

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.REV.P. 333/2018**

Date of decision: 12th March, 2021

IN THE MATTER OF:

SALMAN & ORS

..... Petitioners

Through Mr. Ajayinder Sangwan, Advocate

versus

STATE & ANR

..... Respondents

Through Ms. Meenakshi Chauhan, APP for the
State
Mr. Sumer Kumar Sethi, Advocate
for respondent No.2

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This revision petition filed under Section 397/401 Cr.P.C is directed against the order dated 07.03.2018, passed by the Additional Session Judge-06, (South-East), Saket Courts, New Delhi, in SC No. 130/2017, framing charges against the petitioner for offences under Sections 308, 385, and 34 IPC. It is stated that on 10.10.2016, at about 3:25 A.M. an information was received that a man has been stabbed in front of Okhla Sabzi Mandi. The said message was entered vide DD No.6-PP at Police Post S.N. Puri.

2. In the hospital the complainant/respondent No.2 told the police that he conducts business of selling vegetables near Gate No. 2, Okhla Sabzi Mandi. It is alleged in the FIR that one Anwar/petitioner No.4 herein and his children Salman/petitioner No.1 herein, Shahrukh/petitioner No.2 herein and

Imran/petitioner No.3 herein, who also do business of selling vegetables used to demand money from the complainant/respondent No.2 for conducting business there. It is stated that on 10.10.2016, the petitioners came to the complainant, Anwar was armed with a *Danda*, Imran and Shahrukh were armed with iron rods and Salman was armed with a knife. They demanded money from the complainant. It is stated that Shahrukh hit the complainant with the iron rod on his head. It is stated that all four of them started hitting the complainant. It is further stated that when the petitioner's brother, one Naazim, rescued him, Salman ran after him and that they also took away Rs.4,800/- of the petitioner. It is stated that the brother of the petitioner, Naazim, gave a call to the Police. The accused left after threatening the complainant of dire consequences. On the said statement, FIR No.609/2016 was registered on 10.10.2016, for offences under Sections 384/308/34 IPC. After investigation charge-sheet has been filed. In the charge-sheet it is stated that from the investigation conducted and the statements of the witnesses there is sufficient evidence for filing charge-sheet against the petitioners under Sections 308, 384, 34 IPC.

3. On 07.03.2018, by the order impugned herein, the learned Additional Session Judge-06, (South-East), Saket Courts, found that *prima facie* a case under section 308 IPC is made out against the accused/petitioners herein and charges under Sections 308, 384 and 34 IPC were accordingly framed. The petitioners pleaded not guilty and claimed trial. This order has been challenged in the present revision petition.

4. Mr. Ajayinder Sangwan, learned counsel for the petitioner states that there is a contradiction between DD entry and the version narrated by the

victim in the FIR. He states that the DD entry shows that a person was stabbed while the case in the FIR is only for assault. Mr. Ajayinder Sangwan has taken this Court through the MLC report which states that the nature of injury is only simple. Mr. Sangwan also places emphasis on a medical opinion wherein it has been opined by Dr. Shashi Kant Yadav, Junior Resident, AIIMS, that the nature of injury is simple and the weapon used is blunt and that the injury mentioned in the MLC No. 588759/10OCT2016 is simple in nature and is possibly by blunt force/impact and is not sufficient to cause death in ordinary circumstances. Mr. Ajayinder Sangwan, learned counsel for the petitioner, argues that since the nature of injury is only simple and the doctor has opined that the injury is not sufficient to cause death in the ordinary circumstances charges under Section 308 IPC could not be framed. He places reliance on a judgement of this Court in Narinder Kaur Oberoi v. State, **2015 SCC OnLine Del. 7864**, and Rajiv Sharma v. State, **2015 SCC OnLine Del. 12138**, to contend that in view of the injuries suffered by the petitioner charges under Section 308 IPC could not be framed.

5. *Per contra*, Ms. Meenakshi Chauhan, learned AAP for the State submits that the nature of injury cannot be a decisive factor at the time of framing charge under Section 308 IPC. She would contend that what has to be seen at the time of framing of charges for an offence under Section 308 IPC is the intention or knowledge that by that act death could be caused or not. She would state that the victim was hit by an iron rod on the head and that is sufficient to frame charge under Section 308 IPC.

6. Heard Mr. Ajayinder Sangwan, learned counsel appearing for the

petitioner, Ms. Meenakshi Chauhan, learned APP appearing for the State, Mr. Sumer Kumar Sethi, learned counsel appearing for respondent No.2 and perused the material on record.

