

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

% Reserved on : 27th February, 2023

Pronounced on: 14th March, 2023

+ CRL.REV.P. 159/2021 & CRL.M.A. 5194/2021

SANJEEV KUMAR AND ANR

..... Petitioners

Through: Mr. Vinay Kumar, Advocate

versus

STATE

..... Respondent

Through: Ms. Richa Dhawan, APP for the State
with SI Nishant PS: Swaroop Nagar.

Mr. Rahul Sharma, Ms. Jyoti Dutt
Sharma, Mr. C.K. Bhatt, Mr. Sparsh
Chaudhary and Mr. Ayush Bhatt,
Advocates for R-2&3.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

1. By this petition, the petitioner seeks setting aside of order dated 7th October, 2020 passed by the Ld. ASJ, Tis Hazari Courts wherein order on charge was passed under Sections 323/341/34 IPC in proceedings arising out of FIR No.42/2012 PS Swaroop Nagar and consequently uphold the framing of charge under Sections 323/341/34 as well as Section 308 IPC by Ld. MM. As per the case of the prosecution, the case was registered on the complaint of the petitioner against the accused persons viz. Kaptan Singh and his son Vivek Singh. The complainant/petitioner alleged that he is residing on the ground floor of House No.3/61, Swaroop Nagar, Delhi and on 30th March, 2012 at about

10:30 am he was present in his room and heard some noise. The complainant alleged that he went upstairs and saw that the accused persons were beating his elder brother Pawan Kumar. Accused Vivek Singh had caught hold of his brother with his hair and hit his head against the grill till he sustained injuries on the head. Accused Kaptan Singh was exhorting Vivek Singh to throw the petitioner's brother out of the grill. The petitioner's niece made a call at 100 Number, the police reached the spot and injured persons Sanjeev Kumar, the petitioner and Pawan Kumar were medically examined *vide* MLC Nos.1771/19 and 1769/19, respectively. During the medical examination of Pawan Kumar, the doctor opined that they were two lacerated wounds parallel to each other on the scalp of frontal bone measuring 4 cm x 0.5 cm and the nature of the injuries was opined as simple and the weapon used as blunt. The statements were recorded and after completion of investigation, a charge-sheet was filed under Sections 323/341/34 IPC. During the arguments on charge, the Ld. Trial Court (Ld. MM, Tis Hazari Courts) invoked Section 308 IPC as well and the case was committed to Ld. Sessions Court. The accused Kaptan Singh filed a Revision Petition (Cr.) No.671/2019 before the Ld. Sessions Court which held that offence under Section 308 IPC was not made out and revoked it from the proceedings. The petitioners have assailed this order of the Ld. ASJ revoking the addition of charge under Section 308 IPC.

2. As per the learned counsel for the petitioner, the accused had attempted to hurt the victims, the petitioner and his brother, in order to cause harm to their life and that the order of committal dated 12th September, 2019 was passed after perusal of materials on record and prolonged judicial deliberation. As per the petitioners, it was evident

that the intention of the accused was severe harm to the victims. The petitioners had also insisted on showing the video footage of the injuries which were caused to the victim Pawan Kumar and to canvass the point of view that this would attract Section 308 IPC and that the Ld. MM had appropriately and correctly added that charge and committed the case to the Sessions Court. Reliance was placed on judgments of the Hon'ble Supreme Court in *Sadakat Kotwar v. State of Jharkhand*, 2021 SCC OnLine SC 1046 at para 4; *Nallapareddy Sridhar Reddy v. State of A.P.*, (2020) 12 SCC 467 (para 21 to 24) and *Sanjay Gandhi v. Union of India*, (1978) 2 SCC 39 of the High Court of Allahabad in *Vijay Mishra v. State of U.P.*, CrI.Rev. No.584/2022 of the (para 6, 13, 14, 17 and 20). It was contended that the video had been authenticated by the FSL and would show that there was blood oozing out from the head of the victim Pawan Kumar which was a vital part of the body. It was further contended that even if charges were framed under Section 308 imposing graver punishment the Court has always the liberty to convict the accused on a lenient provision.

3. The learned counsel for the respondent Nos. 2 and 3 refuting the submissions of the petitioner stated that it has been almost 10 years since the incident where cross-complaints and FIRs were registered. Petitioners are cousin brothers of respondent No.3 and nephews of respondent No.2. The petitioners were accused in FIR No.43/2012 which was registered on behalf of Ms. Seema Singh, the wife of respondent No. 3. It was contended that the FIR was not registered under Section 308 IPC even after two sets of fresh investigations when a supplementary charge-sheet was also filed on 23rd August, 2014 and a second supplementary charge-sheet filed on 19th September, 2016. The

petitioners had already submitted fresh statements and the alleged video clip which was taken on record and was well within the knowledge of the Ld. MM. The petitioner never challenged the charge-sheet for non-incorporation of Section 308 IPC. It was submitted that the Ld. MM concluded that Section 452 IPC was not attracted against the respondents, which has not been challenged but on the other hand invoked Section 308 IPC. The case of the petitioners rests upon the exhortation to throw Pawan Kumar out of the said grill, which is not evident from the video footage and it would be inconceivable to throw a huge person from the said grill which were closed as also no attempt was made of this sort. Further, the MLC of Pawan Kumar mentions that he was fit for statement and that his blood pressure was 126/80 and normal and pulse rate was 96. The CT Scan of brain of Pawan Kumar was done on 30th March, 2012 when everything was reported as normal. Further, there were serious contradictions in the statements of the family members and other witnesses and the Ld. ASJ has perused all the material on record including the statements, the investigation, the MLC, as also the video footage. The respondents were not armed with any weapon or object as it was clearly not premeditated, and an altercation between the families for which cross-FIRs were registered.

