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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P. 20/2025 & CRL.M.As. 1392-1393/2025**
DINESH SHARMA & ORS.Petitioners

Through: Mr. Viraj R. Datar, Senior Advocate
with Mr. Sahil A. Garg Narwana, Mr.
Dipesh Singhal, Mr. Honey Gola, Mr.
Kapil Gaba, Advocates with
Petitioner No. 1 (in-Person).

versus

STATE OF NCT OF DELHIRespondent
Through: Mr. Sunil Kumar Gautam, APP.
SI Vinod Kumar, P.S. Mehrauli.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
20.01.2025

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1. The present revision petition under Section 438 of the Bhartiya Nagarik Suraksha Sanhita, 2023¹ read with Section 397 of the Code of Criminal Procedure, 1973², challenges the order dated 24th October, 2024, passed by the ASJ, (South), Saket Courts, New Delhi, directing framing of charges under Sections 451, 323, 342, 308, and 34 of the Indian Penal Code, 1860³ against all the accused persons – i.e., the Petitioners herein. Moreover, as against Petitioner No. 1 - Dinesh Sharma, additional charges have been directed to be framed under Section 201, 379 and 34 of the IPC, whereas against Petitioner No. 2 - Sneha Sharma, additional charges have been directed to be framed under Sections 379 and 34 of IPC.

¹ "BNSS"

² "Cr.P.C."

³ "IPC"



2. The case of the prosecution, which forms the basis of the FIR, is as follows:

2.1. On 8th June, 2022, at around 3 P.M., the Complainant - Rohan Kaushik, who is the husband of Petitioner No. 3 - Swati Sharma, left his home to meet a certain person sent by his Chartered Accountant and collected cash from the said person. Thereafter, the Complainant met his friend, namely – Nargisa, who was living in Chhatarpur Pahari and whom he has known for 4-5 months.

2.2. At around 7 P.M., when the Complainant was in the drawing room of Nargisa's house with Nargisa and her flatmate Shirin, the Complainant's wife, i.e., Petitioner No. 3 - Swati Sharma, her sister – Petitioner No. 2 - Sneha Sharma and Swati's brother-in-law – Petitioner No. 1 - Dinesh Sharma, entered the house forcefully and started beating the Complainant. They confined Nargisa and Shirin (flatmate of Nargisa) in one room and dragged the Complainant to the bedroom where Petitioner No. 2 and Petitioner No. 1 started repeatedly hitting glass bottles on the Complainant's head, due to which he started bleeding profusely. While hitting the Complainant, Dinesh was shouting that he will kill the Complainant today.

2.3. Subsequently, Dinesh took out a leather belt and started to repeatedly hit the Complainant with the belt's buckle, on his torso, back, neck and head. The Complainant tried to save himself and escape, but all three of the aforementioned Petitioners caught him and hit his head against the wall of bedroom as well as the drawing room.

2.4. Even though the Complainant pleaded for mercy, the said Petitioners continued to hit him with anything that they could find, including their fists, the belt, glass bottles, glass cups and perfume bottles. At this point,



Petitioner No. 1 - Dinesh told Petitioner No. 2 - Sneha to bring out his knife, with which he attempted to stab the Complainant multiple times, but failed as the Complainant struggled to save himself from the assault.

2.5. The said Petitioners then compelled the Complainant to lie down in a particular position to depict as though it was the Complainant who was trying to beat the Petitioners. The Petitioners also made videos of the Complainant laying on the floor in an attempt to stage a lie that the he was the one beating them up for about an hour and a half, whereas it was the Complainant who was beaten and was actively bleeding. Thereafter, the Complainant's wife – Petitioner No. 3 – Swati falsely informed her parents as well as the Complainant's parents that the said Petitioners had caught the Complainant in a compromising position with Nargisa.

2.6. When the parents of Petitioner No. 3 and the Complainant reached the spot after about an hour, Petitioners No. 1, 2, and 3 – i.e., Dinesh, Sneha and Swati, instigated them by narrating false stories which made the parents annoyed at the Complainant. Even in their presence, Petitioner No. 1 - Dinesh hit the Complainant with the leather belt several times and Petitioner No. 2 - Sneha repeatedly kicked his stomach.

2.7. Further, Petitioners No. 1 and 2 - Dinesh and Sneha snatched away the Complainant's car keys, purse, credit cards, mobile phone as well as his bag containing Rs. 2 Lakh in cash. Petitioner No. 1 – Dinesh's clothes were red with the blood of the Complainant, however, after the arrival of Petitioner No. 3's parents, they managed to get Dinesh's clothes changed and took away the blood-soaked clothes.

