



\$~5

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

+ **CRL.REV.P. 212/2023**

Judgment reserved on: 21.03.2023

Judgment pronounced on: 27.09.2023

JAGAT NARAYAN

..... Petitioner

Through: Mr. R. Mohan, Mr. Rehan Khan, Mr.
Nishant Madan, Advs.

Versus

CENTRAL BUREAU OF INVESTIGATION

..... Respondent

Through: Mr. Mridul Jain, SPP with Ms. Ruby
Sharma, Ms. Vedika Rattan, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

1. This is a petition seeking setting aside of the order on charge dated 09.01.2023 and formal order on charge dated 13.01.2023 in Case No. 20/2022, CC No. 28/2022, RC No. 12(s)/2021/(0532021S0012), at P.S. CBI/SCB/Lucknow in FIR No. 391/2021, whereby charges u/s 302/323/325/201/218/149/34/120B IPC have been framed against the Revisionist.

2. The brief facts of the case are:-

- i. FIR No. 391/2021 dated 29.09.2021 was registered against SHO Jagat Narayan Singh (Revisionist herein), SI Akshaya Mishra, SI Vijay Mishra and three other police officials on the



complaint of Smt. Meenakshi Gupta (wife of deceased Manish Gupta).

- ii. On 27.09.2021, the deceased Manish Gupta, along with two other people checked-in room no. 512 of Hotel Krishna Palace, Gorakhpur. In the intervening night of 27/28/09.2021 at about 12:00 am, the Revisionist, along with other accused police officers, including SI Akshay Kumar Mishra, Constable Prashant Kumar, and Head Constable Kamlesh Singh Yadav, arrived at the Hotel. Upon inquiring with the Hotel Manager (Aadarsh Pandey), the accused persons were informed that room No. 512 was occupied by three individuals from different districts of UP and Haryana. This prompted them to check the room. They knocked on the door, which was then opened by Harbir. Upon entering the room, the Revisionist requested Harbir to provide his identity card and explain the purpose of his visit to Gorakhpur. Harbir presented his own ID and the ID of Pradeep Kumar, who was asleep at the time, and requested that the deceased, Manish Gupta, also shows his ID to them.
- iii. It is alleged that the Revisionist asked the occupants of the said room to go with them to the police station for further inquiry. In between, the deceased Manish Gupta called his friend Durgesh Vajpai for help.
- iv. It is further alleged that Harbir and Manish were abused and beaten by the accused persons i.e, the Revisionist, SI Akshay Kumar Mishra and Constable Prashant Kumar. When the deceased Manish Gupta protested from being taken out of the



room, the Revisionist allegedly pushed the forehead of the deceased against a wall, as a result of which he lost consciousness and fell on the floor- face first. Efforts were made to bring the deceased back to consciousness, but he did not move.

- v. Subsequently, with the help of the Hotel staff, the deceased was brought from his room to the ground floor and the Revisionist, along with other police officials took him to the hospital wherein he was declared dead.
- vi. After initial investigation of this case by SIT, Gorakhpur, the investigation was transferred to SIT Kanpur on 02.11.2021. The government of U.P. issued a notification on 22.10.2021 for transferring the investigation to CBI. Accordingly, on 02.11.2021, the CBI registered the present RC and filed chargesheet against the Revisionist for the offences u/s 302/323/325/201/218/149/34/120B IPC.
- vii. *Vide* order dated 09.01.2021, the learned Trial Court was pleased to order for framing of charges u/s 302/323/325/506/218/201 r/w 34/120-B/ 149 of IPC against the Revisionist Jagat Narayan Singh and *vide* order dated 13.01.2023, charges were framed against the Revisionist including section 302 IPC.

SUBMISSIONS ON BEHALF OF THE REVISIONIST

- 3. Mr. Mohan, learned counsel for the Revisionist submits that it is an admitted case of the prosecution that Sh. Vipin Tanda, the then S.S.P



Gorakhpur directed the Revisionist and other police officers of the district to visit and check hotels to prevent any illegal activity in view of prevailing law and order situation. Hotel Krishna Palace was falling within the jurisdiction of P.S Ramgarh Tal where the Revisionist was posted as the SHO.

