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

+ CRL.L.P. 500/2016 and Crl.M.A. No. 14595/2016

STATE (GNCT OF DELHI)

..... Petitioner

Through: Mr. Rajat Katyal, APP for the State.

versus

RAVI GUPTA

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

19.09.2016

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The State has preferred the present petition to seek leave to appeal against the impugned judgment dated 21.04.2016 passed by the learned ASJ(FTC) : E-Court, Shahdara District in SC No.32/2013 titled *State Vs. Ravi Gupta* arising out of FIR No.23/2012 registered at Police Station – Jagat Puri under Section 308/ 201IPC.

By the impugned judgment, the respondent was convicted under Section 325 IPC and not under Section 308 IPC. The respondent/ convict was ordered to be released on probation for a period of two years upon his furnishing a personal bond with surety bond in the sum of Rs.25,000/- with one surety. He was directed to maintain peace and good behaviour during the said period. He was also subjected to payment of compensation of

Rs.15,000/- to the victim.

The submission of Mr. Katyal is that one of the injuries inflicted on the victim was on the head by a danda. Consequently, it is argued that the convict should have been convicted under Section 308 IPC, as charged.

I find that in the impugned judgment, the said aspect has been duly considered by the Trial Court. The relevant extract from the judgment of the Trial Court in this regard, reads as follows:

“16. But the question is whether prosecution succeeds in proving its case against the accused under Section 308 IPC. Section 308 of IPC makes punishable an act which is capable of causing death by a person who knows that had he caused death by his act, he would have been guilty of committing culpable homicide, not amounting to murder. The question is whether the evidence led by the prosecution suggests that the accused did the above mentioned act with such intention or knowledge and under such circumstances that if by the act, death would have resulted, accused would be guilty of culpable homicide not amounting to murder?”

17. In this regard, reference can be made to following cases:

- 1) Sunder v. State : 2010 (1) JCC 700*
- 2) Ramesh v. State : 2010 (1) JCC 796*
- 3) Sunil Sharma v. State : 2013 (7) LRC 219 (Del)*

17.1 In the case of Sunder (supra), it was held that where the injuries caused are superficial in nature and there is no pre-planning or pre-meditation on the part of accused and the entire incident took place during the course of altercation and when one wooden lemon squasher was only used, there was no intention to cause culpable homicide. It was held that in order to prove an offence under Section 308 of IPC, it must be proved that injury was caused by the accused with such intention or knowledge and under such circumstances that if it had caused death, the act of accused would have amounted to culpable homicide not amounting to murder.

17.2 In the case of Ramesh (supra), it was held that the

intention or knowledge on the part of accused is to be deducted from the circumstances in which injuries are caused as also the nature of injuries and the portion of body selected for inflicting injuries. It was held that when assault was not pre-meditated and even though the injury was on head and was simple in nature, merely because the injury was on head it cannot be said that the injury was caused with intention to commit culpable homicide.

17.3 In the case of Sunil Sharma (supra), it was held that offence punishable under Section 308 IPC postulate doing of an act with such intention or knowledge and under such circumstances that if by the act, death would have resulted, accused would be guilty of culpable homicide not amounting to murder. In the facts of that case, it was held that during verbal spat, in a sudden burst of anger the accused inflicted a saria blow on the head of victim, but not very forcibly. It was held that intention of accused at best was to beat the victim and the conviction of accused was converted to one under Section 324 IPC from under Section 308 IPC. In that case, there was two inches long lacerated wound found on the scalp of the injured caused by blunt object which was simple in nature and no stitches were required to be put.

18. That takes us to not only the nature of injuries sustained by the injured, but also as to what instrument/ weapon was used in causing injuries. Perusal of the original complaint as well as testimony of Deepak reveals that accused came to the spot unarmed. There is no pre meditation for committing the crime by the accused. It is revealed from the fact that accused happened to come from opposite side when Deepak was returning to his office after installing cable connection. Accused had no knowledge that Deepak would be coming on that way after installing cable connection. Accused was not armed, when he encountered Deepak. Admittedly accused picked up a danda lying in the gali itself. Since the danda has not been recovered and its description has not come in evidence, we do not know what was the strength, breadth and length of that dana. The very fact that accused was unarmed and he gave leg and fist blows to the complainant reveals that

he did not intend to commit culpable homicide. It appears that danda lying nearby was picked up during commission of crime and further injuries were administered. The nature of injuries has been opined grievous because of some dental injury and no serious injury on the head of Deepak was inflicted. There was only abrasion on mid parietal region. There was swelling on the cheek and bleeding from mouth which appears to be consequence of dental injury, which could be from leg and fist blows. Had the dental injury been because of danda blow, consequent external injury would have been there on the face of Deepak, but no such external injury existed.

19. In the given facts and circumstances, neither the accused can be imputed with intention to commit culpable homicide, nor knowledge can be imputed that the injuries inflicted could have caused death of Deepak. Necessary ingredients of sec 308 IPC are not fulfilled, in the facts and circumstances of this case”.

From the above discussion, it is clear that the accused had no intention or knowledge in the circumstances that his act could result in death, i.e. culpable homicide not amounting to murder. There was no pre-planning or pre-meditation on the part of the convict and the entire incident took place during the course of altercation. The convict had no knowledge that the victim would be coming on the date of the incident after installing cable connection. The convict was not armed when he injured the victim. Admittedly, the convict picked up the danda lying in the gali itself. The said danda was not recovered and its description had not come in evidence. The nature of injuries has been opined grievous because of some dental injury and no serious injury was inflicted on the head of the victim. There was abrasion on his parietal region. There was a swelling on the cheek and bleeding from the mouth which appears to be consequence of dental injury which could have been caused from the leg and fist blows. The Trial Court

has opined that had the dental injury been caused by danda blow, consequent external injury would have been there on the face of the victim but no such external injury existed.

In view of the aforesaid, I am of the view that the Trial Court has given sufficient reasons for not convicting the convict under Section 308 IPC. I find no merit in this petition. Dismissed.

VIPIN SANGHI, J

SEPTEMBER 19, 2016

B.S. Rohella