



\$~11

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Date of decision: 24th July, 2023*

+ **CRL.L.P. 698/2019 & CRL.M.A. 42535/2019**
STATE

..... Appellant

Through: Ms. Manjeet Arya, APP for State

V

RAHUL

..... Respondent

Through: None.

CORAM

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

J U D G M E N T (oral)

1. The present criminal leave to appeal is filed under section 378(3) Cr.P.C on behalf of the appellant/State to impugn the judgment dated 19.07.2019 and order on sentence dated 23.07.2019 passed by the Court of Dr. S. K. Gautam, Additional Sessions Judge-03, East, Karkardooma Courts, Delhi in Sessions Case bearing no. 1601/2018 arising out of FIR bearing no. 0049/2015 registered under sections 308/427 read with section 34 IPC at P.S. Mayur Vihar.

2. The perusal of FIR bearing no. 0049/2015 reflects that it was got registered on the basis of complaint made by Babu under sections 308/427/34 IPC at P.S. Mayur Vihar, Phase 1 wherein the respondent was implicated. After conclusion of the investigation, charge sheet



was filed under sections 308/427/34 IPC. The case was committed to the court of sessions after compliance of section 207 Cr.P.C by the court of concerned Metropolitan Magistrate. The Trial Court vide order dated 07.09.2018 framed the charges for the offences punishable under sections 427/34 IPC and 308/34 IPC against the respondent. The respondent pleaded not guilty and claimed trial. The prosecution to prove the guilt of the respondent, examined seven witnesses including Babu the complainant/victim as PW1; Babar, another eye witness as PW2 and Investigating Officers ASI Subhash as PW-6 and ASI Dinesh Tyagi as PW-7. The statement of the respondent was also recorded under section 313 Cr.P.C wherein the respondent denied all the incriminating evidence against him and pleaded innocence. The respondent preferred not to lead defence evidence.

3. The complainant/victim PW1 Babu supported the case of the prosecution and deposed that on 15.01.2015 he was going along with his son Babar PW2 from Block 15 to Block 30 in a car and at about 7:30/8:00 p.m. reached at the chowk of 23-24 Block Trilokpuri where the vehicle was being driven slowly due to metro work. Two boys came and gave signal to him to stop the car and then, one boy threw a stone on the glass of the driver's side as a result of which PW1 Babu received an injury on the right side of his temple/head and blood started to ooze out from his head. The respondent was apprehended at the spot and PW1 Babu was moved to LBS Hospital. The police went to the hospital and recorded the statement of Ex-PW1/A. The testimony of PW1 was supported by another eye witness PW2 Babar.



The respondent in his statement recorded before the Trial Court on 18.01.2019 under section 294 Cr.P.C admitted the MLC prepared in respect of PW1 Babu.

4. The Trial Court vide judgment dated 19.07.2019 had convicted the respondent for offences punishable under sections 427/34 IPC and 324/34 IPC, but acquitted him for the offence punishable under section 308 IPC. The respondent vide order on sentence dated 23.07.2019 was sentenced to imprisonment for the period already undergone with a fine of Rs.10,000/- and in default of payment of fine to undergo further simple imprisonment for a period of 2 months for the offences punishable under section 324 IPC. The respondent for the offences punishable under sections 427/34 IPC was sentenced to imprisonment for the period already undergone with fine of Rs.5000/- and in default of payment of fine to undergo simple imprisonment for a period of 1 month.

5. The Additional Public Prosecutor appearing on behalf of the State impugned the judgment dated 19.07.2019 and order on sentence dated 23.07.2019 on the grounds as stated in the petition. The Additional Public Prosecutor further argued that the respondent should have been convicted for the offences punishable under section 308.

6. The perusal of MLC pertaining to PW1 Babu, as admitted by the respondent during the course of trial reflects that PW1 Babu at the time of admission in the hospital was conscious and oriented. The MLC does not reflect the admission of PW1 Babu in the hospital.



