

**Naval Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/697145](http://sooperkanoon.com/697145)

**Court :** Delhi

**Decided On :** Mar-08-1996

**Reported in :** 1996IIAD(Delhi)407; 1996CriLJ2842; 1996(36)DRJ709

**Judge :** Jaspal Singh, J.

**Acts :** [Indian Penal code, 1860](#) - Sections 308

**Appeal No. :** Criminal Revision Appeal No. 158 of 1995

**Appellant :** Naval

**Respondent :** State

**Advocate for Pet/Ap. :** K.B. Andley and; H.J. Singh, Advs

**Judgement :**

**Jaspal Singh, J.**

(1) The petitioners are aggrieved by the order of the learned Additional Sessions Judge framing charges against them under sections 308 and 452 read with section 34 of the Indian Penal Code.

(2) Before I come into grip with the issues involved let me first bring forth the background of the case.

(3) On June 1, 1991 at about 10.20 p.m. information was received at Police Post Harsh Vihar, Police Station Nand Nagari that a quarrel was taking place in the house of one Ram Chander Pradhan. Consequently Sub-Inspector Subhash Chand along with other staff went to the place of occurrence. Finding the injured having already been removed to the hospital he went to G.T.B. Hospital where the statement of Banwari Lal was recorded. The statement of Banwari Lal shows that he owns a plot of land near to the house of Ram Chand and that Ram Chand Along with others had made an attempt to carve out a passage from within that plot which was thwarted and that irked by it Ram Chand his son Naval Singh, Parkash, Bhagwan etc. armed with lathis had trespassed into his house and had attacked him and his son Bhopal with the said lathis. As per the medical report Bhopal had received the following injuries with a blunt weapon.

'2CLW over scalp

2CIW over right arm'

It further appears that the wounds were stitched which were removed after 6 or 7 days.

(4) It need hardly be mentioned that consequent upon the report, case was registered against the present petitioners under sections 308/452/147/146/149 of the Indian Penal Code. A cross-case was also registered. Later, a vigilance enquiry was conducted on the complaint of Bhagwan Sahai petitioner. Consequent upon that inquiry, a cancellation report was submitted before Mr. P.D. Jarwal, Metropolitan Magistrate. Mr. Jarwal, however, refused to accede to the request and taking cognizance, summoned the present petitioners under sections 452/308/34 of the Indian Penal Code and thereafter committed them to the Court of Sessions. The matter then came before Mr. Balbir Singh, Additional Sessions Judge who, upon hearing arguments, framed charges under sections 452/308/34 of the Indian Penal Code. Hence this revision petition.

(5) Time now to deal with the arguments advanced by the learned counsel for the petitioner.

(6) It was contended that as the prosecution had, after a vigilance enquiry, applied for cancellation of the challan, the learned Metropolitan Magistrate ought not to have taken cognizance. I disagree. The Metropolitan Magistrate was neither expected nor required to act as a rubber stamp. He refused to do so and rightly so. The Supreme Court supports him. One may, in this respect, refer to *Kamlapati Trivedi v. State of West Bengal* : 1979 CriLJ679 . The order passed by Mr Jarwal shows that he applied his judicial mind and that too very appropriately. He looked into the First Information Report. He peeped into the medical report of Bhopal. He examined the statements of Sulekh, Banwari, Bhopal, Roshan Lal and Narain Singh recorded under section 161 of the Code of Criminal Procedure. The entire approach was critical and not mechanical. Thereafter, the learned Additional Sessions Judge also looked into the matter afresh and he too found himself in agreement with Mr Jarwal. And, as far as I am concerned, I too discern no infirmity. Not even a speck of it. Why should then I interfere

(7) It was next contended that there was no material on the record to justify framing of charges under sections 452/308/34 of the Indian Penal Code. I find myself unable to agree. That the petitioners committed criminal trespass into the complainant's house after having made preparation for causing hurt or for assaulting the complainant and his son or for putting them in fear of hurt, or of assault, is prima facie made out from the statement of the complainant and other alleged witnesses interrogated during investigation. They trespassed into the house of the complainant after having fully armed themselves with lathis and caused injuries on the person of Bhopal. The intention or knowledge requisite for attracting section 308 of the Indian Penal Code stands prima facie established from the statement of the complainant and of other witnesses examined under section 161 of the Code of Criminal Procedure. The medical evidence referred to above provides further support.

(8) No other point was agitated before me.

(9) The criminal revision is dismissed.