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

% *Date of Decision : 11th February, 2016*

+ **CRL.REV.P. NO.78/2010**

STATE

..... Petitioner

Through: Ms. Alpana Pandey, APP for the State

versus

ABDUL SAMAD & ANR.

..... Respondents

Through: None.

PRATIBHA RANI, J. (Oral)

Crl. M.A.1676/2010

1. For the reasons stated in the application, the delay of 51 days in filing the revision petition is condoned.
2. Application stands disposed of.

CRL.REV.P. NO.78/2010

1. The State has preferred this revision petition in the year 2010 impugning the order dated 04.08.2009 whereby the learned ASJ formed an opinion that prima facie no offence under Section 308/34 IPC is made out against the accused persons. The other offences mentioned in the charge sheet being triable by the Court of Magistrate, the file was ordered to be sent to the learned ACMM, Dwarka.
2. Ms. Alpana Pandey appearing on behalf of the State has submitted that in this case the offence committed by the accused persons is prima facie established from the statement of Smt. Saroj Devi as well as statement of the injured. Thus, learned ASJ erred in discharging the accused persons for the

offence punishable under Section 308/34 IPC.

3. At the outset it is necessary to mention that the date of occurrence in this case is 01.07.1996. The FIR in this case has been recorded on 28.09.1998 i.e. after the period of more than 2 years. On filing of the chargesheet and after compliance of Section 207 Cr.P.C. the case was committed to the Court of Sessions but the learned ASJ in his order dated 03.02.2005 noted that the learned MM has not complied with Section 475 Cr.P.C. and Rule 36 (F) Central Reserve Police Force 1955.

4. Thereafter, learned MM complied with the requirements of Section 475 Cr.P.C. and Rule 36 (F) Central Reserve Police Force 1955 and committed the case to the Court of Sessions.

5. Learned ASJ after hearing the State and the accused persons on the point of charge, ordered discharge of the accused persons for the offence punishable under Section 308/34 IPC for the following reasons:

“As per facts pleaded by prosecution in instant case, the scuffle was going on between the accused persons when one of the accused suddenly moved the girl to his front to avoid the fist blow of his opponent. Thereafter the girl was thrown on the other accused who threw her back. The entire episode occurred on spur of moment and there was admittedly no premeditation to commit any such injury as is envisaged under Section 308 IPC on the injured. Neither the accused persons were armed with any weapon nor there is anything to show that they had acted with such intention or knowledge and under such circumstances, that if by their act they had caused her death, they would be guilty of culpable homicide not amounting to murder. The major injury sustained by the girl was only on her leg which appears to have got fractured when accused persons while fighting fell on her.

In view of these facts, I am satisfied that no offence under Section 308 IPC is attracted against both the accused persons. The other offences for which the accused persons have been sent for trial are exclusively triable by the Court of a

Magistrate. Hence, the file be placed before the learned ACMM, Dwarka Courts, Delhi for 06.08.09 with directions to either keep the same with him for trial or to assign it to the Court of any other Metropolitan Magistrate for trial as per law. Both the accused are also directed to appear before the Court of Ld. ACMM, Dwarka Courts on 06.08.09 at 10 AM.”

6. In the year 2010, the State impugned the order on charge on the ground that the case under Section 308/34 IPC was prima facie made out against both the accused persons. The revision petition had been pending for almost 6 years and has now come up for hearing.

7. During the pendency of this revision petition LCR was also attached, as a result of which trial could not proceed. Thus, as on date in respect of an incident that had taken place on 01.07.1996, even after two decades though the charge has been framed by learned MM on 10.08.2009, prosecution is yet to lead its evidence.

8. The question now to be considered by this Court is whether on the basis of material adduced by the prosecution the offence under Section 308/34 IPC is prima facie made out against the accused persons.

9. The reasons given by learned ASJ for discharging the accused persons for the offence under Section 308/34 IPC have already been noted above.

10. The MLC of the injured child reveals as under:

*“fracture in shaft femur right leg.
Shaft femur till radiologic callus formation and proper fracture alignment. The Pt was given 1½ hip spica after 3 wks of 90/90 traction.
BB rt. leg was treated by B/K pop cast for the first 3 wks. B/K cast was incorporated in spica in 3 wks.”*

11. **The history of the injured recorded on the MLC is of fall of one person on the child.** FIR has been registered after a period of 2 years on the basis of statement of mother of the injured child wherein she has stated

that on 01.07.1996 she has gone to the milk booth, CRPF alongwith her 5½ years daughter. Two persons namely Ct. Naveen Kumar and Ct. Abdul Samad were scuffling with each other and during scuffle, to avoid a fist blow Ct.Naveen Kumar lifted her daughter and put her in front of him. As a result of which her daughter received injuries.

12. It may be noted that on the basis of statement made by the mother of the injured, FIR was registered for the offence under Section 325/336/34 IPC. Perusal of the MLC shows that the child received grievous injuries i.e. fracture in shaft femur right leg.

13. The history of fall of a person on a girl given to the doctor after the occurrence, the nature of injury suffered by the injured child, it cannot be said that the act of the accused was with intention or knowledge to commit culpable homicide not amounting to murder so as to justify framing the charge under Section 308/34 IPC.

14. After taking into consideration the MLC as well as the statement of victim and her mother, I am of the considered view that the ingredients for framing of charge under Section 308/34 IPC against the respondents are not even prima facie made out.

15. Since, the impugned order passed by learned ASJ does not suffer any illegality, infirmity or irregularity, no interference is warranted by this Court in exercise of revisional jurisdiction.

16. CRL. Revision Petition 78/2010 is hereby dismissed.

17. Copy of the order be sent to the Trial Court alongwith LCR immediately through special messenger.

18. Both the accused persons are members of paramilitary forces and may be posted in distant area. Learned Trial Court is directed to conclude the trial within one year from the date of receiving the order and if necessary,

may grant exemption to the accused persons, if so prayed and if they do not dispute their identity, so that trial is concluded expeditiously and both the accused persons are also able to discharge their official duties at the place of their posting.

PRATIBHA RANI, J.

FEBRUARY 11, 2016
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