

\$~

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

%

Reserved on: 06.01.2023

Pronounced on: 02.02.2023

+ **CRL.REV.P. 831/2022**

BHUWAN YADAV @ BHANU

...Petitioner

Through: Mr. G.S. Sharma, Mr. V.K. Sharma, Mr. R.A. Sharma and Mr. Afsrun, Advocates

versus

STATE GNCT OF DELHI

...Respondent

Through: Mr. Naresh Kumar Chahar, APP for State with SI Kiranpal Singh, P.S. Sarai Rohilla, Delhi.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The present revision petition under Section 397 read with Section 482 of the Code of Criminal Procedure, 1973 ("Cr.P.C.") has been filed by the petitioner for setting aside the impugned order dated 13.10.2022 passed by learned Additional Sessions Judge-II, Central District, Tis Hazari Courts, New Delhi in FIR bearing no. 190/2022, registered at Police Station Sarai Rohilla, Delhi, for the offences punishable under Sections 394/34 of the Indian Penal Code, 1860 ("IPC"), whereby charges have been framed against petitioner and other accused persons under Sections 394/302/411/34 IPC.

2. The brief facts of the case are that on 28.02.2022, the complainant, i.e., Daya Ram, was driving his battery rickshaw in which a lady passenger namely Smt. Poonam i.e. the victim/deceased, was sitting and talking on her phone. As soon as the complainant reached Main Gate 56, Bigah Park, two bike riders wearing helmets passed by, and one of the riders i.e. petitioner herein snatched the phone of the victim who was sitting in a battery rickshaw. In the process of grabbing the phone, the victim fell on the road and sustained injuries. Meanwhile, one person arrived at the spot, and with his assistance, the complainant was able to get the victim admitted to Deep Chand Bandhu Hospital. On 07.03.2022, secret information was received that the co-accused Sonu@Ravi@Takla would be present at a premises in Ibrahim Pur, Delhi, and the SHO concerned after forming a raiding team, apprehended and arrested Sonu@Ravi@Takla. The co-accused on interrogation confessed that on 28.02.2022, when the deceased lady was going in an e-rickshaw on Inderlok to Wazirpur route, he and co-accused, i.e. Kamal@Kunal had snatched her mobile phone, and she had fallen on the road. They had taken the phone, which had certain documents of the victim inside the cover of the phone. After that, co-accused Sonu@Ravi@Takla led the police team to a vacant house where the police recovered one voter ID card and national food security card, which were of the victim. Thereafter, on 12.03.2022, the petitioner i.e. Bhuwan Yadav@Bhanu and co-accused Rajan were taken to the police station wherein the petitioner produced a Redmi Mobile Phone, which matched the description of the robbed phone. Both the petitioner and co-accused Rajan, were arrested by the police. Subsequently, due to

critical condition, the victim was further referred to LNJP Hospital, and on 12.03.2022, she succumbed to her injuries.

3. The police, after investigation, submitted the charge sheet under Sections 394/302/411/34 IPC, whereupon cognizance was taken against the petitioner, and the case was committed to the Court of Sessions for trial. The learned Trial Court vide order dated 13.10.2022 framed the charges against the accused persons, including the petitioner, the relevant portion of which is as under:

“4. On examination of the charge sheet, particularly, statement of the complainant, namely, Daya Ram and MLC as well as post-mortem report of the deceased, namely, Smt. Poonam and attendant facts and circumstances of the case, there is primo facie material that on 28.02.2022 at about 05.20 p.m., the accused, namely, Bhuwan Yadav @ Bhanu and Rajan robbed mobile phone of the deceased, namely, Smt. Poonam and when she resisted, the accused, namely, Bhuwan Yadav @ Bhanu pulled her while she was traveling in an e-rickshaw and consequently, she fell on hard surface of the road and suffered cerebral damage which proved fatal and she expired, during treatment, on 11.03.2022 at 05.58 p.m. in Lok Nayak Hospital, Delhi. The act committed by the accused persons was imminently dangerous. If a person is pulling other person in order to rob mobile phone while the said person is moving in a vehicle on city road having hard surface, requisite knowledge can be imputed to him.