4. Thereafter, the Revisionist directed his subordinate staff to accompany him to various hotels including Hotel Krishna Palace. He further submits that it is also an admitted case of the prosecution that when Mr. Aadarsh Pandey (receptionist of Hotel Krishna Palace) was asked to show the IDs of all the occupants of all rooms including Room No.512, it was found that two out of the three occupants were from the State of Haryana and the deceased Manish Gupta was from the State of U.P. Additionally, in the guest register, only the entry name of one of the occupants, namely Pradeep was found, and that too without a complete address. It is submitted that this was the primary reason as to why the Revisionist decided to carry out verification of Room No. 512, as there were clear instructions from the SSP to search various Hotels to identify anti-social elements. The Revisionist, being the SHO, was duty bound to obey the command of a superior officer.

5. It is further stated that it is an admitted case of the prosecution that-
- i. The door of the room was not forcibly opened because the police officials rang the door bell.
 - ii. Upon being asked the occupants of the room for their IDs, Harbir showed his ID, Pradeep did not wake up during the whole incident and Manish Gupta objected to showing the same.



iii. Manish Gupta called his relative namely Durgesh and told him that the police had come for checking and they were being taken to P.S. Ramgarh Tal.

6. Mr. Mohan submits that as per the record of CBI, this call continued for about 188 seconds and Durgesh is also a cited witness of the prosecution and he did not disclose that Manish Gupta was being manhandled by the police in any way at that time.

7. It is stated that admittedly, neither the Revisionist nor any of his subordinate staff used any weapon to inflict injury upon the deceased and even though Harbir is alleging the incident of beating, but his MLC does not reflect any injury on his person. Therefore, no preparation, conspiracy or motive can be attributed to the whole of the incident which resulted in the death of Manish Gupta.

8. It is further stated that the third person who was staying in that room, i.e. Pradeep, remained sleeping for unexplained reasons and despite there being all sorts of activities as alleged by the CBI, he did not notice anything and hence casts a serious doubt on the theory of the prosecution.

9. To support his arguments, Mr. Mohan has relied upon the following:-

A. Statement of witnesses

i. Statement of Aadarsh Pandey- The statements of Aadarsh Pandey was recorded on 01.10.2021, 05.10.2021, 29.11.2021 u/s 161Cr.P.C and statement dated 05.01.2022 u/s 164 Cr.P.C. It is stated that there is great variance in his statements with respect to the incident and it is only in the statement recorded by CBI on 29.11.2021 and statement dated 05.01.2022 u/s 164



Cr.P.C, that he disclosed about hitting the head of the deceased against the wall.

- ii. Statement of Harbir Singh- It is stated that the witness Harbir Singh is silent about witnessing any incident regarding the death of the deceased. In this manner, the only eye witness which remains with respect to the incident is Aadarsh Pandey.

B. No delay in providing medical assistance

- i. It is submitted that immediately after sustaining of the injuries by the deceased Manish Gupta, he was taken to the nearest Hospital for providing him medical assistance. It is further stated that the CDR shows that the call of the deceased Manish Gupta with Durgesh started at 00:15:19 Hrs and continued for 188 seconds which shows that this call would be completed only around 00:18 or 00:19 Hrs.
- ii. The record of the Hotel CCTV shows that immediately after sustaining the injuries, all the police officers carrying the deceased came out of the Hotel and were seen rushing towards the PCR at 00:23:36 Hrs. The CCTV of Mansi Hospital shows that the deceased was brought to the Hospital at 00:36:24 Hrs, wherein he was declared dead. Subsequently, at about 00:54:19 Hrs, the PCR along with the deceased Manish Gupta had left Mansi Hospital, and by that time, Manish Gupta was dead.
- iii. The record shows that the dead body of the deceased was brought to BRD Hospital at 2:14:48 Hrs, where he was again examined and declared dead.



