

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

% CRL. REV. P.NO. 207/2010

+ Date of Decision: 17th October, 2012

Bade Lal Parshad & Ors. ...Petitioners
! Through: Mr. P.N. Verma, Advocate.

Versus

\$ State &Ors. ...Respondents
**! Through: Mr. M.N. Dudeja, APP
for the State. Mr. Jasbir Singh
Malik with Ms. Manju, Advocates
for R-2 to 7**

CORAM:
*** HON'BLE MR. JUSTICE P.K.BHASIN**

ORDER

P.K.BHASIN, J:

This revision petition has been filed by the petitioners (complainant side) under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 assailing the correctness of the order dated 23rd April, 2010 passed by the learned Additional Sessions Judge whereby respondents no. 2-7 herein, who were charge-sheeted by the police for the commission of the offences punishable under

Sections 308/341/34 of Indian Penal Code('IPC' for short), have been discharged of the offence under Section 308 IPC and ordered to be tried under Section 324/34 IPC only.

2. Background of the case is that a complaint was lodged by the complainant Bade Lal Parshad, petitioner no.1 herein, on 22nd March, 2006 against the accused persons, respondent nos. 2-7 herein, alleging that on 21nd March, 2006, wife of the accused Parbhu Nath(respondent no.2) had thrown garbage in front of the house of the complainant and when it was objected to by his wife son of the accused Parbhu Nath abused her. In order to put an end to the fight, the complainant went to the house of one of his neighbours and in the meantime his daughter came and said that some persons were beating his son. It was further alleged that on reaching his house Pintu(respondent no.3) and Chottu(respondent no.6) caught hold of the complainant and exhorted their co-accused to beat him and then other accused, respondents no. 2,5 and 7, having iron rods started beating him as a result of which he sustained many injuries on his head, right elbow and his upper lips and accused-respondent no.4 Prema Devi, wife of the accused Parbhu Nath, injured the son of the complainant by hitting him on his head with a brick.

3. On the basis of these allegations in the complaint FIR was registered against the accused-respondents under Sections 308/341/34 of IPC and the police after completing investigation of the matter filed

charge sheet before Metropolitan Magistrate who committed the case to the Court of Sessions since Section 308 IPC is exclusively triable by the Sessions Court.

4. Learned Additional Sessions Judge after hearing the parties passed the order on charge and held that the only offence made out was under Section 324/34 IPC and accordingly ordered the trial of six accused by the Magistrate. The relevant observations in that order dated 23.04.2012 are as under:-

“A perusal of the MLC of the injured Bade Lal Parshad shows that when he was taken to Hospital he was conscious and oriented. He was having lacerated wounds on his forearm and paritiaeal region. The other injured Ravi Shankar was also having lacerated wound on his left paritiaeal region. Both these injured were found having simple injuries and they were discharged from the Hospital on the same day.

I have perused the FIR as well as the statement of witnesses recorded under Section 161 Cr.P.C. complainant and accused persons are neighbourers and there was a dispute on the throwing the garbage in the gali. No person including the complainant had made any allegation in his statement that injuries were inflicted by the accused persons with an intention to cause death of Bade Lal or Ravi Shankar. The evidence and the circumstances of the case otherwise show that there was no intention or knowledge on the part of the accused persons to cause such injuries which would have resulted in the death of Bade Lal and Ravi Shankar as a result of which they would have been guilty of murder. Though not referred to or relied upon, for taking this view I am supported with the judgment Surender Kumar Vs. State 1977 JCC 45.

For the foregoing reasons, I am of the considered opinion that accused persons cannot be charged for an offence punishable under Section 308/34 IPC. The only offence under Section 324/34 IPC is made out against the accused persons. Charge framed accordingly to which accused plead not guilty and claim trial. Trial Court record with charge be sent to the Court of Shri Vijay Shankar, Metropolitan Magistrate for its disposal in accordance with law.....”.

5. Feeling aggrieved by the discharge of the accused under Section 308 IPC the complainant side has filed the present revision petition since the State chose not to challenge that decision of the Sessions Court. However, the learned Additional Public Prosecutor had supported this petition since the police itself also wanted the accused to be tried under Section 308/34 IPC and it had filed the charge-sheet against them under Section 308 IPC.

6. Learned counsel appearing on behalf of the petitioners contended that the trial Court erred in discharging the accused persons for the offence committed by them under Section 308 IPC and so this Court should order framing of charge under Section 308 IPC against the accused persons. In support of his submissions learned counsel for the petitioners placed reliance upon one judgment of the Supreme Court reported as 1999(1) JCC 92 , “Sunil Kumar v. State” .

7. Learned counsel for the accused persons had submitted that since the Sessions Court had passed a well reasoned order on charge there

was no scope for interference by this Court in exercise of the revisional jurisdiction.