6. As regards sharing of common intention, there is sufficient material that the accused, namely, Rajan was driving the motor-cycle and the accused, namely, Bhuwan Yadav @ Bhanu robbed and pulled the deceased and thereafter, they escaped from the place of incident.

8. Accordingly, charges under Section 302/34 and 394/34 IPC are framed against the accused, namely, Bhuwan Yadav @ Bhanu and Rajan to which they have pleaded not guilty and claimed trial. Charges under Section 411 IPC are framed against the accused persons, namely, Bhuwan Yadav @ Bhanu, Sonu @ Ravi @ Takla and Mohd. Rashid to which they have pleaded not guilty and claimed trial.”

4. In the aforementioned circumstances, the petitioner, being aggrieved by the decision of the learned Trial Court to frame charges against him under Sections 411/394/34 and, in the alternative, under Sections 302 IPC, has challenged the legality and validity of the impugned order.

5. Learned counsel for the petitioner states that the learned Trial Court has committed an error in framing the charges without appreciating the fact that there are no allegations or any material on record to make out a prima facie case against the petitioners that satisfies the ingredients of the offences under Section 302 IPC. It is further stated by learned counsel for the petitioner that the learned Trial Court has failed to appreciate that the petitioner herein is accused of snatching the phone, having no intention to cause death of the victim. However, the petitioner falls within the ambit of offence punishable under section 304 IPC. Furthermore, no material on record has been put forth by the prosecution which satisfies the ingredients of Section 302 IPC. Therefore, as argued, the impugned order dated 13.10.2022 is liable to be set aside.

6. *Per contra*, learned APP for the State opposes the present petition and states that as per facts of the case, it is pertinent to note that

the petitioner had snatched a mobile phone from the victim on a moving e-rickshaw and thus while committing the offence, he had clear knowledge of his acts that the same can result into death of the victim. Learned APP for the State vehemently contended that there is prima facie material for framing charges against the petitioner under Section 302/34 IPC and 394/34 IPC.

7. The rival contentions raised on behalf of both the parties have been heard and material placed on record has been perused.

8. The issue at hand is whether there exist any circumstances with this court to interfere with the impugned order framing charge, on account of there being no intention to cause death for which the accused person/petitioner has been charged under Section 302 IPC.

9. The statutory law with respect to framing of charge and discharge is provided under Sections 227 and 228 of Cr.P.C., and the same have been reproduced as under for reference:

“228. Framing of charge.

(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant- cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub- section (1), the charge shall be read and explained to

the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.”

"227. Discharge.

If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf. the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

10. In *Manendra Prasad Tiwari v. Amit Kumar Tiwari and Anr. 2022 SCC OnLine SC 1057*, the Hon'ble Apex Court has explained the well-settled law on exercise of power under Section 397 and Section 482 of Cr.P.C. by the Courts while deciding as to whether the charges framed against an accused be quashed or not, as under:

“21. The law is well settled that although it is open to a High Court entertaining a petition under Section 482 of the CrPC or a revision application under Section 397 of the CrPC to quash the charges framed by the trial court, yet the same cannot be done by weighing the correctness or sufficiency of the evidence. In a case praying for quashing of the charge, the principle to be adopted by the High Court should be that if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not. The truthfulness, the sufficiency and acceptability of the material produced at the time of framing of a charge can be done only at the stage of trial. To put it more succinctly, at the stage of charge the Court is to examine the materials only with a view to be satisfied that prima facie case of commission of offence alleged has been made out against the accused person. It is also well settled that when the petition is filed by the accused under Section 482 CrPC or a revision Petition under Section 397 read with

Section 401 of the CrPC seeking for the quashing of charge framed against him, the Court should not interfere with the order unless there are strong reasons to hold that in the interest of justice and to avoid abuse of the process of the Court a charge framed against the accused needs to be quashed. Such an order can be passed only in exceptional cases and on rare occasions. It is to be kept in mind that once the trial court has framed a charge against an accused the trial must proceed without unnecessary interference by a superior court and the entire evidence from the prosecution side should be placed on record. Any attempt by an accused for quashing of a charge before the entire prosecution evidence has come on record should not be entertained sans exceptional cases.