- iv. It is further submitted that these timelines indicate that there was no delay in providing medical assistance to the deceased and the duration it took to bring the deceased to the Hospital was within normal limits, and as such, it cannot be inferred that the Revisionist had any *malafide* intention.

C. Medical record/opinion

- i. The body of the deceased was subjected to autopsy by the board of three doctors of BRD Hospital. As per the post-mortem report, the cause of death was opined as “*Coma due to ante-mortem injuries.*”
- ii. Four injuries were reported, out of which one injury was described as “*abraded contusion, swelling of size 5x4 cms over middle of forehead. On cutting skin, underneath hematoma present. On the opening of skull, brain membrane hematoma present.*” The other three injuries were on the forearm and on the lid.
- iii. Only one injury which was inflicted upon the deceased was on the vital part, i.e the head and the remaining injuries were on non-vital parts which as per the pattern of injury, can be caused while shifting the deceased from the Hotel to the Hospital.
- iv. From the post-mortem report, it is clear that the board of doctors did not observe that the injury on the head was sufficient to cause death in the ordinary course of nature. It also shows that there was no rupture of skin, laceration, fracture of any skull bone or hemorrhage in brain or in any vital organ of



the head which implies that there was no brutality or severity in sustaining these injuries by the deceased from any other person.

v. As per the statement of the sole eye-witness Aadarsh Pandey, the Revisionist hit the head of the deceased against the wall and thereafter the deceased fell on the ground face first. Injury on the forehead is singular. When a person is falling on the ground on his face, there is every likelihood of sustaining such injury because of this fall.

vi. The CBI did not obtain the opinion from the board of doctors of BRD Hospital which conducted the post-mortem. Instead, they obtained a subsequent opinion dated 10.02.2022 after filing of the chargesheet in which it is mentioned that the injuries were sufficient to cause death in the ordinary course of nature.

vii. It is stated that if the case of the prosecution is taken as a whole, there was only one injury on the vital part of the body of the deceased. On the basis of this single injury, the prosecution has filed the chargesheet u/s 302 IPC.

10. Learned counsel for the Revisionist argues that the moot question is whether all these acts taken as a whole, constitute an offence u/s 302 IPC, 304 IPC or 304A IPC.

11. Mr. Mohan relies upon the judgement of “*Virsa Singh v. State of Punjab*” [1958 SCR 1495], and more particularly para 10,11 and 23 wherein the Supreme Court opined that:-

“10. It was argued with much circumlocution that the facts set out above do not disclose an offence of murder because the prosecution



has not proved that there was an intention to inflict a bodily injury that was sufficient to cause death in the ordinary course of nature. Section 300 “thirdly” was quoted:

“If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death.”

It was said that the intention that the section requires must be related, not only to the bodily injury inflicted, but also to the clause, “and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death”.

11. This is a favourite argument in this kind of case but is fallacious. If there is an intention to inflict an injury that is sufficient to cause death in the ordinary course of nature, then the intention is to kill and in that event, the “thirdly” would be unnecessary because the act would fall under the first part of the section, namely—

“If the act by which the death is caused is done with the intention of causing death.”

In our opinion, the two clauses are disjunctive and separate. The first is subjective to the offender:

“If it is done with the intention of causing bodily injury to any person.”

It must, of course, first be found that bodily injury was caused and the nature of the injury must be established, that is to say, whether the injury is on the leg or the arm or the stomach, how deep it



penetrated, whether any vital organs were cut and so forth. These are purely objective facts and leave no room for inference or deduction : to that extent the enquiry is objective; but when it comes to the question of intention, that is subjective to the offender and it must be proved that he had an intention to cause the bodily injury that is found to be present.

23. The learned counsel for the appellant referred us to Emperor v. SardarkhanJaridkhan [(1917) ILR 41 Bom 27, 29] where Beaman, J., says that—

“where death is caused by a single blow, it is always much more difficult to be absolutely certain what degree of bodily injury the offender intended”.

