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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 15.09.2022***Pronounced on: 20.09.2022***

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CRL.REV.P. 368/2018

THE STATE (NCT OF DELHI)

.... Petitioner

Through: Mr. Naresh Kumar Chahar,
APP for the State with SI
Amrish, P.S. Madhu Vihar

versus

VARUN DASS & ANR.

..... Respondents

Through: Mr. Tarun Gaur, Advocate
(Through VC)

CORAM:**HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J.**

1. The present Criminal Revision Petition filed under Section 397(1) of Code of Criminal Procedure, 1973 is directed against the impugned order dated 13.09.2017 passed by learned Additional Sessions Judge-03, Shahdara District, Karkardooma Courts, Delhi *vide* which both the respondents herein were discharged in case FIR bearing no. 1146/2014, under Section 308/34 of the Indian Penal Code, 1860, (hereinafter as 'IPC') registered at Police Station Madhu Vihar.

Factual Background of the case

2. Briefly, the facts of the present case are that on 07.10.2014 at about 09.00 pm, the complainant along with his friend was going to



Madhu Vihar. On the way when he had reached near Joshi Colony, accused/respondent no. 1 had called him on the pretext that he wanted to talk to him. When the complainant and respondent no. 1 were talking to each other, respondent no. 2 had hit on the head of the complainant from the back side with an iron rod while respondent no. 1 had caught hold of him. Respondent no. 2 had again hit him with an iron rod. Respondent no.1 hit him with a sharp edged weapon on the back and stomach. The complainant ran towards Hanuman Mandir near Samudai Bhawan where he fell unconscious. A complaint was lodged with the police resulting into FIR bearing no. 11460/2014.

3. Learned Additional Sessions Court while hearing arguments on charge, discharged both the accused persons for the offence punishable under Section 308/34 IPC and remanded the case to learned Metropolitan Magistrate, Shahdara, Delhi for trial for the offence punishable under Section 323/34 IPC. The operative portion of the impugned order dated 13.09.2017 reads as under:

“4. Considering the over all circumstances and further that the victim had suffered only simple injury i.e. one lacerated wound on his head and other injury was merely abrasion on abdomen measuring 7-8 cm, it cannot be said that accused persons herein in furtherance of their common intention had attempted to cause injury which might have been likely to cause death and the victim survived due to the factors beyond their control. Under these circumstances, I discharge both the accused persons of the offence u/s 303/34 IPC. In my view, the only offence u/s 323/34 IPC is attracted. Accordingly, file be sent to the Court of Sh. Pranjal Aneja, Id. Ilaaka MM, Shahdara for 18.09.2017 at 2.00 pm. Both accused persons shall appear there on that day.”



Submissions by the Learned Counsels

4. Learned APP for the State submits that learned ASJ has committed grave error in not appreciating the contents of the complaint as well as the MLC filed by the prosecution. Learned ASJ also did not appreciate that the injuries were caused on the head i.e. vital part of body of the complainant and therefore had committed an error in discharging the accused persons/respondents for the offence under Section 308/34 IPC.

5. Learned counsel for the respondents opposes the present revision petition on the ground that the complainant had filed the case due to previous animosity between the parties and that no such incident had ever taken place as alleged in the FIR. He, therefore, stated that the order passed by learned ASJ does not suffer from any illegality or infirmity.

6. This Court has heard the submissions of learned counsels and perused the record.

7. This Court deems it appropriate to reproduce Section 308 IPC, which 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. Illustration A, on grave and sudden provocation, fires a pistol at Z, under such circumstances



that if he thereby caused death he would be guilty of culpable homicide not amounting to murder. A has com-mitted the offence defined in this section.”

8. It is clear from the reading of the Section itself that to constitute an offence under Section 308 IPC, the following conditions should be fulfilled:

- (a) that a person does an act;
- (b) that the act is done with an intention or knowledge to commit culpable homicide not amounting to murder;
- (c) that the person concerned commits the offence under such circumstances that in case the act so done by that person causes death, he would be guilty of culpable homicide not amounting to murder
- (d) in case hurt is caused while committing this offence, the person concerned shall be awarded enhanced punishment.

