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

+ CRL.REV.P. 541/2014 with Crl. M.A. No. 13767 & 13769/2014

JYOTI

..... Petitioner

Through: Mr.Anwesh Madhukar, Advocate

versus

THE STATE &ORS.

..... Respondents

Through: Mr.S.N. Pandey and Ms.Manju
Prasad, Advocates for R-2
ASI Davender, PS Dabri

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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21.03.2016

1. The petitioner before this Court is complainant in case FIR No. 206/2012 which was registered on the direction of the Learned MM in exercise of powers under Section 156(3) Cr.P.C.
2. The grievance of the petitioner before the Court is that after the case was committed to the Court of Sessions, Learned Sessions Judge (South-West), Dwarka Courts, New Delhi vide impugned order dated 20.01.2014 directed that the case be remanded to the committal Court for conducting trial of offence in accordance with law as no offence under Section 308 IPC was made out and the other offences were triable by the learned Magistrate.
3. Notice of the revision petition was sent to the respondent.
4. Heard.
5. On behalf of the petitioner, it has been submitted that nature of the

injury is not a decisive factor to make out a case under Sections 308 IPC.

6. Learned counsel on behalf of the petitioner has relied upon the following judgments in support of his contention:

- i. Hari Mohan Mandal Vs. State of Jharkhand (2004) 12 SCC 220.
- ii. State of Maharashtra Vs. Balram Bama Patil and Others (1983) 2 SCC 28.
- iii. Pasupuleti Siva Ramkrishna Rao Vs. State of Andhra Pradesh and Others (2014) 5 SCC 369.

7. Section 308 IPC reads as under:

308. Attempt to commit culpable homicide.—Whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

8. The criminal complaint C.C. No. 834/1 filed on 24.5.2012 was assigned to Learned M.M. on 26.5.2012 which is annexed with this petition as Annexure 2 (colly). In the said complaint, the petitioner has alleged that she was 17 years of age at that time and had been residing along with her parents. Her father Lakshmi Narayan and his three other brothers namely Hari Kishan, Bhrigraj and Ramesh Chand are joint owners of the said property consisting of four rooms. Each brother is in possession of one room in that property. Ramesh Chand is residing in a nearby house. He wanted to purchase the share of Lakshmi Narayan for which Lakshmi Narayan refused.

9. Ramesh Chand made a plan to grab their portion of Lakshmi Narayan and Anuj, his tenant joined in the said plan.

10. It is further mentioned in the complaint that on 23.6.2009 wife of Ramesh Chand along with her children and tenant having cricket bat and iron rod in their hands forcibly entered in the house of the complainant in the absence of her father. They started abusing and beating the complainant, her mother and brothers while Anuj gave a blow with a cricket bat on the face of her mother. Accused Rajni caught the complainant and accused Reena gave iron rod to Anuj who hit the complainant with that iron rod as a result of which she suffered injury on her head. Accused Raju took Prem Kumar, aged 2 ½ years old who is brother of the complainant out of the room and gave a fist and leg blow on his stomach. Other accused namely Lajwanti and accused Amit gave leg and fist blows to the mother of the complainant and other brother Narender. When her father came home PCR was informed and complainant was taken to DDU Hospital. She was medically examined and she got 5-6 stitches on her head.

11. On the directions of the Ld. MM under Section 156(3) CrI. Case FIR No. 206/12 was registered on 7.6.2012 and charge sheet in this case was filed for commission of alleged offence punishable under Section 323/308/452/34 IPC against the accused persons namely Rajni, Lajwanti, Beena @ Reena and Anuj. Two other persons allegedly involved in the occurrence were juvenile.

12. The impugned order of the Ld. ASJ observed that no case under Section 308/34 IPC is made against the accused persons. The impugned order reads as under:

“As per case of prosecution, minor quarrel took place between
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the children and thereafter these four accused persons along with Raju and Amit (who are facing trial before Juvenile Justice Board, being minors) came to teh house with bat and hit Jyoti on her head and when other intervened also gave beatings to them. It is not that Jyoti was repeatedly hit with bat nor there is allegation that accused persons intended to hit Jyoti with bat time and again or that Jyoti was saved by them. There is no averment that the accused has intention or knowledge that if by that act they cause death it will amount to culpable homicide not amounting to murder neither the act done shows so. Rather in the complaint all the affected persons including Jyoti have described as “marpitai ki”. As per MLC of Jyoti – vitals were stable and jyoti was conscious oriented and there is no history of concussion vomiting and she was discharged on the same day.

As such no offence under Section 308 IPC is made out. Other offences are triable by Ld. Metropolitan Magistrate. The case is remanded back to the Committal Court for conducting trial of the offence in accordance with law. ”

13. Learned counsel for the petitioner has contended that irrespective of the fact that the injury has been opined as simple it was a case requiring framing of charge under Sections 308 IPC hence the order passed by the Learned Sessions Judge observing that no case under Section 308 IPC is made out needs to be set aside and accused may be directed to be charged for the offence punishable under Section 308 IPC.

14. Along with the petition only MLC of the petitioner/Jyoti is placed on record and not of her mother and two brothers. In the report under Section 173 Cr.P.C. it is specifically mentioned that on 23.6.2009 PCR call vide DD No. 35B about some quarrel was received. When the call was attended it was informed that the matter had already been settled by the parties and thereafter after a long gap the complaint case was filed.

15. Vide impugned order dated 20.01.2014 Learned ASJ had specifically observed that there is no material to prima facie show that the petitioner was hit time and again or that the accused had intention or knowledge to attempt to cause such death which will amount to culpable homicide not amounting to murder neither the act done shows so. The accused persons in this case are wife and children of Ramesh Chand who is real brother of the father of the petitioner and the joint owner of the said property wherein in one room the petitioner along with her parents and brothers are residing.

16. I have perused the case laws cited on behalf of the petitioner which are clearly distinguishable on facts hence are of no help to the petitioner.

17. Learned ASJ has rightly observed that it was not a case of multiple injuries, the nature of the injury received by the petitioner was simple. The impugned order whereby learned Sessions Judge held that no case under Section 308 IPC is made out warrants no interference by this Court.

18. Revision petition is dismissed.

PRATIBHA RANI, J.

MARCH 21, 2016

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