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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.L.P. 203/2020 & CRL.M.A. 5031/2020**
STATEPetitioner

Through: Mr. Amit Ahlawat, APP.
versus

RAKESH KAUSHIK & ANRRespondents
Through: Mr. Satyam Thareja, Ms. Vasundhara
Nagrath, Mr. Shaurya Katotch and
Mr. Shikhar Yadav, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
02.04.2025

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1. The State seeks leave to appeal against the judgment dated 16th November, 2019 passed by ASJ-03, East District Karkardooma Courts, Delhi in Sessions Case No. 478 of 2016 in FIR No. 822/2014, under Sections 308, 452, 356, 379, 506 and 34 of the Indian Penal Code, 1860¹, registered at P.S. New Ashok Nagar. The charges were framed against three accused persons – Respondent No. 1 and 2 and one Pushpa Kaushik. However, during the pendency of trial, accused no. 3 – Pushpa Kaushik deceased, and the proceedings against her were accordingly abated on 1st October, 2016.

2. At the outset, Mr. Amit Ahlawat, APP for State, submits that Respondent No. 1 – Rakesh Kaushik also deceased on 17th December, 2023. The factum of his death has been duly verified, and a verification report to

¹ “IPC”



this effect has been handed over and is taken on record. Accordingly, the proceedings *qua* Respondent No. 1 stand abated.

3. The impugned judgement acquits Respondents No. 1 and 2 of the offences under Sections 308, 452, 506, 379 and 356 read with 34 of IPC. However, both have been convicted for the offences under Sections 323 read with 34 of the IPC.

4. The essential facts emerging from the record are as follows:

4.1. On 20th July, 2014, at about 08:15 PM, on receipt of DD No. 57-B, the Investigating Officer² HC Satish along with HC Ram Singh proceeded to House No. 296, Pandit Mohalla, Kondli, Delhi, where a disturbance had been reported. Upon arrival, the officers were informed that the injured party had already been transported to LBS Hospital by PCR. At the hospital, one Dharamvir Kaushik was found admitted under MLC No. 0013059, which recorded the nature of the injuries as ‘simple’ and ‘fresh’ and described the incident as an “assault”.

4.2. The injured Complainant, Dharamvir Kaushik, stated that around 7:45 PM that evening, he had seen his sister-in-law Pushpa (since deceased) deliberately deflating the tyre of his bike parked outside the house. He stated that she used to regularly deflate the tires of his and his tenants’ bikes because of which there was family discord between him and his brother. Upon objecting, an altercation ensued, and by 8:05 PM, his brother Rakesh Kaushik, sister-in-law Pushpa, and nephew Vinay forcefully entered his residence. According to the Complainant, while Vinay restrained him, Pushpa inflicted a head injury on him and Rakesh took Rs. 50,000/- from the Complainant’s pocket. His wife, upon intervening, was subjected to abuse,



and her gold chain was allegedly snatched and broken during the scuffle. The Complainant then called the police number – 100 and the PCR responded and took him to the Hospital.

4.3. Based on the Complainant's statement, a *rukka* was prepared and sent to the Police Station for registration of the FIR. Further investigation was assigned to SI Neeraj Kumar. A site plan was prepared, and a blood-stained RCC stone was recovered from the scene, sealed, and seized. Statements of witnesses were recorded, and the case property was deposited in the *malkhana*.

4.4. Upon completion of the investigation, a chargesheet was filed against the accused persons under Sections 308, 452, 356, 379, 506, and 34 of the IPC. Pursuant to summoning, the accused appeared before the Trial Court, and copies of the chargesheet and accompanying documents were supplied to them in accordance with Section 207 of Code of Criminal Procedure, 1973³. Thereafter, the IO filed a supplementary chargesheet enclosing the FSL report pertaining to the RCC stone recovered from the scene. The FSL results of the seized stone were also filed by the IO before the court by way of Supplementary Chargesheet.

4.5. On 26th October, 2015, charges under Sections 452/34, 308/34, 379/356/34 and 506/34 IPC were framed, to which the accused pleaded not guilty and claimed trial.

4.6. During the course of trial, the prosecution examined 11 witnesses in support of its case. Upon conclusion of the prosecution evidence, the statements of the Respondents were recorded under Section 313 of the

² "IO"

³ "Cr.P.C."



Cr.P.C. The Respondents denied all allegations, asserting that they were innocent and had been falsely implicated at the instance of the Complainant, who is the real brother of the accused, Rakesh Kaushik.

