

* HIGH COURT OF DELHI : NEW DELHI

Crl. Rev. P. No.38/2010 & Crl.M.A. No.733/2010

% Judgment reserved on: 25th January, 2010

Judgment delivered on: 2nd February, 2010

1. Sh. Ajit Singh
S/o. Sh. Uday Singh
R/o. Village Ranholla,
Nangloi, Delhi

2. Sh. Kulbeer Singh @ Kuldeep
S/o. Sh. Navrang
R/o. Village Ranholla,
Nangloi, Delhi

....Petitioners

Through: Mr. J.K. Dhingra, Adv.

Versus

State (Govt. of N.C.T. of Delhi) Respondent

Through: Ms. Fizani Hussain, APP.

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

V.B.Gupta, J.

Present petition has been filed under Section 397/401 of Code of Criminal Procedure (for short as 'Code') against order dated 17th November, 2009 passed

by Additional Sessions Judge, vide which charges under Section 308/341/427 read with Section 34 IPC were ordered to be framed against present petitioners.

2. Brief facts are that on 11th October, 2007 at about 8.20 p.m., Yogender Singh, the complainant was going to his go-down at Mundka road on his motorcycle. Petitioner No.1 Ajit Singh, who was known to him attacked him with an iron rod, the blow of which fell on his elbow. Immediately, another person known to the complainant namely, Kulbeer Singh-petitioner No.2, hit the complainant with an iron rod on his head. Thereafter, two-three other associates of the petitioners started beating the complainant. The complainant managed to reach his home and was taken to hospital by his brother. As per MLC, complainant received lacerated wounds over the right occipital-parietal region and abrasions over his wrist.

3. It is contended by learned counsel for petitioners that Court cannot act merely as a post office or mouth piece of the prosecution. If two views are possible, judge has the right to discharge the accused for the particular offence. In the present case, trial court mechanically framed charges against the petitioners and reasons given by trial court are contrary to law. Medical examination of the injuries and opinion of the doctors show that the injuries are simple in nature. Under these circumstances, ingredients of Section 308 IPC are not made out at all.

4. On the other hand, it is contended by learned counsel for State that injuries were caused by petitioners on the head-which is a vital part of the body. These injuries were caused with an iron rod. There is no infirmity or ambiguity in the impugned order.

5. It is well-settled that at the time of framing of charge, the court has to see;
- (i) If a prima-facie case has been made out or not and whether there are sufficient grounds for proceeding against the accused or not;
 - (ii) The charge has not to be framed at the mere asking of the prosecution;
 - (iii) The court has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not, a prima-facie case against the accused has been made out;
 - (iv) If the court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence;
 - (v) At the stage of framing of charge, probative value of the material brought on record by the prosecution has to be accepted as true at that stage and;
 - (vi) The court has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before it. This, however, does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting the trial.
6. In the light of above principles, it is to be seen as to whether in the present case prima-facie, there are sufficient grounds for framing charges against the petitioners or not.

7. As per prosecution case, the injured was hit with an iron rod over head. The nature of injury in the MLC report is stated to be 'simple' but there is no denying the fact that complainant was hit on the head with an iron rod. There is no doubt that a blow of an iron rod on the head can cause death. If such a blow leads to death, it could be an offence punishable under 304 and 302 of IPC, but if the person survives, it is still a grave offence under section 308 IPC. The MLC clearly shows that complainant received lacerated wounds over the right occipital-parietal region.

8. Trial court in the impugned order observed;

“It cannot be disputed that a blow of an iron rod on the head of a person is capable of causing his death. A simple knowledge that it is so capable can ordinarily be imputed to offender unless there are any other circumstances to indicate that he could have had no such knowledge. If death is actually caused by voluntarily hit somebody with iron rod the offender would have committed an offence punishable under Section 304 or 302 IPC, depending upon the degree of knowledge or intention that can be imputed to him in the given circumstances. If on the other hand, the blow of the iron rod falls short of causing death, this would certainly attract section 308 IPC.”

9. Here, both the petitioners have been named by the complainant in his statement. Thus, prima facie the involvement of both the petitioners is there in this case. There is no infirmity or ambiguity in the impugned order.

10. The present revision petition is not maintainable and same is hereby dismissed.

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11. Dismissed.
12. Copy of this order be sent to trial court.

2nd February, 2010
RB

V.B.GUPTA, J.