2.8. The Petitioners did not allow the Complainant's parents to provide him any medical aid, because of which the Complainant's father had to call



the police. The police then, brought the Complainant to Fortis Hospital, Vasant Kunj where he was given treatment for his injuries and an MLC was prepared. Therefore, it is clear that Petitioner No. 1 and 2 - Dinesh and Sneha respectively, caused the Complainant several injuries by hitting him with objects which could have caused his death. Subsequently, the Complainant filed a complaint with the SHO, P.S. Mehrauli on 9th June, 2022, on the basis of which an FIR bearing no. 362/2022 was lodged at P.S. Mehrauli on 14th June, 2022, under Sections 308, 451 and 34 of the IPC.

2.9. After conclusion of investigation, a chargesheet dated 10th July, 2023, was filed before the Metropolitan Magistrate⁴, Saket Courts, New Delhi, wherein the Petitioners No. 2 and 3 were implicated under Sections 308, 451, and 34 of the IPC and Petitioner No. 1 was implicated under Sections 308, 451, 506 and 34 of the IPC. Thereafter, on 13th September, 2023, the MM took cognizance of the case and chargesheeted the Petitioners under Sections 451, 308, 506 and 34 of IPC and on 16th November, 2023, the matter was committed to the Sessions Court under Section 209 of Cr.P.C. Subsequently, on 25th July, 2024, a supplementary chargesheet was also filed in the case and on 24th October, 2024, the ASJ passed the impugned order, framing the charges as follows:

- i) Petitioner No. 1 – Dinesh Sharma: u/s 451, 323, 342, 308, 379, 201 and 34 of IPC.
- ii) Petitioner No. 2 – Sneha Sharma: u/s 451, 323, 342, 308, 379 and 34 of IPC.
- iii) Petitioner No. 3 - Swati Sharma: u/s 451, 323, 342, 308 and 34 of IPC.



3. In light of the above, Mr. Viraj R. Datar, Senior Counsel for the Petitioners, argues that the bare perusal of the material on record depicts that there was no sufficient or acceptable evidence against the Petitioners for charging them with the aforementioned charges. He further submits that the Trial Court has failed to take into account all the facts and circumstances, as well as the material placed on record, which *prima facie* do not support the framing of the specific charges as noted above. Mr. Datar emphasizes that for attracting the provisions of Section 308 of IPC against the Petitioners, the ingredients of Section 308 – i.e., acting with the requisite knowledge and intent to cause death must be present, however, there is no such evidence presented by the prosecution. He urges that it is not even the Complainant's case that the Petitioners attempted to stab him with a broken bottle or inflicted injuries using sharp edges, with the intent to cause his death. Therefore, he argues that in absence of the essential ingredients of Section 308, the framing of the charge of Section 308 against the Petitioners is erroneous.

4. Furthermore, Mr. Datar submits that in the FIR as well as the Chargesheet, there are no allegations *qua* Petitioner No. 3 - Swati Sharma of assault or hitting or any kind of violence perpetrated by her. Therefore, the charges framed against her under Sections 323 and 308 of IPC are *prima facie* not attracted. He also argues that the Trial Court has failed to appreciate that *prima facie* the present case does not attract Section 308 of IPC against the Petitioners since the conduct of the Petitioners, including the calling of the parents of both the Complainant and Petitioner No. 3, at the scene of the incident, demonstrates the clear absence of any intent and

⁴ "MM"



knowledge to cause death of grievous harm. Moreover, he urges that as is recorded in the MLC, the Complainant's injuries are classified as simple and as such, there is no evidence of intent or knowledge on the part of the Petitioners to cause bodily harm likely to result in death.

5. Lastly, Mr. Datar submits that while the Trial Court has noted the judgments of this Court in *State v. Rahul*⁵ and *Pawan Chaddha v. State*⁶, in the impugned order, the said judgements have not been correctly appreciated.

6. The Court has considered the aforementioned contentions but remains unpersuaded. The Court is mindful of the legal threshold at the stage of framing charges, which is distinct from the standard applied during trial. The Supreme Court, in *Union of India v. Prafulla Kumar Samal & Anr.*⁷ has laid down that the test to be applied is whether the material on record discloses a grave suspicion of the commission of the alleged offense, sufficient to frame charges. At this stage, the Court does not delve into a meticulous analysis of the evidence or assess its credibility but rather evaluates whether a *prima facie* case exists.

