

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **CRL.REV.P. 669/2010**

Decided on 20.01.2011

IN THE MATTER OF :

RAM NATH DEEPAK AND ORS.

..... Petitioners

Through: Mr. S.D. Singh, Advocate with Mr. Rahul
Kumar Singh and Ms. Megha Bansiwala, Advocates

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr. Navin Sharma, APP for the State

CORAM

*** HON'BLE MS.JUSTICE HIMA KOHLI**

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

HIMA KOHLI, J. (Oral)

1. The petitioners are aggrieved by the order on point of charge dated 02.07.2010 passed by the learned ASJ in SC No.39/2010 arising out of FIR No.540/2005 lodged by Shri Rajesh Kumar Gupta against the petitioners on 29.11.2005 with Police Station: Moti Nagar, Delhi.

2. The main grievance of the petitioners is that by the impugned order on the point of charge, the petitioners have been wrongly charged under Section 308 read with Section 34 of the IPC and that at best, it would be a case where the petitioners could have been charged under Section 324 of the IPC. A perusal of the *Rukka*, i.e., the first information given by the complainant shows that the complainant was working as a car mechanic at

Shakurpur and residing at a *Jhuggi* at Moti Nagar with the members of his family. On the date of the incident, i.e., on 25.11.2005 at 10:30 PM, when the complainant was returning home, he found many people standing in front of the shop of petitioner No.2, Raj Kishore, blocking the road. Some of them, i.e., petitioner No.1, Ram Nath Deepak, petitioner No.4, Rajender, petitioner No.5, Guddu and petitioner No.7, Prem were known to the complainant. It is alleged that when he asked them to make some space for the passage of the public, petitioner No.2, Raj Kishore hit the complainant on his head with a cricket wicket while petitioner No.5, Guddu hit a rod on the right hand of the complainant, thus injuring him. The complainant called the police on 100 No. and a PCR Van took him to the DDU Hospital, where he was examined and a MLC was conducted. The nature of the injuries suffered by him were found to be grievous. Statement of the complainant was also recorded by the police. On the basis of the statement of the complainant and the MLC, offences under Sections 325/34 IPC was found to have been committed and the case was submitted for registration of FIR.

3. In a subsequent statement of the complainant recorded on 29.11.2005, under Section 161 of the Cr.PC, in addition to what he had stated in the *Rukka*, he named petitioner No.1, Ram Nath Deepak, petitioner No.4, Rajender, petitioner No.7, Prem and specifically stated that petitioner No.1, Ram Nath Deepak hit him with a *Danda* while petitioners No.4, Rajender and petitioner No.7, Prem had kicked him and hit him with their fists. He further stated that he had accidentally got the name of accused, Rajender written as Ravinder, on account of being in acute pain at that time. In the second supplementary statement of the complainant recorded under Section 161 of the Cr.PC on 25.12.2005, the complainant described the

incident in detail and named all the petitioners as accused. He named petitioner No.3, Raj Kumar, petitioner No.6, Raju and petitioner No.8, Chandrawati for the first time and stated that petitioner No.6, Raju had beaten him with a *Danda* alongwith others, while petitioner No.8, Chandrawati had pulled at his hair. On the aforesaid complaint, the FIR was lodged and after the investigation was completed, police filed a charge-sheet on 10.01.2007 under Sections 147/149/308/34 IPC against the petitioners.

4. Vide order dated 29.08.2009, the then learned ASJ, before whom the matter had been committed, held that the provisions of Section 308 IPC were not attracted against the petitioners, and as the remaining offences were triable by the court of the Magistrate, the matter was remanded back to that court. Aggrieved by the aforesaid order, the complainant/victim preferred a revision petition in this Court, registered as Crl.Rev.P. 582/2009, which was allowed vide order dated 07.04.2010. While allowing the said petition, the Court recorded the submission of the complainant that the then ASJ ought to have himself stated as to which offence was actually made out, if the offence under Section 308 IPC was not made out and that this aspect of the matter ought not to have been left for determination by the learned Metropolitan Magistrate. Thus, it was alleged that there was no proper order on charge. In view of the statement of the counsel for the respondents therein (petitioners herein) as well as the learned APP for the State that the matter may be remanded back to the learned ASJ for passing a fresh order on charge, the revision petition was disposed of and the matter was remanded back to the Ld. ASJ for re-hearing on the point of charge. This was followed by the passing of the aforesaid impugned order dated 02.07.2010, whereunder the Sessions Court arrived

at the conclusion that the petitioners ought to be charged under Sections 308/34 IPC.

5. Counsel for the petitioners submits that the impugned order is liable to be set aside as the learned ASJ failed to consider that Section 308 IPC is not attracted in the facts and circumstances of the present case, as there is no material available on record to show that the petitioners had any knowledge or intention to cause death of the complainant and that the nature of injuries as recorded in the MLC as also on the parts of the body where such injuries were sustained by the complainant, would not point towards an offence under Section 308 IPC. He submits that merely because the injuries were grievous would not mean that an offence punishable under Section 308 IPC is made out, rather Section 324 IPC would be applicable to the facts of the case as there was no knowledge or intention on the part of the petitioners to commit culpable homicide not amounting to murder. In support of his submissions, he relies on the judgment in the case of P.K. Ghosh vs. State & Anr. reported as **2008(2)JCC 834** and another unreported judgment delivered by a co-ordinate Bench of this Court in **Crl. Appeal No.27/2008** entitled Jamalu & Anr. vs. State of Delhi.

