

Raj Kumar Vs. State and ors.

Raj Kumar Vs. State and ors.

SooperKanoon Citation : sooperkanoon.com/685902

Court : Delhi

Decided On : Sep-13-1999

Reported in : 2000IAD(Delhi)185

Judge : M.S.A. Siddiqui, J.

Acts : Code of Criminal Procedure (CrPC), 1975 - Sections 227; [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 308 and 323

Appeal No. : C.R. Rev. No. 356/97

Appellant : Raj Kumar

Respondent : State and ors.

Advocate for Def. : Mr. R.D. Mathur, Adv.;Mr. Pawan Bahl

Advocate for Pet/Ap. : Mr. K.K. Sud and; Ms. Kamna Vohra, Advs

Judgement :

ORDER

Crl. R. No. 356/97

1. After hearing learned counsel for the parties, I propose to dispose of the revision at the stage of admission itself.

2. This revision is directed against the order dated 20.5.1997 passed by the Additional Sessions Judge, Delhi discharging respondents No.2 to 4 of the offences charged under Sections 308/452/34 IPC.

3. Briefly stated, facts giving rise to this petition are that on 20.3.1993 at about 11 P.M. while complainant Raj Kumar was going to sleep in the house of Satish, the respondent Rajinder met him on the way and threatened him. As per prosecution case while the complainant Raj Kumar was inside the house, respondents 2 to 4 secured their entry in the said house, and at that time, the respondent Rajinder was armed with hockey stick while respondent Laxmi Kant was armed with a lathi. It is alleged that respondent Jagdish caught hold of Raj Kumar and the remaining respondents belaboured him with their respective weapons, as a result whereof, he sustained injuries. On 21.3.1993, Raj Kumar lodged a report regarding the alleged incident at the Police Station Kanjhawala, Delhi. Investigation pursuant to the said FIR culminated into submission of a charge-sheet under Sections 308/452/34 IPC against the respondents No.2 to 4.

4. On a consideration of the documents referred to in Section 207 Cr.P.C. and after hearing the parties, learned Additional Sessions Judge, came to the conclusion that the material collected by the investigating agency makes out a case under Section 323 IPC only and as the said offence has been investigated without obtaining permission of the concerned Magistrate under Section 155(2) Cr.P.C., the proceedings are liable to be quashed. Accordingly, he discharged respondents 2 to 4. Feeling aggrieved, the complainant Raj Kumar has come up in revision before this Court.

5. Learned counsel for respondents 2 to 4 has raised a preliminary objection regarding maintainability of the revision at the instance of a private party. In my opinion, the objection raised by the learned counsel for the respondents does not hold much water. It is open to the Court to entertain revision at the instance of a private party, though the State may not have thought fit to file revision, but this jurisdiction should be exercised only in exceptional cases, when there is some glaring defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice.

6. Assailing the validity of the impugned order, learned counsel for the petitioner contended that the learned Additional Sessions Judge has committed a patent illegality in discharging the accused merely on the ground of nature of the injuries sustained by the complainant Raj Kumar. According to the learned counsel, learned Additional Sessions Judge has overlooked material circumstances, which unmistakably bring the case within the mis-chiefs of Section 308 read with Section 34 IPC against respondents 2 to 4. Reliance is placed on the decision of the Supreme Court in *Sunil Kumar Vs . N.C.T. of Delhi and others*, : (1998)8SCC557 . As against this, learned counsel for respondents 2 to 4 relying on the decision of the Supreme Court in *Sarju Prasad v. State of Bihar* 1965(1) Cri.L.J. 766 contended that the evidence collected by the prosecuting agency does not show or suggest the requisite knowledge to attract the provision of Section 308 I.P.C. In the case of *Sunil Kumar (supra)* it was held that section 308 IPC postulates doing of 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. It was also held that an attempt of that nature may actually result in hurt or may not. In the instant case, the case diary statement of the complainant Raj Kumar shows that on the night in question while he was going to sleep in the house of Satish, the respondent Rajinder met him on the way and threatened him; that while he was inside the house, respondents 2 to 4 secured their entry and at that time, the respondent Rajender was armed with hockey stick and Laxmi Kant was armed with a Lathi; that respondent Jagdish caught hold of him and respondents Laxmi Kant and Rajender belaboured him with their respective weapons, as a result whereof, he sustained injuries on his person. Thus the state of mind of the respondents can be gathered from the aforesaid circumstances. It has to be borne in mind that a hockey or a lathi becomes a deadly weapon, the moment the same is used on some vital part of the body. In the instant case, the medical report of the complainant Raj Kumar shows that out of the three injuries found on his person one was bleeding injury on his skull. The Doctor further opined that the bone of the skull was visible. The learned Additional Sessions Judge has overlooked the cumulative effect of the circumstances enumerated above. Thus, the aforesaid circumstances raise strong suspicion against the respondents in respect of the offence punishable under

Sections 308/34 IPC. The decision in Sarju Prasad (supra) is distinguishable on facts. In my opinion, the case in hand is squarely covered by the decision of the Apex Court in the case of Sunil Kumar (supra) and in this view of the matter, the impugned order of the learned Additional Sessions Judge cannot be allowed to stand as it has resulted in flagrant miscarriage of justice.

7. For the foregoing reasons, the impugned order of the Additional Sessions Judge deserves to be and is hereby quashed restoring the status quo ante of the trial remaining with the Additional Sessions Judge to proceed in accordance with law. The revision is thus allowed.

8. Parties are directed to appear before the learned Additional Sessions Judge on 5.10.1999.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com