With due respect to the learned Judge he has linked up the intent required with the seriousness of the injury, and that, as we have shown, is not what the section requires. The two matters are quite separate and distinct, though the evidence about them may sometimes overlap. The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present. If he can show that he did not, or if the totality of the circumstances justify such an inference, then, of course, the intent that the section requires is not proved. But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it. Whether he knew of its seriousness, or intended serious consequences, is neither here nor there. The



question, so far as the intention is concerned, is not whether he intended to kill, or to inflict an injury of a particular degree of seriousness, but whether he intended to inflict the injury in question; and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant an opposite conclusion. But whether the intention is there or not is one of fact and not one of law. Whether the wound is serious or otherwise, and if serious, how serious, is a totally separate and distinct question and has nothing to do with the question whether the prisoner intended to inflict the injury in question.”

12. He states that the inference which can be drawn from ***Virsa Singh*** (supra), is that there must be an intended injury, and not an accidental injury. If the injury is intended, then it is to be seen that whether it is sufficient to cause death in the ordinary course of nature or not. In the present case, there is a single injury. As per the statement of Aadarsh Singh, two possibilities can be drawn, i.e. i) the cause of death was by hitting the head of the deceased against a wall or ii) the cause of death was because the deceased fell on the ground- face first. He further submits that the injury is single and there is no case of the prosecution that this injury was solely because of hitting the head of the deceased against the wall and in these circumstances, it cannot be said that any of the ingredients of the offence u/s 302 IPC is made out.

13. He has also relied upon the judgement of Supreme Court titled “***Litta Singh v. State of Rajasthan***”[(2015) 15 SCC 327] and “***Shaikh Matin v.***



State of Maharashtra”[(2020) 20 SCC 402], where on the basis of a single blow and especially in the circumstances where the offender was having opportunity to effect more severe injury, but he did not do or evade that opportunity, the offence was always considered by the Supreme Court as not amounting to murder.

SUBMISSIONS OF THE RESPONDENT

14. Mr. Jain, learned SPP appearing for the CBI primarily submits that the present case is a challenge to framing of charge and it is a well settled principal of law that at this stage, a detailed examination of evidence is not required and only a *prima facie* view of the matter is to be seen.

15. He further submits that during the course of the arguments, two aspects have been very vehemently contended on behalf of the Revisionist, being:

A. Medical opinion

He states that the Revisionist has argued that there is no opinion of any doctor regarding sufficiency of the injury inflicted upon the deceased to cause death in the ordinary course of nature. In response, he states that the AIIMS Medical Board Expert Opinion report dated 10.02.2022, which is an opinion of panel of seven doctors opined that the injuries inflicted upon the deceased are sufficient to cause death in the ordinary course of nature. Moreover, the Revisionist has adequate opportunity to cross-examine these doctors at the stage of trial. At the stage of framing of charge, it is sufficient that there is an opinion of doctors



available which states that the injuries inflicted upon the deceased were sufficient to cause death in the ordinary course of nature.

B. Sanction for prosecution

As far as the argument of filing the chargesheet without sanction is concerned, Mr. Jain states that the acts of Revisionist and other accused persons (giving beatings to the deceased and after murder creating false record/evidence, obtaining false complaint from the witness Aadarsh Pandey under coercion causing disappearance of evidence) could never be the part of official duties and hence, CBI has not sought sanction for prosecution against any of the accused persons.

16. It is stated by the learned SPP that the investigation conducted by CBI reveals that the Revisionist along with other police officials were present at Hotel Krishna Palace, Gorakhpur and they conducted police raid/checking.

17. Police team headed by the Revisionist abused and beat up the deceased Manish Gupta and the Revisionist pushed the forehead of the deceased against the wall which caused fatal injury, which ultimately resulted in his death. Meanwhile, on instructions of the Revisionist, SI Vijay Yadav and SI Rahul Dubey entered into the Room No. 512 and forcefully took Harbir out of the room in order to facilitate the beatings of deceased Manish Gupta. After the entire incident, one Kamlesh Singh Yadav, HC had driven the vehicle which carried the police team along with the deceased, however, he did not make any complaint against the conduct of the team at any forum.

