions in close temporal proximity, and to assess not merely the recorded testimony but also their conduct, demeanor and overall credibility. The

Judge thus gets a comprehensive opportunity to see and evaluate both parties, which is indispensable in determining the real aggressor and the true sequence of events.

22. It is a cardinal principle of criminal justice that justice must not only be done but must also appear to be done. In matters involving rival versions of the same incident, the appearance of fairness is as vital as fairness itself. If two different Courts were to return inconsistent findings on the same occurrence, it would erode confidence in the adjudicatory process. Therefore, ensuring that cross-cases are tried by the same forum, particularly where one involves offences triable exclusively by the Court of Sessions, is not merely a procedural arrangement but a substantive guarantee of justice. It upholds the credibility of the judicial process, maintains coherence in fact-finding, and advances the larger cause of judicial propriety.

III. In S.B. Criminal Revision Petition No. 188/2026

(Petitioners as Accused – Challenge to Framing of Charges)

23. The grievance here is against framing of charges under Sections 148, 341, 323, 323/149, 325, 325/149, 326, 326/149, 308, 308/149, 504 and 504/149 of the IPC.

24. At the stage of framing of charge, the Court is not required to conduct a meticulous appreciation of evidence. The standard is not proof beyond reasonable doubt. The Court is

required only to ascertain whether there exists a strong suspicion that the accused has committed the offence.

25. The degree of satisfaction required at this stage is lower than that required for conviction but higher than mere conjecture.

26. From the record, it is evident that:

- Injuries have been caused on vital parts of the body, including frontal and parietal regions.
- The number of injuries is not insignificant.
- Medical evidence supports the prosecution version.

27. In criminal law, intention is inferred from:

- Nature of weapon,
- Part of body targeted,
- Severity and multiplicity of injuries.

28. Blows inflicted on vital organs such as frontal and parietal lobes cannot be treated lightly. The head is a vital part of the human anatomy. Assault upon it raises a legitimate presumption of knowledge that death may be caused.

29. Thus, at this stage, there exists sufficient material to justify framing of charge under aforementioned Sections IPC.

30. It is a settled proposition that revisional jurisdiction against an order framing charge is extremely limited. Interference is warranted only where:

- There is patent illegality,
- No material whatsoever exists,
- The order is perverse or absurd.

31. In the present case, the learned trial court has applied judicial mind and framed charges based on medical and ocular evidence. No perversity is discernible. Therefore, there is no room for interference.

IV. In S.B. Criminal Revision Petition No. 189/2026

(Petitioner as Complainant – Challenge to Non-Framing of Section 308 IPC)

32. In this petition, the grievance is that although grievous injuries were alleged, the learned trial court declined to frame charge under Section 308 IPC.

33. Upon perusal of the record:

- Injuries sustained in this cross-case are primarily on hand and fingers.
- No injury on vital organs is reflected.
- Medical evidence does not suggest imminence of death.
- The nature of injuries is simple or, at best, falling within Section 325 IPC.

34. Section 308 IPC postulates the existence of intention or knowledge that the act committed is likely to cause death. It is well settled that mere grievous hurt does not ipso facto attract Section 308 IPC. The provision contemplates a situation where the act is done with such intention or knowledge, and under such circumstances, that if death had ensued, the offence would have amounted to culpable homicide not amounting to murder. In other words, the

injury must be of such a nature, and inflicted in such a manner, that it can reasonably be inferred that death might have resulted therefrom.

35. In the present case, the injuries attributed to the accused are primarily on the hand and fingers. The material available on record does not prima facie indicate that such injuries were inflicted with the requisite intention or knowledge that they were likely to cause death. Nor can it be reasonably presumed, at this stage, that injuries on non-vital parts such as fingers or hand were of such a character as to be potentially fatal. Therefore, the foundational ingredients necessary to attract Section 308 IPC are conspicuously absent.

36. The situs of injury is a determinative factor. Injury on non-vital parts such as hand or finger ordinarily negates intention to cause culpable homicide unless accompanied by other incriminating circumstances.

37. The learned trial court has considered:

- Nature of injuries,
- Medical report,
- Absence of injury on vital organ,
- Overall circumstances.

38. Merely because it is a cross-case does not mandate symmetrical charges in both matters. Criminal liability depends on individual conduct and evidence in each case.

The maxim "***actus non facit reum nisi mens sit rea***" (the act does not make a person guilty unless the mind is also guilty) governs the field.

39. In absence of prima facie material indicating intention or knowledge to cause death, refusal to frame charge under Section 308 IPC cannot be said to be illegal.