7. In this regard, it is important to take note of the observations made by the Trial Court in the impugned order, which are as follows:

*“9. While applying said principles to the case at hand and relying upon the judgment of Hon'ble Delhi High Court in Salman & Ors. Vs. State & Anr. CrI. Revision Petition 333/2018, this Court is of the view that no case for discharge of accused persons is made out and that prosecution should be given an opportunity to prove its case. **The fact that injured Rohan Kaushik was allegedly hit on a vital part of his body i.e., head with glass bottle and that his head was also hit against the wall was sufficient to attract Section 308 IPC. This Court is unable to see***

⁵ CrI. L.P. 698/ 2019

⁶ Criminal Appeal 640/2011

⁷ AIR 1979 SC 366



anything in law to the effect that offence U/s 308 IPC shall be attracted only in a case where the injured would have died if no one had come to protect him immediately. Judgments relied upon by Ld. Defence Counsel are distinguishable on facts. As far as offence U/s 451 IPC is concerned, statements of Rohan Kaushik and Nargisa @ Mabuda Khon on record were sufficient to prima facie show the ingredients thereof. Whether the allegations leveled against the accused were true or not can only be decided during trial after giving opportunity to both the parties to lead evidence as per law. In these circumstances, the request for discharge of accused stands declined.

10. *As far as submission of Ld. Addl. PP for State to the effect that a prima facie case for commission of offence U/s 307 IPC was made out in the given facts is concerned, this Court is unable to agree to that. Though, it has been mentioned in the FIR that accused Dinesh Sharma had tried to stab the injured with a knife and he failed in getting the desired result due to resistance by the injured, there is no recovery of any such weapon. It is highly improbable that injured could have successfully resisted him having been stabbed with knife by accused Dinesh Sharma if he had actually attempted to do so. Injured having been hit on the head with a glass bottle in itself was not sufficient to make out a case for commission of offence U/s 307 IPC especially considering the MLC of injured which shows nature of injuries as simple with only two injuries on the head one contused lacerated wound and one small abrasion).*

11. *Considering the record, a prima facie case for commission of offences U/s 451/323/342/308/34 IPC was made out against all the accused persons. Additionally, a prima facie case for commission of offence U/s 379/34 IPC was made out against accused Dinesh Sharma and Sneha Sharma. Further, offence U/s 201 IPC was also prima facie made out against the accused Dinesh Sharma. Charge has been framed accordingly to which all the accused persons have pleaded not guilty and claimed trial.*

12. *Let PW s at serial no. 2, 5 & 8 as mentioned in the list of witnesses be summoned for next date. Case property if any, be also summoned. At request of Ld, Addl. PP for State, notice be also issued to IO/SI Banwari Lal to remain present for assistance”*

[Emphasis added]

8. The Petitioners argue that the essential ingredients of Section 308 of IPC, namely the requisite knowledge or intention to cause death or grievous



harm, are absent in this case. However, the Trial Court's findings suggest otherwise. The material on record indicates that the Complainant suffered injuries to vital parts of his body, including his head, caused by the Petitioners allegedly using glass bottles and repeatedly hitting him against the wall. While the Complainant's injuries have been classified as "simple" in the MLC, the cumulative acts, particularly the alleged use of potentially lethal objects and threats to life, create a *prima facie* case of grave suspicion under Section 308 IPC. It is settled law that *mens rea* or the intent to commit a specific offence, such as causing harm likely to result in death, is an inference that must be drawn from the surrounding circumstances. At the stage of framing charges, the prosecution is not required to conclusively establish this intent but only show the existence of material indicating a *prima facie* case.

9. The Petitioners' contention that Petitioner No. 3, Swati Sharma, has no specific allegations of assault against her is noted. However, the FIR and chargesheet allege her active involvement in instigating the assault and confining the Complainant. The Trial Court, in its detailed order, noted that the specific acts attributed to her, when viewed collectively, *prima facie* establish her participation in furtherance of a common intention under Section 34 of IPC. This aspect warrants examination during trial and does not merit discharge at this stage. As regards the charges under Sections 379 and 201 of IPC against Petitioners No. 1 and 2, the prosecution has alleged that cash and personal belongings of the Complainant were taken by these Petitioners, and blood-stained clothing of Petitioner No. 1 was destroyed to erase evidence. These allegations, coupled with the statements of witnesses and circumstantial evidence, satisfy the requirement of grave suspicion,



warranting framing of charges under these sections.

10. The reliance placed by the Petitioners on judgments such as *State v. Rahul* and *Pawan Chaddha v. State* is misplaced. These cases were decided post-trial, based on a detailed evaluation of the evidence. At the stage of framing charges, the Trial Court is not required to weigh the evidence meticulously but to assess whether there is sufficient material to proceed to trial. In this regard, the Trial Court's reliance on *Salman v. State*, which emphasizes allowing the prosecution an opportunity to substantiate its case during trial, is appropriate in this context.

11. In light of the above, this Court finds no infirmity in the impugned order dated 24th October, 2024, passed by the ASJ for framing of charges

12. Needless to say, that the observations made hereinabove are only for the purpose of deciding the present revision petition and shall not influence the final determination, which shall be considered on the basis of the evidence adduced by the parties and the material on record.

13. Accordingly, the petition stands disposed of along with pending applications.

SANJEEV NARULA, J

JANUARY 20, 2025/as