PW1 Babu received injury which was CLW-4x0.5 cm and there was swelling over the right temporal region. The injury stated to be received by PW1 Babu was opined to be simple in nature.

7. The issue which needs judicial consideration is that whether from the evidence led by the prosecution it is proved that the PW1 Babu received such injury which was likely to cause his death not amounting to murder. The Additional Public Prosecutor argued that PW1 Babu received injury on his head as such the case falls within the ambit of section 308 IPC. It is reflected from the evidence that the PW1 Babu after incident was taken to LBS Hospital, Khichripur where he was medically examined by PW9 Dr. Abbas Ali with history of assault vide MLC Ex.PW2 and referred PW1 Babu after initial treatment to Surgery Department for further treatment and management. PW1 Babu on medical examination was found having injury of CLW-4x0.5 cm and there was swelling over the right temporal region. A laceration wound is a tear in tissue caused by a shearing or crushing force and is result of a blunt-trauma mechanism. Laceration is typically caused by hard objects. PW1 Babu was discharged from hospital without admission. The nature of injury received by the PW1 Babu was opined as simple.

8. In **Bishan Singh & another V State**, AIR 2008 SC 131 the surviving accused were tried and convicted for commission of offences under sections 147 and 308/149 IPC. As per the complainant, the accused allegedly assaulted him with *lathis* and took out a sum of



Rs.400/- from his pocket. The injuries suffered by the complainant as per the injury report are as under:-

- 1. Lacerated wound 3 cm x 1 cm on scalp at right parietal region, 14 cm above the right eye-brow. Scalp deep. Fresh bleeding present.**
- 2. Lacerated wound 5 cm x = cm x scalp deep on scalp, at right parietal area, 19 cm above the right eye-brow.**
- 3. Lacerated wound 3 cm x < cm x skin deep, 4 cm above the right eye-brow at right forehead, 6 cm x 7 cm swelling around the wound.**
- 4. Abrasion 1 cm x = cm, at upper lip, 3 cm from the right angle of the mouth. 4/1 Abrasion 1 cm x = cm at lower lip right angle of mouth.**
- 5. Contusion mark 10 cm x 5 cm above right shoulder reddish in colour. Swelling 2 cm around the wound.**
- 6. Contusion mark 6 cm x 6.5 cm on above and front and middle of left arm, 13 cm below the shoulder joint 1 cm swelling around the injury.**
- 7. Contusion 12 cm x 10 cm at fore-arm, 8 cm from the left wrist joint cm swelling around the injury.**
- 8. Complain of pain in both lower legs and thigh, but no injury seen.**

The injuries except one injury were simple. The injured deposed that his head was wounded and his shirt was full of blood. The Trial Judge relying on the basis of the testimony of the witness convicted the appellants for commission of an offence under Sections 147 and 308/149 IPC. It was observed that the offence punishable



under section 308 IPC provides for existence of an intention or knowledge. The High Court also dismissed the appeal and opined that it is established that the intention of the accused persons was to commit culpable homicide. They had enmity with the injured. Threats were also given to him by the accused to ruin his life. Injuries were also caused on scalp. The Supreme Court observed as under:-

Before an accused can be held to be guilty under Section 308 IPC, it was necessary to arrive at a finding that the ingredients thereof, namely, requisite intention or knowledge was existing. There cannot be any doubt whatsoever that such an intention or knowledge on the part of the accused to cause culpable homicide is required to be proved. Six persons allegedly accosted the injured. They had previous enmity. Although overt-act had been attributed against each of the accused who were having lahtis, only seven injuries had been caused and out of them only one of them was grievous, being a fracture on the arm, which was not the vital part of the body.

The accused, therefore, in our opinion, could not be said to have committed any offence under Section 308 IPC. The same would fall under Sections 323 and 325 thereof.

