

Arun Saroha and Another Vs. State

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Court : Delhi

Decided On : May-03-2012

Judge : The Honourable Ms. Justice Pratibha Rani

Appeal No. : CRL.REV.P. 311 OF 2011

Appellant : Arun Saroha and Another

Respondent : State

Judgement :

PRATIBHA RANI, J.

(ORAL)

1. This revision petition has been preferred by the petitioners impugning the order dated 4th May, 2011 vide which they were ordered to be charged for committing the offence punishable under Section 308/323/34 IPC.

2. In order to appreciate the contentions advanced on behalf of the petitioners, it is necessary to look into the facts of the case leading to registration of FIR No.529/2009 at PS Prashant Vihar against these petitioners. As per the complaint made by Raj Dev Singh before the police, on 7th September, 2009 the complainant alongwith his friend Mannu was going to DDA Market, D-Block at about 10.00 PM when one motorcycle bearing registration No.DL- 8S-AK-0650 came from the front and touched their car. The motorcycle was driven by the

petitioner Arun Saroha and when he was asked to drive it properly, there was some hot words exchange. Arun Saroha left the spot in an angry mood and returned after about 15 minutes alongwith his companion Vijay and one other person and all of them were armed with dandas. At that time, complainant alongwith his friend was going back in the car but they were stopped by the accused persons and asked to come out.

3. Complainant Raj Dev Singh was taken out of the car and attacked with dandas resulting in injuries on his back, legs, hands and head. His cousin Surya Pratap, who happened to pass from there, on seeing the complainant being assaulted, intervened. Even he was not spared and beaten mercilessly by the petitioners and their companion. Surya Pratap suffered head injury. The injured persons were removed to hospital where their MLCs were prepared. Though the nature of injury was opined to be simple, Surya Pratap suffered head injury i.e. lacerated wound of size 3cm X .5cm X .5cm over the mid occipital region of the head.

4. The contention of learned counsel for the petitioners is that in view of the nature of injury being simple, learned Addl. Sessions Judge could not have charged them for committing the offence punishable under Sec.308/34 IPC. Learned counsel for the petitioners has referred to the provisions of Section 308 IPC and the necessary ingredients required to constitute the offence which, in his opinion, are missing in this case as there was no intention or knowledge on the part of the petitioners to cause such injuries that if he by that act death was caused. They would have been guilty of culpable homicide not amounting to murder. Learned counsel for the petitioner has relied upon **Kala Chand Gorain and Ors. vs. The State of Bihar 2009 Cri.L.J. 4506**, **Machhendra Singh vs. State of Rajasthan 2006 Cri.L.J. 1740**; **Kala Singhand Ors. vs. State of Rajasthan 2006 Cri.L.J. 4135**; **Premchand S.Bansode and Anr. vs. State of Maharashtra 2007 Cri.L.J. 142**; **Pran Yadav and Ors. vs. State of Jharkhand 2007 Cri.L.J. 1059**; **Ibrahim vs. Government of M.P. 2007 Cri.L.J. 3928**; **Malkhan Singh and 6 Ors. vs. State of Madhya Pradesh 2007 Cri.L.J. (NOC) 365 (M.P.)**; and **Kishan and Anr. vs. State of Madhya Pradesh 2007 Cri.L.J. (NOC) 247 (M.P.)**, in support of his contentions.

5. On behalf of State, reliance has been placed on **Sunil Kumar vs. NCT of Delhi and Ors. (1998) 8 SCC 557** and it has been contended that the injury was caused on the vital part of the body i.e. head and as the injured was being attacked repeatedly with danda blows one of which was on the head, the necessary knowledge required to constitute the offence punishable under Sec.308/34 IPC can be attributed to the petitioners and the charge has rightly been framed requiring no interference.

6. After considering the rival contentions of the parties, first of all it would be apt to refer to the reasoning given by learned Addl. Sessions Judge while ordering for framing of charge. Para 8 of the impugned order containing the reasoning given by learned Addl. Sessions Judge is extracted as under :-

‘8. In the present case, injured Surya Pratap had received a lacerated wound of the size 3cm x .5cm x .5cm over mid occipital region. It would be gainsaying the fact, that the occipital region of the human brain/head is one of the most vital part of the human body, any small injury to the said portion of the head can be fatal or can cause serious complications to the injured person. The very fact that lacerated would had been caused on the said vital part by both the accused persons acting in concert by Lathi and Danda Blows, shows that both the accused persons were having intention to cause such injuries that were likely to cause death or the accused persons can be attributed with the knowledge that by causing such injuries, they were likely to cause death of the injured Surya Prakash (sic). The nature of the injuries being simple is not relevant, as it is the intention of the accused persons, which has to be seen or discerned from the aforesaid acts of the accused persons.’

