

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

+ **CRL. REV. P. No. 228/2008**

Date of Decision : 20.05.2011

RAJ KUMAR SHARMA

..... Petitioner

Through: Ms.Gita Dhingra, Adv.

Versus

STATE

..... Respondent

Through: Mr. M.N.Dudeja, APP
Mr.A.S.Sharma, Adv. for the
complainant.

CORAM :

HON'BLE MR. JUSTICE V.K. SHALI

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

V.K. SHALI, J. (oral)

1. This is a revision petition filed by the petitioner against the order dated 18.1.2008 by virtue of which the learned Sessions Judge had directed the framing of charge against the petitioner under Section 308 of the IPC.
2. Briefly stated the facts of the case are that one Mr.Abhinav Sarup Sharma lodged a complaint with the police that on 2.4.2005, he went to drop his cousin sister (Buaji's daughter) in Ram Nagar, Tilak Nagar. At about 12.30 -1.00 P.M., while he was returning to his home, the present petitioner Sh.Raj

Kumar Sharma who happens to be his Uncle came in front of him and hit him on the head with a baseball bat.

3. In the meantime, the grandfather of the complainant Anand Sarup Sharma also came out and shouted that Raj Kumar should eliminate the complainant. Raj Kumar is living in the adjoining portion to his sister's house, who happens to be the Bua of the complainant and whose daughter he had gone to drop. Two boys are alleged to have come out from the residence of Raj Kumar Sharma and started beating the complainant with leg and fist blows. The complainant started bleeding due to injuries as he was hit on the head with a baseball bat. The Uncle and the grandfather of the complainant caught hold of the two arms of the complainant while as the boys took out their belt and started hitting the same over the person of the complainant. The Uncle of the complainant shouted that since the complainant and his father are contesting litigation against the assailants therefore, if the complainant is eliminated, there will be no one to follow the cases. The wife of Raj Kumar is alleged to have thrown a brick which hit the complainant. The complainant was also hit on the back with the help of a hockey by the grandfather.
4. As a consequence of the entire episode, the complainant is stated to have suffered injuries which were two Contused Lacerated Wounds of 2

cms x 0.5 cms and 1.5 cms x 0.5 cms over the mid frontal region of the scalp and the injuries were opined to be simple.

5. The investigating agency filed a charge sheet and the learned Sessions Judge on the basis of the statements and documents on record came to the conclusion that prima facie a case of attempt to culpable homicide is made out, therefore, the petitioner along with the other co-accused persons were charged for an offence under Section 308 IPC. The petitioner feeling aggrieved by this has assailed the said order.
6. I have heard learned counsel for the petitioner as well as learned APP and the learned counsel for the complainant who is also present.
7. The main contention of the learned counsel for the petitioner is that as the nature of injuries on the complainant are opined to be simple by the doctor, therefore, no charge u/S 308 IPC can be sustained. The petitioner in order to support her point has placed reliance on judgments titled **Surinder Kumar Vs. State** 1996 V AD (Delhi) 345 and **P.K.Ghosh Vs. State & Anr.** 2008 (2) JCC 834. On the basis of these authorities, it has been contended that as in the present case as the injuries were simple and there was no intention or knowledge attributable to the petitioner that it could have resulted in homicide of the complainant, therefore, the charge could not have been framed.

8. The learned APP has contested the arguments of the defence counsel and urged that merely because the nature of injuries are opined to be simple, it does not warrant the dilution of the charge from Section 308 IPC to one u/S 323 IPC. It has been contended that while considering a prima facie case as to whether a charge under Section 308 IPC is made out against the petitioner or not only the nature of injury is to be seen but even other attendant circumstances are also to be borne in mind.
9. Admittedly, in the present case, the attack on the complainant seems to be pre-planned as the same is fortified from the fact that the grandfather of the complainant himself shouted for taking the life of the complainant so that there is no one to chase the pending litigation between the petitioner and his father on the one side and the family of the complainant on the other.
10. So far as the learned counsel for the complainant is concerned, he has contended that the nature of the injuries could not be said to be simple, as admittedly the MLC shows that the complainant had received six stitches and it was only providence which saved the complainant, otherwise the petitioner and his father were bent upon liquidating the complaint.