7. Section 308 IPC reads as under:

“ The Indian Penal Code

308. Attempt to commit culpable homicide.—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 culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both. Illustration A, on grave and sudden provocation, fires a pistol at Z, under such circumstances that if he thereby caused death he would be guilty of culpable homicide not amounting to murder. A has committed the offence defined in this section.”

8. In Narinder Kaur Oberoi v. State (supra), where reliance has been placed by the learned counsel for the petitioner, there was a quarrel between the groups, the FIR was lodged after considerable delay and none of the parties there sustained injuries on any vital organ by a deadly weapon. It is worthwhile to mention here that even in that case the learned Judge while discharging the accused for an offence under Section 308 IPC has observed as under:

“6. Offence punishable under Section 308 IPC

postulates doing of an act with such intention or knowledge and under such circumstances that if one by that act caused death, he would be guilty of culpable homicide not amounting to murder. An attempt of that nature may actually result in hurt or may not. What the court is to see whether the act irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in Section 308 IPC. It depends upon the facts and circumstances of each case whether the accused had the requisite intention or knowledge.....”

9. Similarly in Rajiv Sharma v. State, **2015 SCC OnLine Del. 12138**, where reliance has been placed by the learned counsel for the petitioner, it was held as under:

“4. To proceed under Section 308 IPC, it is not essential that the injury actually caused to the victim 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 such circumstances that, if one by that act caused death, he would be guilty of culpable homicide not amounting to murder. If an accused does not intend to cause death or any bodily injury, which he knows to be likely to cause death or even to cause such bodily injury as is sufficient, in the ordinary course of nature to cause death, Section 308 IPC would not apply. It depends upon the facts and circumstances of each case whether the accused had the intention to cause death or knew in the circumstances that his act was going to cause death. The nature of weapon used, the intention expressed by the accused at the time of the act, the motive of commission of offence, the nature and size of the injuries, the parts of the body of the victim selected for causing injuries, severity of the

blow or blows and the conduct of the accused are important factors which may be taken into consideration in coming to a finding whether in a particular case, the accused can be proceeded under Section 308 IPC.”
(emphasis supplied)

In the facts of that case it was found that it was a simple case of scuffle/quarrel between the parties where injuries were inflicted voluntarily and the court opined that the assailants can be proceeded for causing hurt under Sections 323/324 IPC.

10. It is alleged by the complainant/respondent No.2 in his statement that the petitioners used to demand money for conducting business from that place and all four of them attacked the victim. This is not a case of a sudden quarrel and injury has been inflicted on the victim by an iron rod on the head of the victim. The fact that the iron rod has not been recovered is not material at this stage for framing charges.

11. To secure conviction under Section 308 IPC the prosecution must prove that the accused had requisite intention or knowledge to cause culpable homicide. It is crucial to determine whether the accused had intention or knowledge that the injuries inflicted on the victim would cause the death and as a result thereof the accused could be guilty of committing culpable homicide not amounting to murder. The intention can be established only at the time of trial. Four people have assaulted the respondent/victim and he has been hit on his head by an iron rod. Whether the intention was to cause death or not can only be established at the trial and not at the time of discharge.

12. While considering a case of discharge in a case under Section 308

IPC, the Supreme Court in Sunil Kumar v. N.C.T. of Delhi, (1998) 8 SCC 557, observed as under:

“4. The view taken by the High Court is obviously erroneous because offence punishable under Section 308 IPC postulates doing of an act with such intention or knowledge and under such circumstances that if one by that act caused death, he would be guilty of culpable homicide not amounting to murder. An attempt of that nature may actually result in hurt or may not. It is the attempt to commit culpable homicide which is punishable under Section 308 IPC whereas punishment for simple hurts can be meted out under Sections 323 and 324 and for grievous hurts under Sections 325 and 326 IPC.....”

13. Ms. Meenakshi Chauhan, learned APP for the State is right in her submissions that the injury alone sustained by the accused at the time of framing charge cannot be the only criterion to discharge a person from an offence under Section 308 IPC. The attempt of that nature may or may not actually result in injury. What is relevant for framing charges under Section 308 IPC is that an act done by the accused with intention or knowledge that under such circumstances death could have been caused or not. The facts which are relevant at this stage are that the victim has suffered an injury on head which is a vital part of the body and that the injury has been caused by hitting him with an iron rod. The fact that the injury suffered by the victim is simple might not be a very relevant circumstance at this juncture in view of the circumstances of the judgment of Supreme Court in Sunil Kumar v. N.C.T. of Delhi (supra).

14. This Court does not find any infirmity in the order dated 07.03.2018, passed by the Additional Session Judge-06, (South-East), Saket Courts, New

Delhi.

15. Accordingly, the revision petition is dismissed along with the pending applications.

SUBRAMONIUM PRASAD, J.

MARCH 12, 2021

Rahul