7. Reliance placed by learned counsel for the petitioner on **Machhendra Singh vs. State of Rajasthan** (Supra) wherein the order framing of charge under section 307 IPC was quashed, does not advance the case of the petitioners for the simple reason that charge was quashed on the ground that though the accused persons abducted the injured from his house at gun point, assaulted him with hockey and saria. The fact that no fire arm had been used and all injuries were caused on non-vital parts, the intention was to cause grievous injuries and not death.

8. The other judgments **Kala Chand Gorain and Ors. vs. The State of Bihar** (Supra), **Kala Singhand Ors. vs. State of Rajasthan** (Supra), **Premchand S.Bansode and Anr. vs. State of Maharashtra** (Supra), **Pran Yadav and Ors. vs. State of Jharkhand 2007** (Supra), **Ibrahim vs. Government of M.P.** (Supra), **Malkhan Singh and 6 Ors. vs. State of Madhya Pradesh** (Supra), and **Kishan and Anr. vs. State of Madhya Pradesh**(Supra) are the cases wherein the conviction was recorded after examination of witnesses, thus of no help to the petitioner while dealing with the present petition seeking quashing of charge framed for committing the offence punishable under Section 308/34 IPC.

9. Reverting to the allegations against petitioners made in the complaint, to infer the knowledge at the time of occurrence, the relevant portion of the statement of the complaint made before the police is required to be extracted hereunder :-

‘Main car se bahar nikla to un teeno ne mujhe dando se danadan marna shuru kar diya. Main chhaati ke bal gir gaya. Unhone mere peeth, haath, pairon ve ser par jahan bhi maar sakte the mujhe peeta. **Isi doraan Shri Surya Pratap, S/o Shri Satish Kumar jo mere bua ka ladka hai, apni gaadi se aa raha tha mujhe pit ta dekh kar mujhe bachane aaya to use bhi lathion se marna shuru kar diya . Lathi maar kar uska ser phhaad diya.**’

10. At the stage of framing of charge, the jurisdiction of learned Sessions judge is limited for the reason that marshalling and appreciation of evidence cannot be done by the Court at that stage. The knowledge required for purpose of charging the accused persons under Section 308/34 IPC can be attributed from the above quoted statement of the complainant showing incessant danda blows being given by the petitioner not only to him but also to the person on the vital part of the body i.e., head, who happened to know the complainant. He was passing by there and on seeing the incident including the complainant, he intervened. He was attacked with lathis due to which apart from injuries on other parts, he suffered head injury referred to above. Merely because the injury was opined to be simple in itself was not sufficient to discharge the petitioners for having committed the offence punishable under Sec.308/34 IPC or to charge them for committing the offence punishable under Sec. 323/34 IPC.

11. In the case **Sunil Kumar vs. NCT of Delhi** (Supra) relied upon by the State, the Apex Court while dealing with the similar situation wherein the High Court discharged the accused persons for committing the offence punishable under Section 308/34 IPC on the ground that injuries received were simple, in para 4 of the judgment observed as under :-

‘4. The view taken by the High Court is obviously erroneous because offence punishable under Section 308 IPC postulates doing of an act with such intention or knowledge and under such circumstances that of one by that act caused death, he would be guilty of culpable homicide not amounting to murder. An attempt of that nature may actually result in hurt or may not. It is the attempt to commit culpable homicide which is punishable under Section 308 IPC whereas punishment for simple hurts can be meted out under Sections 323 and 324 and for grievous hurts under Sections 325 and 326 IPC. Qualitatively, these offences are different. The High Court was thus not well advised to take the view as afore-extracted to bring down the offence to be under Sections 323/34 IPC and then in turn to hold that since that offence was investigated by the police without permission of the magistrate, the proceedings under that provision be quashed. For the view afore-taken as to the commission of the offence under Sections 308/34 IPC, it is not necessary to dwell on the correctness of the second part of the order relating to quashing of proceedings under Sections 323/34 IPC. Thus, the entire order of the High Court deserves to be and is hereby quashed, restoring the status quo ante of the trial remaining with the Additional Sessions Judge to proceed in the accordance with law.’

12. The legal position is almost settled that at the stage of charge, the Court is not required to consider pros and cons of the case. The Court can only sift and weigh the material for the limited purpose of finding whether or not a prima facie case for framing the charge has been made out. In my opinion, the learned Addl. Sessions Judge has taken into account all the relevant material and passed the impugned order following the parameters laid down in various judgments referred to by him in the impugned order. The order framing charge for committing the offence punishable under Section 308/34 IPC against the petitioners despite the opinion about the injury being simple does not suffer from any illegality or infirmity in view

of the judgment of Apex Court in **Sunil Kumar vs. NCT of Delhi** (Supra).

12. The revision petition is hereby dismissed.

13. Parties are directed to appear before the concerned Trial Court on 17th May, 2012. Registry is directed to send the copy of the order to the Trial Court for information.

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