22. The scope of interference and exercise of jurisdiction under Section 397 of CrPC has been time and again explained by this Court. Further, the scope of interference under Section 397 CrPC at a stage, when charge had been framed, is also well settled. At the stage of framing of a charge, the court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage the final test of guilt is to be applied. Thus, to hold that at the stage of framing the charge, the court should form an opinion that the accused is certainly guilty of committing an offence, is to hold something which is neither permissible nor is in consonance with the scheme of Code of Criminal Procedure

23. Section 397 CrPC vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in the proceeding.”

11. In *Amit Kapoor v. Ramesh Chander (2012) 9 SCC 460*, the Hon'ble Supreme Court enlisted certain principles with reference to exercise of power under Section 397 and Section 482 of Cr.P.C. by the Courts while deciding as to whether the charges framed against an accused be quashed or not. The principles listed are as under:

“27. Having discussed the scope of jurisdiction under these two provisions, i.e., Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:

27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loathe to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

27.5. Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

27.6. The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

27.7. The process of the Court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

27.8. Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a 'civil wrong' with no 'element of criminality' and does not satisfy the basic ingredients of a criminal offence, the Court may be justified in quashing the charge. Even in such cases, the Court would not embark upon the critical analysis of the evidence.

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction, the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.10. It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.11. Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

27.12. In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed with by the prosecution.

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

27.14. Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

27.15. Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that interest of justice favours, otherwise it may quash the charge. The power is to be exercised ex debito justitiae, i.e. to do real and substantial justice for administration of which alone, the courts exist.

27.16. These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under Section 482 of the

Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance to the requirements of the offence.”

12. Before dwelling further into the factual matrix of the case on the basis of which learned Trial Court framed charges against the petitioner under Section 302 IPC, it would be useful to briefly recapitulate the law on point. Section 299 and Section 300 IPC deal with the definition of culpable homicide and murder respectively, the relevant portions of which are as under:

“299. Culpable Homicide

Whoever causes death by doing an act with which the intention of causing death, or with the intention of causing bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable Homicide.

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—

(Secondly) - 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-

(Thirdly) -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-

(Fourthly) -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..."

13. In *State of A.P. v. Rayavarapu Punnayya (1976) 4 SCC 382*, the Hon'ble Apex Court had observed the following with regard to "culpable homicide" and "murder" :

"12. In the scheme of the Penal Code, "culpable homicides" is genus and "murder" its specie. All "murder" is "culpable homicide" but not vice-versa. Speaking generally, "culpable homicide" sans "special characteristics of murder", is "culpable homicide not amounting to murder". For the purpose of fixing punishment, proportionate to the gravity of this generic offence, the Code practically recognises three degrees of culpable homicide. The first is, what may be called, "culpable homicide of the first degree". This is the greatest form of culpable homicide, which is defined in Section 300 as "murder". The second may be termed as "culpable homicide of the second degree". This is punishable under the first part of Section 304. Then, there is "culpable homicide of the third degree". This is the lowest type of culpable homicide and the punishment provided for it is, also, the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304".

14. In *Shatrughna Baban Meshram v The State of Maharashtra, (2021) 1 SCC 596*, it was observed by the Hon'ble Supreme Court as under:

“21. Whenever a court is confronted with the question whether the offence is “murder” or “culpable homicide not amounting to murder”, on the facts of a case, it will be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to “culpable homicide” as defined in Section 299. If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of Section 300 of the Penal Code, is reached. This is the stage at which the court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four clauses of the definition of “murder” contained in Section 300. If the answer to this question is in the negative the offence would be “culpable homicide not amounting to murder”, punishable under the first or the second part of Section 304, depending, respectively, on whether the second or the third clause of Section 299 is applicable. If this question is found in the positive, but the case comes within any of the exceptions enumerated in Section 300, the offence would still be “culpable homicide not amounting to murder”, punishable under the first part of Section 304, of the Penal Code”.