18. It is further stated that the Revisionist cleaned the blood inside Room No. 512 and also ordered a staff member to clean the blood outside the room,



in order to wipe out evidence. Further, all the accused police personnel had pressurized Aadarsh Pandey to give a false video on the same false facts regarding the death of Manish Gupta, which the Revisionist got entered in the GD of PS Ramgarh Tal.

19. Mr. Jain submits that oral and documentary evidence has been established to show that both Harbir and the deceased were brutally beaten in the room and the death of Manish Gupta was caused by hitting his head against the wall with intention of causing bodily injuries to him, and these injuries were sufficient to cause death in the ordinary course of nature.

20. He further submits that all the witnesses cited by CBI with the chargesheet are proving the prosecution's case as a whole. Additionally, the contention of the Revisionist that he took action on instructions of the senior officer cannot be accepted since no such direction to commit an offence was given by the senior officer. Even if for the sake of arguments, this contention of the Revisionist is believed that the Revisionist along with other police officials visited Hotel Krishna Palace on directions of the senior officer, but their legal purpose, if any, ended when the hotel occupants showed their IDs which was also available with the Revisionist with the Guest Record Card. He states that their illegal purpose began when they started giving beatings to Harbir and Manish Gupta, and this was the occasion when their common intention to kill the deceased was formed.

21. It is submitted by Mr. Jain that the Revisionist has been charge sheeted on the basis of concrete evidence and as far as framing of charge u/s 302 IPC against the Revisionist is concerned, the learned Trial Court has rightly appreciated the facts and circumstances mentioned in the chargesheet



filed by the CBI, as the acts of the Revisionist come under the definition of ‘murder’.

ANALYSIS

22. I have heard learned counsel for the parties.

23. At the outset, it will be relevant to note that it is a settled law that the Revision Court against an order of framing of charge is not required to go into the details of the case or hold a mini trial. In “**Ghulam Hassan Beigh v. Mohd. Maqbool Magrey**” [(2022) 12 SCC 657], the Supreme Court opined that-

“23. In Sajjan Kumar v. CBI [Sajjan Kumar v. CBI, (2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371] , this Court had an occasion to consider the scope of Sections 227 and 228CrPC. The principles which emerged therefrom have been taken note of in para 21 as under : (SCC pp. 376-77)

“21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly



explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as



gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.”

24. The Court, at the time of framing of charge, is not to scrutinize each and every material with a magnifying glass or conduct a mini trial, but it is only required to sift and weigh the evidence and take a *prima facie* view on framing of charge by looking into the materials placed before it.

25. Statement of Witness

It is argued by the Revisionist that there is great variance in the statement of the sole witness, i.e Aadarsh Pandey and it is only in the statements dated 29.11.2021 and statement dated 05.01.2022 u/s 164 Cr.P.C, that he disclosed about hitting the head of the deceased against the wall. The statement dated 05.01.2022 reads as under:

“Q. Whether you have seen that the police has given the beating to Manish ?

Ans. Yes, I have seen that they have given legs and fist blow.

Q. Why the police has given the beating to Manish ?

Ans. When police reached in the room, then Harvir has opened the door and police entered the room, and made inquiry and demanded ID Manish and Pradeep has been awaken and their ID



has been sought, when they started checking their bags it has been stated by Manish, that you could not harass in the manner in a night and you are behaving in such a manner as we are terrorist. Harbir has also argued the same, the bag of Harbir has been checked, Inspector has called the police from the downstairs and Harbir has been sent with them. Then they asked to Manish to take out the money, then Manish has question that what is money and for which, then SHO has stated that you are dealing in property and stated while abusing that there is no money and the police started beating Manish. Inspector JN Singh gave a leg blow to him, due to which Manish fell down on the ground by his face and blood was coming from his mouth, thereafter he could not stand up from the ground.”

