

Surinder Kumar Vs. State

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Court : Delhi

Decided On : Oct-01-1996

Reported in : 1996VAD(Delhi)345; 64(1996)DLT620; 1997(40)DRJ327

Judge : S.K. Mahajan, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 227; [Indian Penal code, 1860](#) - Sections 323

Appeal No. : Criminal Revision Appeal No. 225 of 1995

Appellant : Surinder Kumar

Respondent : State

Advocate for Pet/Ap. : B.K. Sharma and; P.K. Behl, Advs

Judgement :

S.K. Mahajan, J.

(1) On September 27, 1992 a fight is alleged to have taken place between the petitioners on the one hand and the tenants of petitioners 1 and 2 on the other. The allegations made in the Fir are that Sunil Kumar and his family were tenants in the premises owned by petitioners 1 and 2 and they were working in the said shop since 1970 under the name and style of M/s.Dharshan Lal & Sons being family business in jewellery; on September 27 at about 4.00 A.M. when Sunil was

opening the shop, the petitioners came there and started quarreling with him and said that they should vacate the shop failing which they will have to face dire consequences. On his telling the petitioners that the shop was under their tenancy for the last 20- 22 years and they were paying the rent regularly and it being their only source of income, it was not possible for them to vacate the same, the petitioners 1 and 2 caught hold of him by his arms and Rajesh hit him with saria on his head. Ajay took up a brick from the road and hit on his head and Ramvir, Ajay and Rajesh started hitting him with lathis also hitting with fists and legs; in the meantime, his brother also came on the shop and when he tried to intervene in the matter all these persons also hit him. In the scuffle which had taken place the petitioners 1,2 and 5 also received injuries. On finding these persons fighting, the neighbourers from the market also reached there and Rajesh and Ajay ran away from the spot. Police also reached on the spot and took petitioners 1,2 and 5 as well as Sunil and his brother to the hospital. Statement of witnesses was recorded under Section 161 of the Code of Criminal Procedure and on receipt of Mlc report case under section 308, 323/34 of the Indian Penal Code was registered against the petitioners and challan was also filed against them. A cross case under Section 354/323/34 was registered against Sunil and his brother and a challan in that case has also been filed in the Court. The Trial Court after hearing the parties framed charges against the petitioners for their having committed an offence punishable under Section 308/34 and 323/34 IPC.

(2) Being aggrieved by the order of the Additional Session Judge framing charges against the petitioners for offence punishable under Section 308/34 Indian Penal Code, the petitioners have filed this revision petition for quashing the said charges and for quashing the proceedings under Section 323/34 Indian Penal Code as the police could not investigate the said offence without permission of the Magistrate.

(3) The contention of Mr.B.K.Sharma, counsel for the petitioners is that to make an offence punishable under Section 308 Indian Penal Code it was necessary that the following ingredients must be present;- a) that the accused has committed the act; b) such act was committed with an intention or knowledge to commit culpable homicide not amounting murder; c) offence was committed under such circumstances that if the accused by that act had caused death, he would have

been guilty of culpable homicide.

(4) MR.SHARMA contends that a perusal of the Mlc shows that the injuries were simple and the Investigating Officer had obtained the opinion on Mlc from a doctor who had no occasion to examine the patient. In his view, therefore, such an opinion was not acceptable as per the provisions of Section 45 of the Evidence Act. Mr. Sharma has referred to the judgments reported as Braham Dutt vs. State 1996 Jcc 183 Jagbir Singh vs. State of Punjab 1987 (1) L R 714 and Ajit Singh vs. State 1990 (1) L R 580 in support of his contention that no offence punishable under Section 308 was made out against the petitioners and that proceedings under Section 323/34 Indian Penal Code were liable to be quashed as no permission to investigate had been taken from the Magistrate.

(5) Section 227 and 228 of the Criminal Procedure Code have a bearing on the contentions raised by the parties. While Section 227 requires the Court to discharge an accused if upon consideration of the case and documents submitted therewith and after hearing submissions of the accused and the prosecution in that behalf, the Judge considers that there was no sufficient grounds for proceeding against the accused, Section 228 states that if after such consideration and hearing as mentioned under Section 227, the Judge is of the opinion that there were grounds for assuming that the accused had committed an offence, he may frame charges against the accused. Reading of two provisions together makes it clear that at the beginning and at the initial stage of trial, the Court is not required to meticulously judge the truth, veracity and effect of evidence which the Prosecutor proposes to adduce nor any weight is attached to the probable defense of the accused. It is not obligatory for the Judge at that stage of trial to consider in detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The Court at that stage is not to see whether there is sufficient ground for conviction or whether the trial is sure to end in the conviction of the accused and the only thing to be seen is whether there is a strong suspicion which leads the Court to think that there are grounds for presuming that the accused had committed an offence. However, the Judge while considering the question of framing of charges has undoubtedly the power to sift and weigh the evidence for limited purpose of finding out whether or

not a prima- facie case against the accused had been made out. The Court cannot act as a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. The prima-facie case would depend upon the facts of each case and it is difficult to lay down a rule of universal application. However, if two views are equally possible and the Judge is satisfied that the evidence produced before him gives rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused. It is in this background that I have to consider the facts of the present case to find out whether the charges framed against the petitioners under section 308/34 can be sustained.