40. Thus, the order declining to frame charge under Section 308 IPC does not suffer from perversity or legal infirmity.

V. On Symmetry in Cross-Cases

41. It is neither a rule of law nor a principle of judicial prudence that charges framed in cross-cases must necessarily mirror each other in form or substance. The mere existence of a case and counter-case arising out of the same transaction does not create a presumption of symmetrical culpability. Criminal jurisprudence does not proceed on notions of parity in accusation but on the independent assessment of material available in each case. The framing of charge is fundamentally an evidence-oriented exercise, guided by the prima facie satisfaction of the Court regarding the ingredients of the alleged offences. In both cases, charges are required to be framed strictly on the basis of the material available on the respective records. Depending upon the evidentiary substratum, the charges in cross-cases may, in a given situation, be similar; however, they may equally differ where the factual foundation so warrants. Therefore,

symmetry in charges cannot be elevated to a legal mandate merely because the parties are adversaries in a common occurrence.

42. Each criminal case must stand on its own evidentiary footing.

Even where the genesis of the incident is common, the roles attributed to the accused persons, the nature and situs of injuries, the weapons allegedly used, the surrounding circumstances, and the medical corroboration may differ materially. The judicial duty at the stage of framing of charge is to scrutinize whether, on the basis of the record pertaining to that particular case, the essential ingredients of the alleged offence are prima facie disclosed. The Court cannot import facts, presumptions or inferences from the counter-case to artificially maintain equivalence. To do so would amount to substituting judicial analysis with mechanical parity, which the criminal justice system does not countenance.

43. The mere fact that in one case charge under Section 308 IPC has been framed does not ipso facto compel the framing of an identical charge in the counter-case. Since charges are framed on the basis of the material available on record in each individual case, they may legitimately vary from one case to another. Section 308 IPC is attracted only where the act is committed with such intention or knowledge, and under such circumstances, that if death were caused, the

offender would be guilty of culpable homicide not amounting to murder. The existence of such intention or knowledge must be discernible from the material available in that specific case. If the evidentiary foundation in one case discloses assault on vital parts, multiplicity of serious injuries, or circumstances indicating knowledge of likely fatal consequences, while the counter-case lacks such attributes, the differentiation in charges is legally justified. Judicial determination at the stage of charge is not governed by comparative symmetry but by statutory ingredients and factual sufficiency.

44. Criminal law recognises and enforces the doctrine of independent culpability. Liability is individualised and fact-specific. Even in incidents involving mutual assault or group rivalry, the degree of participation, the nature of overt acts, and the mental element attributable to each accused may vary significantly. The law does not operate on the principle of retaliatory equivalence; rather, it mandates objective evaluation of conduct and intention in each distinct prosecution. Therefore, differentiation in the nature of charges between cross-cases is not an anomaly but a reflection of principled adjudication based on independent appraisal of material. Such an approach reinforces fairness, preserves doctrinal integrity, and ensures that criminal

liability is determined by evidence and statutory criteria rather than by notions of symmetry.

VI. Conclusion

45. In S.B. Criminal Revision Petition No. 188/2026, the framing of charges is legally sustainable.

46. In S.B. Criminal Revision Petition No. 189/2026, the refusal to frame charge under Section 308 IPC is justified in view of absence of injury on vital organs and lack of prima facie intention to cause death.

47. Both the revision petitions are accordingly disposed of with the following directions in order to preserve judicial propriety, ensure consistency in fact-finding, and prevent conflicting determinations arising from the same occurrence:

(i) Since Session Case No. 03/2023 (arising out of FIR No. 24/2022) is exclusively triable by the Court of Sessions and Case No. 14/2024 (arising out of FIR No. 23/2022) is presently Magistrate triable, it is directed that Case No. 14/2024 shall be committed to the Court of Sessions in exercise of powers akin to Section 323 CrPC (Section 362 BNSS), so that both matters are tried by the same Court.

(ii) Upon such committal, both cases shall be tried by the learned Additional District & Sessions Judge, Didwana, in accordance with the settled principles governing case and counter-case, as discussed in preceding paras.

(iii) The evidence in both matters shall be recorded separately but in close proximity of time so as to maintain judicial continuity and coherence in appreciation of testimony.

(iv) The learned Trial Court shall ensure that while each case is decided strictly on the evidence adduced therein, the comparative evaluation of rival versions emerging from the same transaction is undertaken in a holistic manner consistent with law.

(v) The learned Presiding Judge shall, while recording evidence, exercise the statutory authority under Section 280 CrPC (Section 315 BNSS) to record such remarks, if any, regarding the demeanour of witnesses as may be considered material.

(vi) The Court shall not hesitate to exercise its wide powers under Section 165 of the Indian Evidence Act, 1872 (Section 168 of BSA) to elicit clarifications, remove ambiguities, and discover the real genesis of the occurrence, subject to statutory safeguards.

(vii) Judgments in both cases shall be pronounced separately but preferably on the same day, in order to obviate the possibility of incongruous findings.

48. It is clarified that each case shall be adjudicated strictly on its own evidentiary record, uninfluenced by the result of the

counter-case; however, the entire transaction shall be appreciated with the judicial circumspection warranted in matters involving rival versions of a single incident. The learned Trial Court shall proceed expeditiously and ensure that the trials are conducted in accordance with law and the principles hereinabove enumerated.

(FARJAND ALI),J

9-Mamta/-