4.7. In their defence, the Respondents contended that one Indrani had earlier confronted the family with allegations of rape, cheating, and harassment against the Complainant, and had demanded payment of the amount allegedly cheated from her. Owing to the serious nature of the allegations and the potential reputational damage to the family, Respondent No. 1 – Rakesh Kaushik – is said to have confronted the Complainant and asked him to resolve the matter. In response, the Complainant allegedly threatened to implicate Rakesh Kaushik in a false case.

4.8. The accused persons further alleged that, on the day of the incident, on 20th July, 2014, at about 07:30 PM, the Complainant had assaulted and disrobed the co-accused, Pushpa Kaushik. In relation to that incident, FIR No. 823/2014 was registered at P.S. New Ashok Nagar. It was also asserted that the Complainant, acting in concert with the IO, falsely implicated the accused persons in the present case.

4.9. Upon consideration of the evidence on record, the Trial Court acquitted the Respondents of the offences under Sections 308, 452, 356, 379, 506, and 34 of the IPC. The Court held that the prosecution had failed to establish any intent or knowledge on the part of the accused to cause death, which is a necessary ingredient for sustaining a charge under Section 308. It was also observed that the injury suffered by the Complainant was simple in nature and not such as would ordinarily endanger life. Accordingly, the Trial Court held that the prosecution had not succeeded in proving the charges beyond reasonable doubt. However, the Respondents



were found guilty of offences under Section 323 read with Section 34 of the IPC,

5. At the outset, Mr. Ahlawat, submits that the State is limiting the challenge to the acquittal of the accused persons under Section 308 of the IPC. On this issue, his arguments are as follows:

5.1. The Trial Court has proceeded on conjectures and surmises, ignoring vital pieces of evidence adduced by the prosecution. The Trial failed to appreciate that the collective reading of the testimonies of PW-2 – the Complainant and PW-3 – the eye witness to the offence, clearly discloses that the accused persons had unlawfully entered the Complainant's premises and inflicted injuries upon him in furtherance of a common intention, stemming from pre-existing enmity between the families.

5.2. Both PW-2 (Complainant) and PW-3 (eye witness) fully supported the case of the prosecution beyond the reasonable doubt. The nature of the injury — inflicted on the head, a vital part of the body — establishes the intention to cause grievous harm, if not culpable homicide, thereby attracting the ingredients of Section 308 IPC.

5.3. The prosecution further relies on the recovery of the weapon of offence — a blood-stained RCC brick — from the spot. PW-5, who is the brother of both the Complainant and accused Rakesh Kaushik, deposed that upon reaching the scene, he witnessed the accused persons assaulting the Complainant, and specifically saw Pushpa strike the Complainant on the head with the said brick, causing bleeding.

5.4. The Trial Court has not properly appreciated the consistent and corroborative depositions of the key prosecution witnesses, each of whom not only named the accused persons with clarity but also assigned specific



roles to them in the commission of the offence. Their identification of the accused in court was also unequivocal.

6. The Court has considered the submissions advanced by Mr. Ahlawat, APP for the State but finds no compelling ground to interfere. At the outset, it must be observed that the Supreme Court has consistently held that leave to appeal is not required to be granted in each and every case.⁴ The Supreme Court has consistently held that such leave is to be granted only in cases where the judgment of acquittal suffers from manifest errors of law or fact, or where the appreciation of evidence by the Trial Court is perverse or leads to a miscarriage of justice. Mere disagreement with the view taken by the Trial Court is not sufficient to warrant interference in appeal⁵.

7. The Trial Court has acquitted the Respondents of the offence under Section 308 IPC, while convicting them under Sections 323 read with 34 IPC. The acquittal under Section 308 was based on the Trial Court's finding that the injury sustained by the Complainant was "simple" in nature, and that the ingredients of Section 308, particularly the requisite intention or knowledge to commit culpable homicide not amounting to murder were not established. The Trial Court's relevant observations are extracted as follows:

*"18. Now only charge is left to be under Sec, 308/34 IPC which defines attempted to commit culpable homicide. The evidence in both the cross-cases are revealed vide FIR No, 823/14 that the present complainant/PW-2 Dharamveer Kaushik is an accused who is facing trial for the cross case and the accused persons had led evidence against the complainant. Now, in the present FIR No, 822/14, out of the three accused persons, one accused Pushpa Kaushik was expired and the trial against her was abated. **The nature of injuries on the person of complainant Dharamveer Kaushik as per MLC is "Simple" one and same is admitted statement u/s 294 CrPC the weapon of alleged injury i.e. concrete material of half brick does not found any DNA profile of***

⁴ *State of Maharashtra v. Sujay Mangesh Poyarekar*, (2008) 9 SCC 457

⁵ *Chandrappa & Ors. v. State of Karnataka*, (2007) 4 SCC 415



complainant/injured as per the FSL result. It is also revealed that the photographs of place of incident where the blood was scattered was not taken nor the blood stained T-Shirts etc. were handedover to police. One of the accused was also sustained injuries in said quarrel. There is no material evidence on record to show that there was any intention in order to attempt to culpable homicide is by the accused persons as their act does not fall under Section 308 IPC. Before an accused held to be guilty under Sec. 308 IPC, it is necessary to arrive a finding that ingredients thereof requisite intention and knowledge was existing. There cannot be any doubt whatsoever such an intention or knowledge on the part of accused to attempt to commit/cause culpable homicide is lacking and same is not proved by any ocular evidence.