15. Section 304 of I.P.C provides punishment for culpable homicide not amounting to murder, which is extracted as under:

"304: Punishment for culpable homicide not amounting to murder-

Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, **if the act by which the death is caused is done with the**

intention of causing death, or of causing such bodily injury as is likely to cause death; or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.”

(Emphasis supplied)

16. A perusal of aforesaid reveals that Section 304 contains two parts. While the first part deals with culpable homicide not amounting to murder in case where death caused is with the intention of causing death or of causing such bodily injury as is likely to cause death, the second part deals with an act done with the knowledge that is likely to cause death but without any intention to cause death or to cause such bodily injury as is likely to cause death. Thus, the statutory law is clear on the point that when there is knowledge, but no intention, on part of accused that his act is likely to cause death of a person and if in consequence thereof the person dies, it will be a case falling under Section 304 Part II of IPC.

17. It is to be noted that it is necessary to look into the facts and circumstances of each case to determine whether a prima facie case is made out or not, in order to establish charge against an accused. At the time of framing of charge, due consideration needs to be given to the material placed on record along with the investigation and the facts determined therefrom, and only the information gathered from these sources should be used to ascertain if the essential ingredients of an offence can be prima facie made out or not. In the present case,

examination of the charge-sheet, particularly the statement of the complainant, MLC, as well as the post-mortem report of the deceased, and attendant facts and circumstances of the case reveal that there is prima facie material that on 28.02.2022 at about 05.20 p.m., the petitioner robbed mobile phone of the deceased while he was riding on a motorcycle, whereas the victim was travelling in an e-rickshaw, and while pulling the mobile phone of the victim, the force was such that it resulted in the victim falling off the e-rickshaw and suffering severe injuries which ultimately led to her unfortunate death. However, even as observed by the learned Trial Court in impugned order, the petitioner and co-accused had the “knowledge” that their actions were extremely dangerous. But, nothing has been pleaded on the part of prosecution to the effect that the intention of the petitioner was not only to rob the deceased, but to cause any bodily injury which could have caused death of victim. The only reasoning this Court infers from the impugned order for framing a higher charge against accused i.e. under Section 302 and not under 304 IPC, is the observations of the Hon’ble Apex Court in the recent decision of ***Ghulam Hassan Beigh v. Mohammad Maqbool Magrey & Ors. 2022 SCC OnLine 913.***

18. It is relevant to take note of the fact that though the Hon’ble Apex Court in ***Ghulam Hassan Beigh (supra)*** has observed that in such cases, a higher charge under Section 302 can be framed instead of Section 304 in order to permit the prosecution to lead evidence with respect to a higher charge, the same, however, cannot be construed to be meant to be applied in each and every case in a mere mechanical manner, even if the facts of the case, including the case of prosecution,

do not point out towards commission of offence under Section 302. The Hon'ble Apex Court in ***Ghulam Hassan Beigh (supra)*** had set aside the order of the Trial Court as well as High Court concerned as both the Courts below had based their findings only on the basis of post-mortem report, and the actual physical assault was overlooked. However, the facts and circumstances of the present case are entirely different and thus, the reliance placed on ***Ghulam Hassan Beigh (supra)***, in the opinion of this Court, will not be applicable to the present case.

19. Thus, having considered the overall facts and circumstances of the case, this Court is of the opinion that the learned Trial Court erred in framing charge under Section 302 IPC. In view thereof, the impugned order to the extent of framing charge against the petitioner under Section 302 of IPC is set aside and charge under Section 304 Part II of IPC *prima-facie* made out which be accordingly framed against the petitioner. The impugned order with respect to charge framed under other provisions of law has not been interfered with.

20. Accordingly, the present petition stands allowed in above terms.

21. It is, however, clarified that the observations made by this Court are only to decide the present petition and shall have no bearing on the merits of the case during trial.

SWARANA KANTA SHARMA, J

FEBRUARY 02, 2023/ns