(6) It is not denied that the petitioners had also been injured in the scuffle which had taken place between the parties and an Fir has also been registered against the opposite party, namely, Sunil and his brother. A perusal of the Mlc of Sunil shows that when he was taken to the hospital he was fully conscious, conversing well and his case for head injury was sent for opinion. One and a half inch size lacerated wound, skin deep in the occipital region with no active bleeding and one centimeter wound on the top of the scalp, skin deep, were found on the body of the petitioner at the time of the medical examination. The kind of weapon used, as per Mlc, was 'blunt'. EMO(S) was asked to further examine the patient and advise further treatment and management. EMO(S) on examination noticed that there was no evidence of head injury and Sunil was asked to attend casualty the next date. However, at the place where nature of injuries has been mentioned, the Doctor who had originally examined the patient noted the same as 'grievous'. The patient at that time was fit for making statement. It appears that he was immediately after being discharged from the Government hospital was taken to a private nursing home and where he is alleged to have been treated for alleged head injuries.

(7) I have perused the Fir as well as the statement of the witnesses recorded under Section 161 of the Criminal Procedure Code by the Police. No person including the complainant has made any allegation in their statements that injuries were inflicted by the petitioners with an intention to cause their death. As already

mentioned above, in order to constitute an offence under Section 308, not only it should be proved that the act was committed by the accused but it was committed with the intention or knowledge to commit culpable homicide not amounting to murder and that offence was committed under such circumstances if the accused by that act had caused death he would have been guilty of culpable homicide. therefore, the most important circumstances in a case under Section 308 would be that an act should have been committed with intention or knowledge to commit culpable homicide not amounting to murder. The injuries sustained by the complainant are not such that could in any manner result in the death of the injured persons. The injuries were caused by a blunt object and it was one and a half inch lacerated wound in the scalp. The doctor who examined the complainant had opined that there was no evidence of head injuries and it did not even require the hospitalisation and he was asked to attend the Opd the next date. The word 'grievous' against the injuries has been written by the doctor who had not examined the injured and had not given any opinion about his alleged head injuries. Merely because an injury has been found on the head, it cannot be said that such an injury was caused with the intention or knowledge to commit culpable homicide not amounting to murder. The evidence and circumstances of the case otherwise show that there was no intention or knowledge on the part of the accused to cause such injuries which would have resulted in the death of the complainant as a result of which they would have been guilty of murder or culpable homicide not amounting to murder. The fact that the petitioners have also been injured and a case under Section 324 Indian Penal Code has been registered against the complainant clearly shows that it was a scuffle between two parties without any intention on either side to cause injuries which might result in the death of the accused. The material before the Additional Sessions Judge, in my view, was not such which could give rise to grave suspicion against the petitioners of their having the intention or knowledge to cause such an injury that had the death been caused, they would have been guilty of culpable homicide.

(8) For the foregoing reasons, I am of the considered opinion that the petitioners could not have been charged for an offence punishable under Section 308/34 IPC.

(9) Coming to the second question as to whether the petitioners could be tried for an offence punishable under Section 323/34 Indian Penal Code, I find that the offence Under section 323 is a non- cognizable offence and investigation by the Police into the case involving non-cognizable offence is not permissible without permission of the Magistrate. Admittedly, no permission has been taken by the Police to investigate into the offence punishable under Section 323 Indian Penal Code It is contended by Mr.Behl that as the Fir related to an offence not only under Section 323 Indian Penal Code but also under Section 308, there was no bar in the police investigating the case. In my opinion, the argument has no basis. When the case is actually registered against an accused in respect of both cognizable and non-cognizable offences and ultimately it is found that the cognizable offence is not made out, it may mean giving long hand to the police in first registering cases for cognizable offences which ultimately may not fall within the definition of such a case. I am, therefore, of the view that the police having not taken permission of the Magistrate under Section 155(2) of the Code of Criminal Procedure, the proceedings against the petitioners under Section 323 cannot be continued.

(10) For the foregoing reasons while I discharge the petitioners of the offence under Section 308 Indian Penal Code, I quash the proceedings pending against them in relation to Fir No.335/92 Ps Krishna Nagar, in so far as it relate to the offence punishable under Section 323 IPC.

(11) Petition stands disposed of.

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