19. In view of judgment *Sunil Kumar Vs. NCT of Delhi* (1998) 8 SCC 557, it was observed that "The provisions contained in Section 308 I.P.C. postulates doing an act with such intention or knowledge and under such circumstances that if one by that act caused death, he would be guilty of culpable homicide not amounting to murder. An attempt of that nature need not result in hurt. It is attempt to commit culpable homicide which is punishable under Section 308 I.P.C., whereas punishment for simple hurt can be meted out under Sections 323 and 324 and for grievous hurt under Sections 325 and 326, Qualitative these offences are different. The High Court erred in bringing down the offences under Section 323 and 34 I.P.C. and then in holding that proceedings under that provision be quashed."

20. In view of aforesaid discussion and ratio of law as discussed above, it does not reflect from the material on record and evidence brought by the prosecution, the accused persons had any intention or knowledge as to be ascertained the nature of injuries and the doctor has already opined that injury was "Simple" in nature, There is nowhere evident that the injury was sufficient in ordinary course of nature to cause death or if any attempt to death can be caused by such an injury in such circumstances, as such, the accused persons can not be held guilty for the offence u/s 308 IPC.

21. Accordingly, in view of the aforesaid discussion and the material on record, the prosecution failed to bring home the guilt of the accused for the charges framed u/s 308/452/506/379/356/34 IPC. As such both accused Rakesh Kaushik S/o Sh. Richpal Kaushik and Vinay Kaushik S/o Rakesh Kaushik are hereby acquitted for the abovesaid sections.

22. However, there are ocular and trustworthy evidence to be attracted the provisions of Section 323/34 IPC. Therefore, accused Rakesh Kaushik S/o Sh. Richpal Kaushik and Vinay Kaushik S/o Rakesh



Kaushik held guilty for the offence under Section 323/34 IPC and convicted accordingly.”

8. The gravamen of the offence under Section 308 IPC lies not merely in the physical injury caused, but in the mental state of the accused — the *mens rea*, i.e., the intention or knowledge with which the act was committed. It is well settled that not every assault or bodily injury, however grave, would attract the rigours of Section 308. The provision is triggered only when the act is committed with the intention or knowledge that it is likely to cause death, had the death actually ensued. The assessment of such intention or knowledge is necessarily contextual — it is not inferred from any abstract declaration but from the conduct of the accused. Factors such as the nature of the weapon used, the part of the body targeted, the degree of force employed, and the surrounding circumstances of the assault are relevant indicia in determining whether the offence amounts to an attempt to commit culpable homicide.

9. This Court finds no perversity or legal infirmity in the conclusion that the essential ingredients of Section 308 of IPC were not made out in the present case. The Trial Court has analysed the evidence led by the parties, including the medical evidence which categorically records that the injuries sustained by the complainant were simple in nature. This in itself does not rule out the applicability of Section 308; however, it significantly weakens the prosecution’s case to show that the act was committed with the intention or knowledge that death was a likely result. Further, the alleged weapon of assault, described as a piece of concrete (half brick), did not yield any DNA evidence matching the complainant, as confirmed by the FSL report. No recovery of blood-stained clothes and no photographs of blood at the scene



of the crime have been brought on record. These investigative lapses undermine the credibility of the prosecution's version.

10. Moreover, the incident is not unidirectional in its aggression. It is an admitted position that there were cross-cases, and that one of the accused persons also sustained injuries in the same altercation. This strongly suggests a mutual quarrel or sudden provocation, rather than a calculated assault aimed at causing death. The prosecution has not brought any evidence of premeditation, prior threats, or targeted violence to infer a homicidal mindset. As such, the essential ingredient of Section 308 of IPC – in terms of having intention and knowledge that an act may result in the death of a person – was not made out in the present case. The reasoning is consistent with both the evidence and the settled position in law.

11. In light of the foregoing, the view taken by the Trial Court, does not call for any interference by this Court. The leave to appeal sought by the State, is declined and the petition is dismissed along with pending application.

SANJEEV NARULA, J

APRIL 2, 2025

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