26. The statement dated 29.11.2021 reads as under:-

“...When they have tried to take Manish, who has objected for the same, then SHO gave beatings and struck his head against the wall, during this period Manish fell down by his face and became unconscious. He fell down between main gate and bathroom. SHO JN Singh has tried to lift him and stated that he is making drama. Manish was unconscious at that time and there was no activity in his body, when his face has been lifted there was injury mark over the same and blood was coming from his nose.”

27. The abovesaid statements of Aadarsh Pandey are clear. He has categorically stated that it was the Revisionist who beat up Manish, due to which he fell on the ground.



28. As regards the statement dated 01.10.2021 is concerned, the only inconsistency is regarding whether the Revisionist gave leg blows or slaps to the deceased, due to which he fell on the ground. This variation is not germane to the issue in the controversy since it is of a minor character and does not call into question the veracity of the prosecution's story. The stand of Aadarsh Pandey with regard to the incident of beating is consistent and clear. It is a settled law that at the stage of framing charges, the Courts must not attach undue importance to minor discrepancies and the discrepancies which do not shake the basic version of the prosecution case may be discarded.

29. There is enough material on record from which the Court has formed the opinion that the Revisionist along with other accused persons might have committed the offence u/s 302 IPC. It is only at the stage of conviction that the prosecution is required to prove beyond reasonable doubt that the accused persons have committed the offence and not at the stage of framing charge.

30. Hence, the contention that there is variation in the statements of Aadarsh Pandey and he is a sole witness, cannot be accepted. At this stage, the statements of Adarsh Pandey are sufficient frame the charges against the Revisionist.

31. **Medical Assistance**

The mere act of rendering medical assistance to the deceased by carrying him to the hospital, is of no relevance at the time of framing of charge. This Court, for the time being, is only considering the order on framing of charge and is not convicting or acquitting the Revisionist after a detailed trial. The



argument that the Revisionist took the deceased to the Hospital, provided timely medical aid are facts which will be considered only after evidence is led. In the present case, the opinion of doctors along with the statements of Aadarsh Pandey, is enough material on record for the Court to frame charges for the offences as alleged.

32. **Medical Record**

Mr. Mohan has argued that the only injury which was grievous was on the head of the deceased and the remaining injuries were on non-vital parts. The Supreme Court in “*Mahesh Balmiki v. State of M.P*” [(2000) 1 SCC 319] observed that:-

“9. Adverting to the contention of a single blow, it may be pointed out that there is no principle that in all cases of a single blow Section 302 IPC is not attracted. A single blow may, in some cases, entail conviction under Section 302 IPC, in some cases under Section 304 IPC and in some other cases under Section 326 IPC. The question with regard to the nature of offence has to be determined on the facts and in the circumstances of each case. The nature of the injury, whether it is on the vital or non-vital part of the body, the weapon used, the circumstances in which the injury is caused and the manner in which the injury is inflicted are all relevant factors which may go to determine the required intention or knowledge of the offender and the offence committed by him.”

33. It is extremely plausible for a person to die due to a single blow. Nowhere is it stated that the offence u/s 302 IPC must constitute the infliction of multiple blows or extensive bodily harm upon an individual. In



the present case, the injury which was inflicted was on the head of the deceased, which is a sensitive and vital part of the body. Consequently, any forceful impact or injury to the head may culminate in the death of an individual. The fact whether the blow was sufficient to cause death in the ordinary course of nature and whether the Revisionist was aware of the same can be determined only after trial is led and at this stage, this argument cannot be a ground for not framing charge u/s 302 IPC. There is a medical opinion of doctors on record by a panel of seven doctors of repute which seems to suggest that the nature of injury in the present case, was sufficient to cause death in the ordinary course of nature. Hence, there is no infirmity in order framing charge against the Revisionist u/s 302 IPC.

34. **Medical Opinion**

The Revisionist has relied upon the post-mortem report which states that death was caused due to “*Coma due to ante-mortem injuries*”. On the other hand, the AIIMS Medical Board Expert Opined has opined “*abraded contusion, swelling of size 5x4 cms over middle of forehead. On cutting skin, underneath hematoma present. On the opening of skull, brain membrane hematoma present.*” There is nothing on record in the post-mortem report which states that the injury inflicted upon the deceased was “not” sufficient to cause death in the ordinary course of nature. Regardless, the Revisionist will have an opportunity to cross-examine the doctors on their opinions.

