



2024 : DHC : 2274



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 19.03.2024***

+ CRL.REV.P. 357/2024 & CRL.M.A. 8125/2024, CRL.M.A. 8126/2024

SUMA GEORGE

..... Petitioner

Through: Mr.Harish Kumar Gupta &
Mr.Gaurav Sharma, Advs.

versus

STATE NCT OF DELHI & ORS.

..... Respondents

Through: Mr.Aman Usman, APP.
SI Anil Kumar, PS Vijay Vihar,
Delhi.
Mr.Sachin Bansal & Ms.Sakshi
Mahajan, Advs. for R-4.**CORAM:****HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)**

1. This petition has been filed under Section 397 read with Sections 401 and 482 of the Code of Criminal Procedure, 1973 (in short, 'CrPC') challenging the order dated 16.02.2024 (hereinafter referred to as the 'Impugned Order') passed by the learned Additional Sessions Judge-05, North-West District, Rohini Courts, Delhi in SC No. 747/2023, titled as ***State v. Rachal Dass***, framing charge against the respondent nos.2 to 4 herein under Sections 304/34 of the Indian Penal Code, 1860 (in short, 'IPC'), and an additional charge under Section 506 of the IPC against the respondent no.4 herein.



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Factual Background

2. It is the case of the prosecution that on the statement of the wife of the deceased, the FIR No. 273/2023 dated 12.06.2023 under Sections 304/34 of the IPC was registered at Police Station: Vijay Vihar, Rohini District, Delhi, and the investigation was carried out by the Investigating Officer (IO)-SI Anil Kumar.

3. The complainant, in her statement, stated that she, along with her husband and other family members, including her sister-in-law (respondent no.2 herein), resides at E-10, First Floor, Phase-2, Vijay Vihar, Delhi. She stated that her husband was an alcoholic and, under the influence of alcohol, he used to quarrel with his family members. She further stated that he was also involved with another woman, and after drinking, he used to fight and abuse his mother as also his sister, that is, the respondent no.2 herein.

4. She stated that the respondent no.3 (Yuvraj Singh), used to come to the house of the mother of the deceased for studying in the NGO, which was run by Complainant's mother-in-law. She further stated that the respondent no.3 had earlier also beaten the deceased, on which the petitioner had advised respondent no.3 not to repeat this act in the future.

5. She stated that, in February, 2022, she had gone to her parental house in Kerala, when her mother-in-law debarred her and the deceased from her properties by publishing a notice in



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the newspaper.

6. She stated that on 10.06.2023, the respondent no.3 had come to the matrimonial house as on the following day, that is, 11.06.2023, it was the death anniversary of her father-in-law, who had died two years prior thereto, and there was a prayer meeting. Another boy, who also used to study in the NGO, namely, Shivam, that is, the respondent no.4 herein, had also come for the prayer meeting.

7. She states that the prayer meeting ended at around 2:00 PM, and all the guests went to their homes. She stated that at that time, her husband/the deceased, who was in a drunken state, asked the respondent nos.3 and 4 as to when they would be going to their own houses. They retorted that this has no concern of the deceased. Thereafter, the deceased started abusing them. At this time, the respondent no.2 asked the deceased not to abuse others after drinking.

8. She states that on the instigation by the respondent no.2, respondent no.3 caught hold of the deceased through his neck and pushed him to the ground. The respondent no.4 and respondent no.2 started beating the deceased with a belt and PVC pipe, respectively. The persons standing nearby informed the police of the incident.

9. Due to the injuries received by the deceased, he was rushed to BSA Hospital, where, during treatment, he unfortunately died.



Submissions of the learned counsel for the petitioner

10. The learned counsel for the petitioner, drawing reference to the MLC Report of the deceased, submits that the deceased had suffered almost 41 external injuries. He had also suffered injuries on his chest, with a fracture to the right side ribs and on the left side ribs. The lungs were partially adherent to the anterior chest walls. He submits that it was also opined that the injuries combined together were sufficient to cause death in the ordinary course of nature and could have been caused by the weapons used, that is, the belt and the PVC pipe.

11. He submits that looking into the nature of the beating given to the deceased, who is stated to be in a drunken condition, itself shows that there was an intention of the accused persons to cause death of the deceased. He was mercilessly beaten for more than half an hour.

12. Placing reliance on the judgment of the Supreme Court in *State of Uttarakhand v. Sachendra Singh Rawat*, (2022) 4 SCC 227, he submits that the intention to cause death is to be gathered from the surrounding circumstances, including whether the incident occurred by chance or there was any premeditation. The learned counsel for the petitioner submits that in the present case, respondent no.3 had earlier also beaten the deceased. There was, therefore, clear premeditation amongst the accused. He submits that there was also prior enmity inasmuch as, there was a property dispute going on between the respondent no. 2 and the deceased, and the nature of injuries



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caused itself shows that the deceased was beaten in a cruel and unusual manner.

13. He submits that, therefore, this was a fit case where a charge under Section 302 of the IPC should have been framed against the accused, that is, the respondent nos. 2 to 4.

Submissions of the learned APP

14. The learned APP supports the plea of the petitioner by contending that from the nature of the injuries caused, it can be seen that there was an intent to cause death of the deceased. He further submits that the common intention can be formed even in the spur of the moment.

Analysis and Conclusion

15. I have considered the submissions made by the learned counsels for the parties.

16. From the above-mentioned sequence of events alleged by the prosecution itself, it would be evident that the incident was not premeditated but happened by chance and on a spur of a moment. It was, in fact, the deceased himself who came in a drunken state to the prayer meeting of his father, and started abusing the respondents. Though it cannot be denied that he was beaten mercilessly by the respondents, at the same time, the weapons allegedly used by the respondents were a belt and a PVC pipe. There was no injury caused to the head of the deceased, as is evident from the MLC report.

