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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Date of decision: 10th July, 2024*

+ **CRL.REV.P. 868/2024, CRL.M.A.19880/2024**

RAMDEV MUKHIYA @ RAMREKH

.....Petitioner

Through: Mr. Amjad Khan, Advocate.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Hemant Mehla, Ld. APP with SI
Jitender Singh, P.S. Burari.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. A Revision Petition under Section 438 of BNSS read with Section 442 and 528 of BNSS, 2023 has been filed against the Order of Charge dated 10.04.2024 *vide* which the learned ASJ has framed the charges under Section 302 IPC.

2. It is submitted in the Revision Petition that the FIR was registered under Section 304 IPC and the Charge Sheet has also been filed under Section 304 IPC, despite which the Charge has been framed under Section 302 IPC. It is submitted that the facts herein *prima facie* disclosed that it falls under Exception 1 of Section 300 IPC and the Charge under Section 302 IPC has been wrongly framed. Reliance has been placed on the Judgments of Rampal Singh vs. State of U.P decided on 24.07.2012, Surinder Kumar vs. Union Territory, Chandigarh (1989) 2 SCC 2017, K. Ravi Kumar vs. State of Karnataka (2015) 2 SACC 638, Ghapoo Yadav and



Ors. Vs. State of M.P. (2003) 3 SCC 528, Raju vs. State of Madhya Pradesh Crl. Appeal No.818/2014 decided on 18.04.2023, Ankush Shivaji Gaikwad vs. State of Maharashtra decided on 03.05.2013.

3. **Learned Prosecutor has opposed the Revision Petition** and has submitted that whether there was an alleged grave and sudden provocation as has been alleged by the petitioner, is a matter of evidence and at this stage the Court cannot give a finding of there having been a grave and sudden provocation. It is further submitted that framing of Charge under Section 302 IPC on the facts of this case, would not prejudice the petitioner, rather if the charges are framed under Section 304 IPC and subsequently the evidence produced makes out a case of 302 IPC, the petitioner would be seriously prejudiced as the trial would have to be recommence. It is submitted that learned ASJ has given cogent explanation for framing the charge under Section 302 IPC. There is no merit in the Revision Petition, which is liable to be dismissed.

4. **Submissions heard.**

5. The basic grievance of the petitioner is that the facts as narrated in the complaint, prima-facie make out the case under Section 304 IPC under which the Charge Sheet was also filed despite which the charges have been framed under Section 302 IPC which seriously affect the petitioner's right to seek Bail in the present case and also impacts the manner in which the Trial is conducted.

6. In so far as the adverse impacts on the rights of the petitioner is concerned, it has no merit for the simple reason that the entire evidence that has been relied upon by the prosecution remains the same. It is the question of interpretation and law as to whether it is an offence under Section 302



IPC or under Section 304 IPC, that is made out. Pertinently even if a charge is framed under a graver Section, it cannot be of any prejudice to the petitioner especially in the present case. If it is subsequently found after the Trial that the offences actually were under Section 302 IPC, it would entail a fresh trial. On the other hand, if after recording of evidence it is found that the petitioner is guilty of the lesser charge of 304, IPC no prejudice whatsoever would be caused to him and he would be liable for sentenced according to the case as made out by the prosecution.

7. The other grievance of the petitioner is that the Charge Sheet had been filed under Section 304 I.P.C despite which the charges have been framed under Section 302 IPC. It needs no reiteration that the Courts are not bound by the conclusions of the Prosecution in filing a Charge Sheet under a specific Section. It is within the domain and in fact, the duty of the Court to appreciate the facts and to frame the charge according to the offences which are prima facie made out. The Court is not a mouth piece of the Prosecution nor is it under any obligation to go by the dictat of the Prosecution. Therefore, this contention of the Petitioner is without merit.

8. Now, the facts of this case may be examined to ascertain if there is any infirmity in framing the charge by the Trial Court. Here a reference may be made to the complaint which contains the narration of the incident. The complainant Sarvan Kumar had stated that he along with various other persons named therein, have been residing together in the rented premises for about two months and they know each other well. On 16.05.2023 at about 11:15 PM while he was present in his room along with three other roommates, Manik and Ramrekh had consumed liquor. They sat down to eat the food prepared by Manik when Ramrekh had chided Manik or being slow



in serving the food, on which there was an argument between the two. Manik pushed Ramreskh who fell and Ramrekh in anger, picked up a pot kept in the room, broke it and with a piece of the broken pot hit Manik on his head from the side, on which they all intervened. Thereafter, they all went of to sleep. In the morning on 17.05.2023 they found Manik unwell. In the evening, they found him lying unconscious. He was taken to LNJP hospital where he eventually died while under treatment, on 23.05.2023. It was further stated that Ramrekh had hit Manik on his head with a *Farsa* which led to the demise of Manik. On this information, the FIR was registered under Section 304 IPC.

9. Prima facie, there are clear allegations that following an altercation the accused hit the deceased with a *Farsa* resulting in injury which eventually led to the demise of Ramrekh.

10. The main contention of the learned counsel for the petitioner is that the facts clearly make out that it falls in the Clause 1 of Exception 1 to 300 I.P.C. which provide when culpable homicide is not murder. It states that when the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person, culpable homicide shall not amounting to murder.

11. The Law in this regard is absolutely clear and unambiguous that if the accused, is able to establish that he had been provoked by the deceased without there being any corresponding provocation by the accused, then the death of a person may be held as culpable homicide not amounting to murder.

12. In the facts as narrated above, there was an altercation but there is nothing to presume at this stage that the deceased had given any provocation



or that the accused was voluntarily provoked by the deceased. It is a matter of Trial whether there was any grave and sudden provocation. At this stage facts on which the case is made, do not lead to any such interference.

13. Explanation to Section 300 I.P.C. also states that whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact. The charge has been rightly framed by the learned ASJ and the impugned Order calls for no interference.

14. The petition is accordingly dismissed. The pending application also stands disposed of.

15. The copy of the Order be sent to the Trial Court.

(NEENA BANSAL KRISHNA)
JUDGE

JULY 10, 2024/PT