8. In my view this revision petition deserves to be allowed as the learned Additional Sessions Judge has committed patent illegality in discharging the accused of the charge under Section 308 IPC. The learned Additional Sessions Judge has come to the conclusion that offence under Section 308 is not made out on the ground that the injuries caused by the accused on the person of the injured were simple and also because none of the witnesses had claimed that the injured were attacked with the intention of causing their death. Nature of injuries is not significant while finding out whether offence under Section 308 IPC is made out or not. Similarly, it is not the requirement of law that the injured persons should claim that they were attacked by the accused with the intention to cause their death. Their intentions or the knowledge about the possible consequences of their acts has to be inferred from the manner of attack, weapons used in causing injuries etc. In the present case, the accused persons were armed with iron rods and bricks. Prior to the said incident on the same day accused Pintu had abused the wife of the complainant when she had objected to the throwing of garbage by accused Prema Devi in front of her house. The accused persons had decided to assault the complainant and his family members and that is evident from the fact that they were armed with rods etc. The Sessions Court has itself found that accused persons had caused injuries with weapons which were likely to cause death (iron

rods) and that is why charge under Section 324 IPC was ordered to be framed. The mere fact that the injuries were found to be simple would not show that the accused had no knowledge about the consequences of causing injuries on the heads of the two injured. The judgment of this Court in Surender Kumar's case(supra) relied upon by the learned Sessions Court is distinguishable. The judgment of the Supreme Court in Surender Kumar's case(supra) cited by the counsel for the petitioners, on the other hand, fully helps the petitioners here. That was a case where the trial Court had framed charge under Section 308/34 IPC but the High set aside that charge in revision at the instance of the accused and found it to be a case of Section 323 only but that charge was not framed because the police could not have investigated that offence without the permission of the Magistrate. The Supreme Court in appeal against that order of the High Court set aside that order and restored the order of the trial Court. The relevant portions from that judgment are reproduced below:-

“3. The dispute is between the tenants and the landlords of a premises in Delhi.(in the present case the dispute was between neighbours). On 27-9-1992, there was a clash between the two sides. Both sides allegedly were injured. The landlords are the accused in the instant case. Sunil Kumar is the victim of the crime. After the matter was reported to the police, his medico-legal examination was conducted by the doctor-in-charge, who after enumerating the injuries opined them to be grievous. Dr Dabbas, whom we have summoned today to explain the medico-legal report, was the doctor who supervised and endorsed the report. According to him, the injuries have been termed grievous because two of them were lacerated wounds and one was a haematoma and since the blows were aimed at the head, they had

endangered life. The learned Additional Sessions Judge to whom the case was committed had framed charges against the respondents under Sections [308/34](#) IPC, the gravamen of the charge being that an attempt to cause culpable homicide not amounting to murder had been made. Whether the injury was grievous or simple deserved a back seat in face of the charge under Sections [308/34](#) IPC. Yet the High Court when approached in its revisional power under Section [439](#) of the CrPC quashed the charge in finding room in the medico-legal report to opine that the injuries were simple. The High Court observed as follows:

"I have perused the FIR as well as the statement of the witnesses recorded under Section [161](#) of the Criminal Procedure Code by the police. No person including the complainant has made any allegation in their statements that injuries were inflicted by the petitioners with an intention to cause their death. As already mentioned above, in order to constitute an offence under Section 308, not only it should be proved that the act was committed by the accused but it was committed with the intention or knowledge to commit culpable homicide not amounting to murder and that offence was committed under such circumstances if the accused by that act had caused death he would have been guilty of culpable homicide. Therefore, the most important circumstance in a case under Section 308 would be that an act should have been committed with intention or knowledge to commit culpable homicide not amounting to murder. The injuries sustained by the complainant are not such that could in any manner result in the death of the injured persons. The injuries were caused by a blunt object and it was one-and-a-half-inch lacerated wound in the scalp. The doctor who examined the complainant had opined that there was no evidence of head injuries and it did not even require hospitalisation and he was asked to attend the OPD the next date. The word 'grievous' against the injuries has been written and had not given any opinion about his alleged head injuries. Merely because an injury has been found on the head, it cannot be said that such an injury was caused with the intention or knowledge to commit culpable homicide not amounting to murder. The evidence and circumstances of the

case otherwise show that there was no intention or knowledge on the part of the accused to cause such injuries which would have resulted in the death of the complainant as a result of which they would have been guilty of murder or culpable homicide not amounting to murder. The fact that the petitioners have also been injured and a case under Section 324 IPC has been registered against the complainant clearly shows that it was a scuffle between two parties without any intention on either side to cause injuries which might result in the death of the accused. The material before the Additional Sessions Judge, in my view, was not such which could give rise to grave suspicion against the petitioners of their having the intention or knowledge to cause such an injury that had the death been caused, they would have been guilty of culpable homicide.

For the foregoing reasons, I am of the considered opinion that the petitioners could not have been charged for an offence punishable under Sections 308/34 IPC."

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. Qualitatively, these offences are different. The High Court was thus not well advised to take the view as afore-extracted to bring down the offence to be under Sections 323/34IPC and then in turn to hold that since that offence was investigated by the police without permission of the magistrate, the proceedings under that provision be quashed. For the view afore-taken as to the commission of the offence under Sections 308/34 IPC, it is not necessary to dwell on the correctness of the second part of the order relating to quashing of proceedings under Sections 323/34 IPC. Thus, the entire order of the High Court deserves to be and is hereby

quashed, restoring the status quo ante of the trial remaining with the Additional Sessions Judge to proceed in accordance with law.”

9. These views of the Apex Court squarely apply in the facts of the present case.

10. This petition is, therefore, allowed. The impugned order dated 23.04.2012 is set aside and framing of charge under Section 308/34 IPC in place of 324/34 IPC against all the accused persons is ordered. The Metropolitan Magistrate shall, on receipt of copy of this order, send back the case to the Sessions Court for framing of the said charge and trial of the accused persons.

P.K. BHASIN, J

OCTOBER 17, 2012