6. On the other hand, learned APP supports the order on charge and states that there is no infirmity therein and hence it is not liable to be interfered with. He states that a perusal of the aforesaid order shows that the entire material on the record has been carefully perused by the Sessions Court and after evaluating and weighing the said material, the learned ASJ has rightly concluded that a *prima facie* case under Section 308 IPC was made out against the petitioners. He further submits that the injuries suffered by the complainant were opined as grievous in nature and the said

fact is borne out by the MLC conducted on him at the DDU Hospital. He further states that the contention of the petitioners that they did not commit a pre-mediated crime is not borne out from the documents on record, particularly from the supplementary statement made by the complainant where he stated that there had been previous incidents of the petitioners having beaten him up, for which he had got cases registered against them, and that now they were threatening him to take back those cases.

7. This Court has heard the counsels for the parties and carefully considered their respective submissions in the light of the documents placed on record. It is a settled legal position that at the stage of framing of charges, the trial court is enjoined to assess, evaluate and weigh the prosecution evidence purely to see if a *prima facie* case exists and to frame charge after forming an opinion that the commission of offence was possible on the part of the accused. In the case of State of Maharashtra v. Som Nath Thapa reported as **(1996) 4 SCC 659**, it was held as under : -

"30. In *Antulay case* [reported as (1986)2 SCC 716] Bhagwati, C.J., opined, after noting the difference in the language of the three pairs of sections, that despite the difference there is no scope for doubt that at the stage at which the court is required to consider the question of framing of charge, the test of "prima facie" case has to be applied. According to Shri Jethmalani, a prima facie case can be said to have been made out when the evidence, unless rebutted, would make the accused liable to conviction. In our view, a better and clearer statement of law would be that if there is ground for presuming that the accused has committed the offence, a court can justifiably say that a prima facie case against him exists, and so, frame a charge against him for committing that offence.

...

32. The aforesaid shows that if on the basis of materials on record, a court could come to the

conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the court were to think that the accused *might have* committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused *has* committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage."

Even in the judgment relied upon by the counsel for the petitioners in the case of P.K. Ghosh (supra), it was held that the probative value of the material on the record cannot be gone into and that there must exist some material, which should form the basis of framing of the charge. A similar view has been expressed in the impugned order where reliance has been placed on the judgment of the Supreme Court in the case of Ramesh Singh vs. State of Bihar reported as **AIR 1977 SC 2018** and Mathura Dass & Ors. vs. State reported as **2003 II AD (CrI) DHC 437**. Such a view has also been expressed in the case of Soma Chakravarty vs. State through CBI reported as **(2007) 5 SCC 403**.

8. In the present case, a perusal of the MLC of the complainant conducted at the DDU Hospital does not bear out the submission of the counsel for the petitioners that the injuries suffered by him were simple in nature. Rather, the said MLC shows that the complainant suffered a clear lacerated wound measuring 2x0.5x0.5 cm on the right side of his forehead. He also suffered abrasions on the right shoulder and chest, and dislocation of his right shoulder apart from blunt injuries, which were all described as grievous in nature. Further, the weapons of assault used in the present case,

i.e., a cricket wicket, which is blunt at one end and sharp edged on the other end and an iron rod, were also of such a nature, which could have caused death. *Prima facie*, it also does not appear to be a case of grave and sudden provocation given to the petitioners, as there appears to be a past history of enmity between the parties, which is reflected from the supplementary statement of the complainant recorded on 25.12.2005. So, it is not as if the complainant was accosted on the night of the incident out of the blue and in the heat of moment, the petitioners assaulted him.

9. Upon perusal of the impugned judgment, this Court is not inclined to agree with the submission of the counsel for the petitioners that the Sessions Court erred in framing charge against the petitioners under Section 308 IPC instead of Section 324 IPC. Learned APP is justified in submitting that Section 308 IPC is in two parts. The first part deals with a situation where if an act is done by a person, with such intention or knowledge and under such circumstances that, if he by that act caused death, then such person would be guilty of culpable homicide not amounting to murder and shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both. The second type of circumstance contemplated under the said Section is when hurt is caused to any person by such act, as mentioned in the first part of the section, then the quantum of punishment would increase to imprisonment of either description for a term which may extend to seven years, or with fine, or with both. Therefore, physical hurt is not a necessary prerequisite for invoking the provisions of Section 308 IPC, which fact is borne out from a bare reading of the aforesaid section, and any hurt which is caused to the victim would only serve to enhance the quantum of sentence.

10. The contention of the counsel for the petitioners that the trial court has acted as a post office or mouthpiece of the prosecution is also not borne out from the record. A perusal of the impugned order on charge shows that the trial court has sifted the material available and applied its mind and only thereafter rightly framed charge for culpable homicide not amounting to murder under Section 308 IPC.

11. In view of the aforesaid facts and circumstances, this Court is not inclined to interfere with the impugned order on charge, as the same does not suffer from any infirmity, illegality or arbitrariness. The petition is, therefore, dismissed as being devoid of merits.

JANUARY 20, 2011
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(HIMA KOHLI)
JUDGE