11. I have carefully considered the submissions of all the parties and have also gone through the impugned order as well as the relevant documents.
12. At the outset, it may be stated that the present petition itself has become infructuous on account of the fact that it has been brought to my notice that as on date, the statement of all the material witnesses including that of the complainant has already been recorded by the Trial Court, therefore, on this ground itself, the revision petition can be treated to have become infructuous because it becomes a question of appreciation of evidence whether a case of attempt to homicide is made or not.
13. Having said so, let us examine on the merits of the case as to whether prima facie case for sustaining the charge under Section 308 IPC is made out or not.
14. It may be pertinent here to mention that this is not in dispute that the petitioner had hit with all force with the baseball bat over the head of the complainant on account of which he suffered two injuries. The placement of injuries are given in the MLC as the mid frontal region of the scalp and if a person is hit with a baseball bat over the head, it can very well be said that if not the intention the assailant ought to have the knowledge that the head being the vital part of the body, if hit on the head with a force, it may cause hemorrhage and the person concerned may die. The nature of injuries cannot be

decisive factor to decide as to whether an attempt to homicide is made. As a matter of fact, the injured in a given case may not yet receive even a single injury yet he may be charged for attempt. Reliance is placed on **Sunil Kumar Vs. NCT of Delhi** 1998 (8) SCC 557.

15. In the instant case, the attending circumstances, namely the call given by the father of Raj Kumar, the grandfather of complainant and the injuries clearly show that he had given a “Lalkara” that Raj Kumar should liquidate the complainant once and for all. The reason given by him is that the complainant was chasing the litigation between the assailant and the family of the complainant. This perhaps has led to the extent where the Uncle wanted to take the life of his own Nephew. All these attendant circumstances, notwithstanding the fact that the nature of injury has been opined to be simple clearly make out a prima facie case u/S 308 IPC. The attack on the complainant was not on the spur of moment.
16. Unlike, in the cases which have been relied upon by the petitioner in the case of Surinder Kumar(supra) where there was a definite view taken by the learned Judge that it was a scuffle on the spur of moment between the two parties resulting in simple injuries. It was in this background that the learned Single Judge in the case of **Surinder Kumar (supra)** observed that the nature of injuries sustained by the complainant could not have in any manner resulted in the

death of the injured person as the injuries were caused with a blunt object.

17. The facts of no two cases are similar and merely because in one particular case in view of the facts of that case and the attendant circumstances, as well as the nature of injuries being simple, the Court has taken a view that no case under Section 308 IPC is made out, does not necessarily mean that in all cases, where there are simple injuries a case under Section 308 IPC could not be made out. Such a generalization would make the job of the Courts to act in a mechanical manner.
18. Similarly in P.K. Ghosh's case (supra) in the peculiar facts of that case where the complainant was simply walking, he was stopped abruptly and hit with hard object on the face and the head. Thereafter, one of the accused was alleged to have taken up a stone and started hitting on the petitioner on the head with a view to kill him, was held as not sufficient to warrant framing of a charge under Section 308 IPC as the injuries on the person were simple and were not considered sufficient to warrant the framing of a charge under Section 308.
19. Facts of the two cases are slightly different than the case in hand. The intention and knowledge of the offender is to be gathered from the facts which transpired at the time of incident and then co-related with the injuries which in every

case need not be greivous, but must necessarily on the vital part of body which likely to cause death.

20. For the above mentioned reasons, I am of the considered opinion that both on the question of lapse of time and the material witnesses being already examined as well as on merits of the case, I feel that there is no impropriety, illegality or incorrectness in the order passed by the learned Sessions Judge, directing the framing of charge against the petitioner under Section 308 Cr.P.C. Accordingly, the petition is dismissed.

V.K. SHALI, J.

MAY 20, 2011
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