

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

RESERVED ON : FEBRUARY 23, 2015

DECIDED ON : MARCH 04, 2015

+ CRL.REV.P. 289/2014 & CRL.M.A.No.7916/2014

SMT NARINDER KAUR OBEROI & ORS. Petitioners

Through : Mr.Sanjeev Anand, Advocate with
Mr.Yakesh Anand, Mr.Arush
Khanna, Mr.Murari Kumar &
Ms.S.Anand, Advocates.

VERSUS

STATE & ANR.

.... Respondents

Through : Mr.Navin K.Jha, APP.
Mr.Mohit Mathur, Advocate with
Mr.Gurbaksh Singh, Advocate for
R2.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.GARG, J.

1. The instant revision petition has been preferred by the petitioners to impugn the legality and correctness of an order dated 11.04.2014 of learned Additional Sessions Judge by which charge under Sections 323/325/341/308/34 IPC was ordered to be framed against them. The petition is contested by respondent No.2.

2. I have heard the learned counsel for the parties and have examined the filing including the authorities relied upon by them.

3. Admitted position is that both the parties are closely related to each other and live separately in the same building. A religious function was organized on 18.05.2012 and many relatives including both the parties participated therein. It appears that a dispute arose between the parties over possession of mezzanine floor. Both the parties claimed themselves to be the owner-in-possession of mezzanine floor in the building. Undisputedly, in the said quarrel people from both sides sustained injuries and they were taken to Jai Parkash Narayan Apex Trauma Centre (AIIMS) for medical examination. After requisite treatment, injured persons from both the sides were discharged. Injuries sustained by respondent No.2 were opined 'simple' in nature whereas injuries sustained by his son Bhupender Singh were opined as 'grievous'. Other injured persons sustained 'simple' injuries on their body. It is also not denied that the incident was reported to the police. However, when the police went to the hospital, they declined to record their statements. The police was informed that they would settle the dispute amicably on their own. Apparently, no proceedings were initiated against any of the parties that day.

4. It seems that the matter could not be resolved/settled and on 21.05.2012, both the sides lodged complaints with the police. Consequently, two cross FIRs bearing Nos.65/12 and 66/12 were registered at Police Station Greater Kailash, Part-I. The instant revision petition pertains to FIR No.66/12 registered under Sections 323/325/341/34 IPC. Investigation was carried out. After recording statements of the witnesses conversant with the facts, a charge-sheet for commission of the aforesaid offences was filed in the court of learned Metropolitan Magistrate. It is relevant to note that respondent No.2 also filed complaint No.62-A/01/2012 under Section 190 Cr.P.C. before the learned Metropolitan Magistrate. Status report was called from the police which revealed that no offence under Section 308 IPC was made out against the petitioners. The learned Metropolitan Magistrate was of the view that, prima facie, offence under Section 308/34 IPC was made out against the petitioners and by an order dated 06.03.2013, they were summoned accordingly. The petitioners did not challenge the summoning order. After committal of the case to the Court of Sessions, by the impugned order, the petitioners were charged under Section 308 IPC also.

5. The petitioners' counsel urged that ingredients of Section 308 IPC are not attracted. There was no material before the Trial Court to

proceed against the petitioners for commission of offence under Section 308 IPC. Learned counsel for respondent No.2 vehemently urged that there is no illegality or irregularity in the impugned order and the petitioners have been rightly charged under Section 308 IPC. The petitioners along with their associates were armed with various weapons including an iron rod. A blow was given on the complainant's head with the iron rod. The fatal blow could be averted due to turban on the head. The petitioners had planned attack on the complainant to eliminate him and had associated 'outsiders' also. Respondent No.2 was attacked with an iron rod and his son was beaten severally as a result of which he lost his teeth. Summoning order of learned Metropolitan Magistrate remained unchallenged and has attained finality. At the stage of framing of charges, the trial court is enjoined to assess, evaluate and weigh the prosecution evidence only to see if a prima facie case exists. Physical hurt is not a necessary pre-requisite for invoking the provisions of Section 308 IPC.

6. Offence punishable under 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. An attempt of that nature may actually result in hurt or may not. What the court is to see whether the act

irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in Section 308 IPC. It depends upon the facts and circumstances of each case whether the accused had the requisite intention or knowledge. The nature of weapon used, the intention expressed by the accused at the time of act, the motive for commission of offence, the nature and size of injuries, parts of the body of the victim selected for causing the injuries and severity of blow and blows are main factors that may be taken into consideration in coming to ascertain the requisite intention or knowledge. In the instant case as discussed above, the parties were closely related to each other and had participated together in a religious function organized by the petitioners in the said building. A dispute occurred all of a sudden over possession of mezzanine floor which both the parties claimed that it belonged to them. A sudden quarrel took place at the spot in which both the parties sustained injuries. They were taken to hospital and were medically examined. All of them were fit to make statements. Despite that, none of the parties opted to lodge any complaint with the police and decided to resolve the dispute amicably through the intervention of the relatives. FIRs were lodged after a considerable delay of three days when the matter could not be settled. None of the parties sustained injuries on any vital organ by a deadly

weapon. No weapon of offence whatsoever was recovered during investigation. Injuries sustained by the complainant's son opined 'grievous' were on his nose and because of loss of teeth. Charge-sheet was filed for various offences excluding Section 308 IPC. Statements of material witnesses i.e. Bhupender Singh recorded on 22.05.2012; Ravneet Kaur, his wife on 06.08.12 and Ravinder Kaur- complainant's wife on 06.08.12 under Section 161 Cr.P.C. did not reveal use of iron rod by the petitioners to inflict injuries on the complainant's head. There was no previous enmity between the petitioners and respondent No.2 and there was no pre-mediation. It was a sudden scuffle between the parties. No repeated blows on vital body parts were inflicted.

7. Considering all the above referred circumstances, it can safely be inferred that the petitioners at no stage had intention or knowledge to commit offence under Section 308 IPC. In the clash that occurred without any pre-planning, injuries were inflicted for which the petitioners can be prosecuted for voluntarily causing hurt to the victims. Apparently, there was no cogent material on record before the trial court to charge the petitioners under Section 308 IPC. Consequently, they are discharged for the offence punishable under Section 308 IPC. However,

they shall face trial for the other offences for which they have been charged.

8. The revision petition stands disposed of in the above terms. CRL.M.A.No.7916/2014 also stands disposed. Trial Court record (if any) along with a copy of this order be sent back forthwith.

**(S.P.GARG)
JUDGE**

MARCH 04, 2015

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