9. In Ramesh V State, 2010 (I) JCC 796 this Court altered the conviction from 308/34 to 323/34 by holding that assault was not premeditated and merely because an injury was found on the head, it cannot be said that such an injury was caused with the intention to commit culpable homicide. In **Sunder V State, 2010 (1) JCC 700** this Court altered the conviction of the appellant from Section 308 to 323 IPC by holding that in order to prove offence under Section 308 IPC, prosecution was required to prove that the injury was caused



with such intention or knowledge and under such circumstances that if it had caused death, the act of appellant would have amounted to culpable homicide not amounting to murder. In **Raju @ Rajpal and others V State of Delhi**, 2014 (3) JCC 1894 this Court altered the conviction from Section 308 to 323/34 by holding that the nature of injuries were simple and injuries were not caused with the avowed object or knowledge to cause death. In **Ashok Kumar and another V State of Delhi**, CrI. Appeal No. 17/2011 decided on 20.02.2015 this Court altered the conviction of Section 308 IPC to Section 323/34 IPC and held that injuries were opined by the doctor as simple caused by a blunt object. Nature of injuries is not such which will be sufficient to indicate that the appellants had any intention or knowledge that by this act they would have caused death of complainant. In **Pawan Chaddha V State**, Criminal Appeal 640/2011 decided on 27 January, 2016 by this Court, the appellant was convicted for offence under Section 308 and Section 323/34 IPC while co-accused were held guilty and convicted under Section 323/34 IPC. As per the MLC following injuries were observed on person of the complainant:-

- (i) CLW 8x2x.5 cms over central parieto occipital region.
- (ii) Swelling and tenderness right forearm and wrist.
- (iii) Abrasion 1x1 cm over right wrist.

One of issues arises for consideration is as to whether the act of appellant in causing injuries on the person of the victim, attracts ingredients of offence under Section 308 IPC. It was observed as under:-



In order to constitute an offence under Section 308 IPC it is to be proved that the said act was committed by the accused with the intention or knowledge to commit culpable homicide not amounting to murder and that the offence was committed under such circumstances that if the accused, by that act, had caused death, he would have been guilty of culpable homicide. The intention or knowledge on the part of the accused, is to be deduced from the circumstances in which the injuries had been caused as also the nature of injuries and the portion of the body where such injuries were suffered. In this case, no previous enmity or dispute between the appellants and the complainant could be proved. There was no premeditation. The quarrel had taken place on a trivial issue. The nature of injuries suffered by the complainant was opined to be simple caused by blunt object. Apparently, the injuries were not caused with the avowed object or knowledge to cause his death.

It was further observed that the Trial Court has convicted the appellant under Section 308 IPC on the ground that the appellant initially hit the complainant with a *saria* and again given a blow with a wooden leg of the cot on vital part of the body i.e. head. There was no premeditation. The entire incident took place on the spur of the moment. Injuries were opined to be simple. The ingredients of Section 308 IPC are not attracted and the case falls within the ambit and scope of section 323 IPC.

10. The complainant/victim PW1 Babu suffered simple injury as reflected from MLC Ex.PW2. The stone which allegedly caused injury was not a specifically designed weapon. PW1 Babu was conscious and oriented when he was taken to the hospital and was fit for statement. PW1 Babu was vdischarged from hospital without admission. There is



no evidence to prove that the attack on PW1 Babu by the respondent was premeditated. There is no evidence that the respondent was having requisite intention or knowledge to cause culpable homicide not amounting to murder. Mere fact that injury was inflicted on head which is a vital part of the body, does not necessarily mean that the respondent was having requisite knowledge and intention to cause the death of PW1 Babu. Although the respondent was convicted by the trial court for offence punishable under section 324 IPC, he should rather have been convicted for offence punishable under section 323 IPC.

11. In view of the above discussion, no ground is made out to grant the leave to appeal to impugn the judgment dated 19.07.2019 and order on sentence dated 23.07.2019. Hence, the application is dismissed and as a consequence of which the appeal is also dismissed.

(DR. SUDHIR KUMAR JAIN)
JUDGE

JULY 24, 2023

sk/ak