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

RESERVED ON : SEPTEMBER 14, 2015
DECIDED ON : SEPTEMBER 23, 2015

+ **CRL.REV.P. 217/2015 & CRL.M.A.No.5176/15**

SHEILA DEVI & ORS Petitioners
Through : Mr.Ajay Pal Singh, Advocate.

VERSUS

STATE Respondent
Through : Mr.Amit Gupta, APP with SI
Baljinder Singh, PS Parsad Nagar.

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

S.P.GARG, J.

1. Instant revision petition has been preferred by the petitioners to challenge the legality and correctness of an order dated 02.02.2015 of learned Additional Sessions Judge by which they were charged for committing offences under Sections 308/380/427/506/34 IPC. Status report is 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 19.04.13 of learned Metropolitan Magistrate under Section 156 (3) Cr.P.C. In the complaint case, it was averred by the complainant that she was residing at

House No.16/893, Ground Floor, H-Block, Bapa Nagar, Karol Bagh. On 25.07.2012 when she objected to the raising of unauthorized and illegal construction of a latrine by the petitioners, they gave beatings on her abdomen, chest, back, hands and arms. She was taken to Lady Harding Hospital and was medically examined. On 26.07.2012 again the petitioners quarrelled with her. She was caught hold of by accused Sheela and other accused Vijay and Ashok inflicted brick blows on her forehead. She got 7-8 stitches on her forehead. Varun and Priyanka, her grand children, also sustained injuries. The petitioners also committed theft of ₹9,000/- after committing trespass and also caused damage to various articles.

3. The investigating agency recorded statements of witnesses conversant with the facts. Upon completion of investigation, a charge-sheet was filed against the petitioners for committing offences under Sections 323/308/380/427/506/34 IPC. Since offence under Section 308 IPC was triable by the Court of Sessions, the case was committed to the Court of Sessions. After hearing the parties, the impugned order on charge was passed.

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, both the parties were acquainted with each other and they lived as neighbours in the same vicinity. There was no history of previous animosity or hostility between them. On 25.07.2012, a

sudden quarrel took place between them on a trivial issue of raising alleged unauthorized toilet which was objected to by the complainant. Again on 26.07.2012 quarrel took place between them on the said issue. In the said quarrel, the complainant sustained injuries on her forehead. MLC (Annexure–C) reveals that one lacerated wound 3'1 c.m. was found on the forehead of the victim. Injuries were 'simple' in nature caused by blunt object. The victim did not need hospitalization and was discharged on the same day after prescribing certain medicines. Apparently, the injuries sustained by the victim were not sufficient to cause death in the ordinary course of nature. The petitioners were not armed with any deadly weapons. Only a single blow was allegedly sustained by the victim when a brick was thrown at her by one of the petitioners in the quarrel that had taken place all of a sudden without premeditation. No serious injuries were caused on the vital organ of the victim. 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 forehead of the victim, it cannot be said that such an injury was caused with the intention to commit culpable homicide. The material 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 IPC.

6. In the light of the above discussion, the impugned order framing charge under Section 308 IPC being unsustainable is set aside. The Court of competent jurisdiction shall proceed against the petitioners for commission of other offences under Sections 323/380/427/506/34 IPC as per law.

7. The revision petition stands disposed of accordingly. Pending application also stands disposed of. Trial Court record (if any) be sent back forthwith along with copy of this order.

(S.P.GARG)
JUDGE

SEPTEMBER 23, 2015
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