

\$~28

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

RESERVED ON : AUGUST 28, 2015

DECIDED ON : SEPTEMBER 17, 2015

+ **CRL.REV.P. 34/2015 & CrI.M.A.768/2015**

RAJIV SHARMA

..... Petitioner

Through : Mr.Abhijat with Mr.Mukesh Vatsa,
Mr.Puneet Mittal, Mr.Neeraj Dev
Gaur and Mr.Arush Sen Gupta,
Advocates.

versus

STATE OF NCT OF DELHI & ANR

..... Respondents

Through : Mr.Amit Ahlawat, APP.
Mr.M.R.Singh Sirodia, Advocate,
for R-2.

+ **CRL.REV.P. 131/2015 & CrI.M.A.3233/2015**

TEJESHWAR SHARMA

..... Petitioner

Through : Mr.Abhijat with Mr.Mukesh Vatsa,
Mr.Puneet Mittal, Mr.Neeraj Dev
Gaur and Mr.Arush Sen Gupta,
Advocates.

versus

STATE(NCT OF DELHI) & ANR

..... Respondents

Through : Mr.Amit Ahlawat, APP.
Mr.M.R.Singh Sirodia, Advocate,
for R-2.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.GARG, J.

1. Instant revision petitions have been preferred by the petitioners to challenge the legality and correctness of an order dated 28.10.2014 by which they along with Sunder Bhati and Jitender Bhati were charged for committing offences under Sections 452/506/308/34 IPC. Status report and complainant's response are on record.

2. I have heard the learned counsel for the parties and have examined the file. FIR in question was lodged by an order dated 25.03.09 of learned Metropolitan Magistrate under Section 156 (3) Cr.P.C. In the complaint case, it was averred by the complainant that he was residing at House No.152, Ground Floor, Hari Nagar Ashram, New Delhi as a tenant under one Jyotsna Das. On 22.02.1009 at about 9.45 p.m., the petitioners along with other assailants while armed with dandas, iron rods, sticks and revolver committed trespass. After breaking open the door of the house, they started abusing him and his family members. The petitioners who were armed with iron rods hit his son Pradeep on his head. They also hit him on his right arm as a result of which he suffered fracture. Sunder Bhati having a revolver hit him by a 'danda'. When his daughter

attempted to intervene, she was also mercilessly beaten by the assailants. All of them fled the spot after extending threats. Upon calling the Police at 100, PCR van arrived and took the injured to AIIMS. The police, however, did not take any action.

3. The investigating agency recorded statements of witnesses conversant with the facts. Upon completion of investigation, a charge-sheet was filed against the petitioners and two others for committing offences under Sections 451/506/324/34 IPC. By an order dated 16.10.2012, learned ACMM took cognizance of the offence against the petitioners and others for commission of the aforesaid offences. Being aggrieved, the complainant filed revision petition No.202/12 which was disposed of by an order dated 29.04.2014 by the learned District and Sessions Judge and the petitioners and others were directed to be charged under Section 308 IPC instead of Section 324 IPC. The case was committed to the Court of Sessions. By the impugned order, the Trial Court charged the petitioners for committing offences among others also under Section 308 IPC.

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.

5. In the instant case, the complainant was residing as a tenant in premises in question under one Jyotsna Das. It appears that subsequently the said premises were purchased by the petitioners. Apparently, there was no previous animosity or hostility between the

parties before the incident. It is alleged that the petitioners' intention was to get the tenanted premises vacated forcibly. No complaint, whatsoever, was lodged by the complainant against the petitioners before 22.02.2009. On that day too, both the parties were booked under Sections 107/150 Cr.P.C. Pradeep and complainant Ram Avtar Sharma sustained injuries 'simple' in nature on their bodies. They were medically examined at AIIMS soon after the quarrel and were discharged on the same day after prescribing certain medicines. The injuries were 'simple' in nature caused by a blunt object. None of the victims was found to have suffered any fracture. Subsequently, the Investigating Officer sought specific opinion from the concerned examining doctor who informed that the injuries sustained by Ram Avtar were "contusion on scalp, abrasion and swelling on left eye, swelling on lower lip and tenderness on out aspect of right eye." X-ray report mentions 'no fracture seen'. MLC pertaining to Pradeep mentions "lacerated wound on scalp on left perital region 2.5 cm, swelling and tenderness on left shoulder, contusion on left shoulder, abrasion of upper lip, abrasions on right elbow." X-ray report mentions 'no fracture seen'. He further informed that the injuries mentioned in both MLCs were possible in a fight. These were caused by blunt

force/weapon. All the injuries were 'simple' in nature and were not sufficient to cause death in the ordinary course of nature.

6. No weapon of offence was recovered during investigation. No repeated forceful blows were inflicted on any vital body parts. Revolver allegedly in possession of one of the assailants was not used. Sharp-side of the weapons allegedly in possession of the assailants were not used to inflict injuries. In 161 Cr.P.C. statement, Pradeep Kumar disclosed that in December 2008 Rajeev Sharma had asked to pay rent to him as he had purchased the premises in question. Apparently, after purchase of the house, the petitioners had intended to get the rent from the tenant. Before 22.02.2009 and even on the day of occurrence, no attempt was made to get the rented premises vacated by throwing the goods out. Identity of unknown assailants accompanying the petitioners could not be established or ascertained. Under these circumstances, it cannot be inferred that injuries were inflicted with the avowed object or intention to cause death or bodily injury capable of causing death. Merely because a superficial injury was found on the head of the victim, it cannot be said that such an injury was caused with the intention to commit culpable homicide. The materials before the learned Trial Court was deficient to attract Section 308 IPC. It was a simple case of scuffle/quarrel between

the parties where injuries were inflicted voluntarily and for that the assailants can be proceeded for causing hurt under Section 323/324 as is applicable.

7. In the light of the above discussion, the impugned order framing charge under Section 308 IPC being unsustainable is set aside. The Trial Court shall proceed against the petitioners for commission of offences charged by the learned ACMM.

8. The revision petitions stand disposed of accordingly. Trial Court record be sent back forthwith along with copy of this order.

(S.P.GARG)
JUDGE

SEPTEMBER 17, 2015

sa