35. Section 300 IPC defines the offence of Murder. It reads as under:-

“300. Murder- *Except in the cases hereinafter excepted, culpable*



homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

2ndly.—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

3rdly.—If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

4thly.—If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

....”

36. The reliance of the Revisionist on paras 10,11 and 23 of ***Virsa Singh***(supra) is misplaced. These paras clearly show that whether or not the accused intended to inflict a serious injury or whether the injury was sufficient to cause death in the ordinary course of nature, are only questions of fact. I am of the view that these questions of fact can only be adjudicated upon once the parties have led evidence.

37. The Supreme Court in this landmark judgement has clearly laid down when an act amounts to murder. It was opined that:-

“14. To put it shortly, the prosecution must prove the following facts before it can bring a case under Section 300 “thirdly”.



15. First, it must establish, quite objectively, that a bodily injury is present

16. Secondly, the nature of the injury must be proved; These are purely objective investigations.

17. Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

18. Once these three elements are proved to be present, the enquiry proceeds further and.

19. Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

20. Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout) the offence is murder under Section 300 “thirdly”. It does not matter that there was no intention to cause death. It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two). It does not even matter that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary



course of nature to cause death. No one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. If they inflict injuries of that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduced, that the injury was accidental or otherwise unintentional.”

38. I am of the view that the present case fulfils the abovementioned criteria:-

- i. The bodily injury was present;
- ii. The injury was not unintentional or accidental, since the Revisionist consciously inflicted injury upon the deceased by beating him up;
- iii. The nature of injury was grievous since it was on a vital part of the body, i.e the head and the same is sufficient to cause death in the ordinary course of nature.

39. In addition, the judgement of ***Virsa Singh*** (supra) was after complete trial and not at the stage of framing of charge.

40. Even if it is presumed for the sake of arguments that the Revisionist had no intention to cause the death of the deceased, the Supreme Court in ***“State of A.P. v. Rayavarapu Punnayya”*** [(1976) 4 SCC 382] held that:-

“19. Thus according to the rule laid down in Virsa Singh case of even if the intention of accused was limited to the infliction of a bodily injury sufficient to cause death in the ordinary course of nature, and did not extend to the intention of causing death, the offence would be “murder”. Illustration (c) appended to Section 300 clearly brings out this point.”



41. In the present case, the ingredients of section 300 IPC *prima facie* seem to be satisfied.

42. As regards the contention that the Revisionist was merely fulfilling his duty of inspecting the hotels pursuant to instructions from his superior, does not inspire my confidence. The duty of the Revisionist ceased upon the deceased presenting his Identity Card. The same is confirmed by the statement of Aadarsh Pandey dated 05.01.2022, which reads as under:-

“Q. Whether Pradeep and Manish have shown their ID themselves.

Ans. Yes. Manish has showed his ID himself, Pradeep was not awake at that time.”

43. The argument of there being no sanction is also misplaced. The acts of the Revisionist and other accused persons are beyond their official duties and hence, no sanction is required for prosecution.

CONCLUSION

44. I am of the view that the learned Special Judge has correctly appreciated the facts in issue and the law on the subject and has also rightly sifted and weighed the material placed before him.

45. Keeping in view the totality of the circumstances for the limited purposes of charge, I find no reason to interfere with the order on charge dated 09.01.2023 and formal order on charge dated 13.01.2023 in Case No. 20/2022, CC No. 28/2022, RC No. 12(s)/2021/(0532021S0012), at P.S. CBI/SCB/Lucknow in FIR No. 391/2021.

46. The petition is dismissed.

47. Written submissions on behalf of the Revisionist are taken on record.



48. The observations made herein are only for the purpose of deciding the present Revision Petition and shall have no bearing on the merits of the case.

JASMEET SINGH, J

SEPTEMBER 27, 2023 /(MS)/st

Click here to check corrigendum, if any