17. In ***Sachendra Singh Rawat*** (Supra), the Supreme Court



considered various precedents on the point whether culpable homicide would tantamount to a murder or not, and I may usefully quote these precedents from the judgment itself:-

7. In light of the above factual scenario, few decisions of this Court on the point whether culpable homicide would tantamount to murder or not, are required to be referred to and considered.

8. In the case of Virsa Singh (supra), in paragraphs 16 & 17, it was observed and held as under:

'16. ... 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.



17. It is true that in a given case the enquiry may be linked up with the seriousness of the injury. For example, if it can be proved, or if the totality of the circumstances justify an inference, that the prisoner only intended a superficial scratch and that by accident his victim stumbled and fell on the sword or spear that was used, then of course the offence is not murder. But that is not because the prisoner did not intend the injury that he intended to inflict to be as serious as it turned out to be but because he did not intend to inflict the injury in question at all. His intention in such a case would be to inflict a totally different injury. The difference is not one of law but one of fact;”

(emphasis supplied)

9. In *Dhirajbhai Gorakhbhai Nayak* (supra), on applicability of Exception 4 of Section 300 IPC, it was observed and held in paragraph 11 as under:

“11. The fourth exception of Section 300 IPC covers acts done in a sudden fight. The said Exception deals with a case of prosecution (sic provocation) not covered by the first exception, after which its place would have been more appropriate. The Exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1, but the injury done is not the direct consequence of that provocation. In fact, Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the



subsequent conduct of both parties puts them in respect of guilt upon an equal footing. A “sudden fight” implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor could in such cases the whole blame be placed on one side. For if it were so, the Exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. The help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight, (c) without the offenders having taken undue advantage or acted in a cruel or unusual manner, and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the “fight” occurring in Exception 4 to Section 300 IPC is not defined in IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties had worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden



quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in a cruel or unusual manner. The expression “undue advantage” as used in the provision means “unfair advantage”.

10. In the case of Pulicherla Nagaraju (supra), this Court had an occasion to consider the case of culpable homicide not amounting to murder and the intention to cause death. It was observed and held by this Court that the intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances: (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows.

11. In paragraph 29, it was observed as under:

“29. Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters —



plucking of a fruit, straying of cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no premeditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under Section 302, are not converted into offences punishable under Section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under Section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances: (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel



and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention. Be that as it may.”

12. *In the case of Singapagu Anjaiah (supra), in a similar set of facts and circumstances, this Court concluded that the accused intended to cause death of the deceased. In paragraph 16, it was observed as under:*

“16. In our opinion, as nobody can enter into the mind of the accused, his intention has to be gathered from the weapon used, the part of the body chosen for the assault and the nature of the injuries caused. Here, the appellant had chosen a crowbar as the weapon of offence. He has further chosen a vital part of the body i.e. the head for causing the injury which had caused multiple fractures of skull. This clearly shows the force with which the appellant had used the weapon. The cumulative effect of all these factors irresistibly leads to one and the only conclusion that the appellant intended to cause death of the deceased.”

13. *In Kanhaiya Lal (supra), it was held by this Court in paras 7.4 and 7.5 as follows:*

7.4. In Ashokkumar Magabhai Vankar, the death was caused by single blow on head of the deceased with a wooden pestle. It was found that the accused used pestle with such force that head of the deceased was broken into pieces. This Court considered whether the case would fall under Section 302 or Exception 4 to Section 300 IPC. It is held by this Court that the injury



sustained by the deceased, not only exhibits intention of the accused in causing death of victim, but also knowledge of the accused in that regard. It is further observed by this Court that such attack could be none other than for causing death of victim. It is observed that any reasonable person, with any stretch of imagination can come to conclusion that such injury on such a vital part of the body, with such a weapon, would cause death.

7.5. A similar view is taken by this Court in the recent decision in Leela Ram [State of Rajasthan v. Leela Ram, (2019) 13 SCC 131 and after considering a catena of decisions of this Court on the issue on hand i.e. in case of a single blow, whether a case falls under Section 302 or Section 304 Part I or Section 304 Part II, this Court reversed the judgment [Leela Ram v. State of Rajasthan, 2008 SCC OnLine Raj 945] and convicted the accused for the offence under Section 302 IPC. In the same decision, this Court also considered Exception 4 of Section 300 IPC and observed in para 19 as under: (Leela Ram case [State of Rajasthan v. Leela Ram, (2019) 13 SCC 131, SCC pp. 140- 41)

‘19. ... Under Exception 4, culpable homicide is not murder if the stipulations contained in that provision are fulfilled. They are: (i) that the act was committed without premeditation; (ii) that there was a sudden fight; (iii) the act must be in the heat of passion upon a sudden quarrel; and (iv) the offender should not have taken undue advantage or acted in a cruel or unusual manner.’”



18. Applying the above principles to the facts of the present case, therefore, in my view, no fault can be found in the Impugned Order insofar as it does not frame a charge against the respondent nos. 2 to 4 under Section 302 of the IPC.

19. In **Amit Kapoor v. Ramesh Chander**, (2012) 9 SCC 460, the Supreme Court has reiterated the ambit and scope of the power under Section 397 and Section 482 of the Cr.P.C., as under:

“12. Section 397 of the Code 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. There has to be a well-founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner.....

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20. The jurisdiction of the court under Section 397 can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression “prevent abuse of process of any court or otherwise to secure the ends of justice”, the jurisdiction under Section 397 is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily....”

20. Testing on the above parameters as well, I find no merit in the present petition. The same is accordingly dismissed. The pending application also stands disposed of.

NAVIN CHAWLA, J

MARCH 19, 2024/rv/ss

Click here to check corrigendum, if any