9. Therefore, Section 308 IPC does not make it mandatory that for an offence to be covered under Section 308 IPC, hurt should have been caused by that person. Causing hurt is, therefore, not an essential condition to attract the provisions of Section 308 IPC.

10. The second part of Section 308 IPC further explains that in case hurt is caused to any person by an act falling within the purview of section 308 IPC, the accused shall be punished with imprisonment of either description for a term which may extend to 7 years or with fine or with both.

11. There is no confusion regarding the settled position of law and the definition of Section 308 IPC itself that causing hurt by the act



committed under Section 308 IPC and no hurt being caused are both covered under Section 308 IPC itself, attracting different punishments. What is crucial to note while deciding a case at the stage of charge under Section 308 IPC is that the act should have been caused with such intention or knowledge and under such circumstances that in case said act caused death, he would be guilty of culpable homicide not amounting to murder.

12. It was observed in ***Narinder Kaur Oberoi v. State 2015 SCC Online Del. 7864***. The observations read as under:

“6. Offence punishable under Section 308 IPC postulates doing of an act with such 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. An attempt of that nature may actually result in hurt or may not. What the court is to see whether the act irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in Section 308 IPC. It depends upon the facts and circumstances of each case whether the accused had the requisite intention or knowledge.....”

13. It was observed by Hon’ble Supreme Court in ***Roop Chand @ Lala vs. State (NCT) of Delhi*** (Criminal Appeal No. 2204 of 2010) as under:

“11. The distinction between attempt to commit culpable homicide not amounting to murder, and voluntarily causing hurt with a sharp-edged weapon, is subtle and nuanced. Under the former (Section 308), injuries must be such as are likely to cause death, but in the latter (Section 324) the injuries may or may not endanger one’s life.....”



14. In the present case, the very cryptic order of learned ASJ rests on four lines on the basis of which the opinion seems to have been formed to discharge the accused persons under Section 308/34 IPC. No reasons have been given in the order as to why learned ASJ has reached the conclusion that Section 308 IPC is not made out in the present case except for the fact that simple injuries had been suffered by the complainant on his head apart from some abrasions on his abdomen and back. The learned ASJ failed to take note of the fact that the nature of injury alone sustained by the victim at the time of commission of offence cannot be the sole criteria to discharge a person from the offence under Section 308 IPC. The most relevant criteria for framing charge under Section 308 IPC is that the commission of any act by an accused with intention or knowledge that under such circumstances death could have been caused. What was relevant at the stage of framing of charge in this case was that the victim had suffered injuries caused by an iron rod on his head which is vital part of the body and the injuries so caused with the iron rod twice could have caused his death, making them guilty of culpable homicide not amounting to murder.

15. Even causing of hurt is not relevant for this purpose. A similar view was taken by the Hon'ble Supreme Court in the case of ***Sunil Kumar vs. NCT of Delhi, 1998 8 SCC 557***, the relevant portion reads as under:

"4. The view taken by the High Court is obviously erroneous because offence punishable under Section 308 IPC postulates doing of an act with such 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. An attempt of that nature may actually result in hurt or may not. It is the attempt to commit culpable homicide which is punishable under Section 308 IPC whereas punishment for simple hurts can be meted out under Sections 323 and 324 and for grievous hurts under Sections 325 and 326 IPC....."

16. In the present case, the accused had hit the victim twice on head with iron rod. A person hitting a victim on his head with iron rod twice cannot be presumed not to have knowledge or intention that such hitting on the head of the victim with an iron rod could result into death of a person. The nature of injury being simple was thus not relevant at the stage of consideration of charge. In this case an iron rod was used to cause injuries on the vital part of body of victim, the severity of blows and conduct of accused and their behavior, motive etc will be clear only during trial and they could not have been discharged.

17. For the foregoing reasons, the present criminal revision petition is allowed and the impugned order passed by the learned ASJ directing discharge of accused persons for the offences punishable under Section 308/34 IPC is set aside.

18. The petition is disposed of.

19. Nothing expressed hereinabove shall have bearing on the merits of the case during trial.

SWARANA KANTA SHARMA, J

SEPTEMBER 20, 2022/kss