4. This Court has appreciated the contentions of the parties as also perused the impugned order as well as the video footage. *Prima facie* from a perusal of the video footage, it is evident that there was an altercation which must have led to a scuffle, since the video showed images of a post-incident situation where the clothes of the victim were torn and there was blood on the face. The video further shows a close-up of the bloodied face which would have been caused by thrashing the

head against the grill as also evident from the report in the MLC of lacerated wounds parallel to each other. The video footage in itself does not substantiate the contention of the petitioners that there was an exhortation to throw the victim out from the grill or that there was any actual attempt made to do so. Even the narrative in the FIR No.42/2012 would show that the complaint was of the exhortation by Kaptan Singh and there was no follow-up action pursuant to the exhortation. The narrative in cross-FIR No.43/2012 filed on the complaint of Seema Singh gives another version of the story whereupon Pawan and Sanjeev had beaten up her father-in-law and her husband and had attacked them with a sharp object and that Pawan was exhorting that they would finish them off. A perusal of the MLC would also show that the nature of weapon used was blunt and the injury was opined as simple. Further, a perusal of the impugned order would show that the Ld. ASJ had examined these aspects in a fair amount of detail. The Ld. ASJ assessed the scope of Section 308 IPC and noted that there has to be intention or knowledge to commit culpable homicide not amounting to murder which has to be ascertained from the facts. The Ld. ASJ viewed that the injuries were not such which would result in the death of the injured person and did not require any extended hospitalisation. The Ld. ASJ relied on the decision of this Court in *Brahm Dutt v. State*, 1996 JCC 183; *Sunder v. State*, 2010 SCC OnLine Del 532; of the Punjab & Haryana High Court in *Jangir Singh v. State of Punjab*, 1987 SCC OnLine P&H 59 and of the Hon'ble Supreme Court in *State of M.P. v. Kanha*, (2019) 3 SCC 605. Based on the record where the head of Pawan Kumar was hit against the iron grill only once and not repeatedly, and based upon the opinion of the doctor that there was no weapon which was being carried by the accused, as also the fact that the

complainant neither in their protest petition nor in the complaint case claimed that Section 308 IPC was attracted and ought to be invoked, held that offence punishable under Section 308 IPC cannot be added to the charge and, therefore, remanded it back to the Ld. MM to try the matter under Section 323/341/34 IPC.

5. It is now well established that Section 216 Cr.P.C. provides wide-ranging powers to the Trial Court for altering or adding charges at any stage before the pronouncement of the judgement provided *prima facie* examination of the material brought on record has a direct link with the ingredients of the alleged offence. In **Nallapareddy Sridhar Reddy** (*supra*) the Hon'ble Supreme Court held, "*The test to be adopted by the court while deciding upon an addition or alteration of a charge is that the material brought on record needs to have a direct link or nexus with the ingredients of the alleged offence. Addition of a charge merely commences the trial for the additional charges, whereupon, based on the evidence, it is to be determined whether the accused may be convicted for the additional charges.*" The Apex Court relied on its judgement delivered in **Onkar Nath Mishra v. State (NCT of Delhi)**, (2008) 2 SCC 561 where it was observed that:

"11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material

which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence.

(emphasis added)

6. Coming to Section 308 IPC, this Court in ***Shiv Singh v. State***, 1983 SCC OnLine Del 163 which was followed in ***Brahm Dutt's*** case (*supra*) held that in order to constitute an offence under Section 308 “*it must be proved (1) that the accused committed an act, (2) that the said act was committed with the intention or knowledge to commit culpable homicide not amounting to murder and (3) the act was committed under such circumstances if the accused by that act had caused death he would have been guilty of culpable homicide.*” It was further ruled that intention is a question of fact which is gathered from the acts committed by the accused and knowledge means awareness of the consequences of the act. This has also been followed by this Court in ***Ved Kumari v. State***, 2002 SCC OnLine Del 168 in setting aside summons issued under Section 308 IPC.

7. In the considered opinion of this Court, there is no infirmity, impropriety or illegality in the finding of the Ld. ASJ. The Ld. MM had in a summary manner while adverting to the same facts reached a conclusion that Section 308 IPC would also be attracted, while the Ld. ASJ also fully examined the video footage as well as the contentions of the parties and the records of the case in detail. In the facts and circumstances where there were cross-FIRs, it was a dispute between family members where it seems that an altercation arose that was not premeditated and that the injury was opined as simple hurt caused by a

blunt object, then simply and merely on the basis of the exhortation of throwing outside the grill which is alleged by the petitioner, charge under Section 308 IPC will not be sustainable. This is also evident from the fact that the original FIRs did not include Section 308 IPC and even pursuant to two subsequent supplementary charge-sheets, this charge had not been invoked. It was only the Ld. MM who based on an argument by the Ld. APP for the State had included this charge, which as stated earlier, is not substantiated by the evidence on record.

8. The petition is, therefore, dismissed and the impugned order of the Ld. ASJ is accordingly upheld.

9. Judgment/order be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

MARCH 14, 2023/mk