

**IN THE COURT OF MR. SANJAY GARG-I
PRINCIPAL DISTRICT & SESSIONS JUDGE,
CENTRAL DISTRICT
TIS HAZARI COURTS, DELHI**

SC No.325/2024

CNR No. DLCT01-007569-2024

FIR No.: 189/2020

PS: Hauz Qazi

State Vs Mehtabuddin @ Babli & Anr.

ORDER ON CHARGE:-

1. The prosecution case is based on the complaint made by Mohd. Harun alleging that on 28.10.2020, he alongwith Wasim S/o Shamim and Wasim S/o Abdul Jamil went to house no. 1814, Katra Sheikh Chand, Lal Kuan, Delhi for getting it cleaned at 7:30 pm. Inside the house cleaning was going on when both the accused persons with other associates forcibly entered inside the said house and asked them to go away from there. When they opposed, accused Shakil told that this property has been purchased by him three years back and he exhorted accused Babli and his other associates to beat them and make them run away from there. On this accused Shakil caught hold of him and accused Babli who was holding a pointed object in his hand, hit on his head with intention to kill him. Both the labourers tried to save him. They also caused injuries to the labourers. When he raised alarm accused Babli made call at 100 number and thereafter they ran away from there. He and his labourers were taken to Lady Harding Hospital by his known person Rashid. Because of pain, he could not get his statement recorded during

night, when the police visited him. On his complaint, IO ASI Anuj Kumar made endorsement to get the FIR registered under section 308/452/323/34 IPC.

2. On this complaint, police registered the FIR and after investigation filed the chargesheet under Section 308/452/323/34 IPC.

3. Heard the arguments of Ld. APP for the State and Ld. counsel for the accused.

4. Ld. Addl. PP for the State submits that at this stage of the trial, Court is only required to see existence of prima facie case and same stands established from the complaint made by Mohd. Harun. It is stated that there are three injured persons, Mohd. Wasim S/o Shamim, Mohd. Wasim S/o Abdul Jamil had sustained simple injuries but complainant Mohd. Harun had sustained injuries on his scalp. It is stated that though the injuries are opined to be simple but it is on vital part and could have been fatal to the injured. In support of his submissions, Ld. Addl. PP has relied upon decision in **Salman & Ors. v. State & Anr.: 2021 SCC Online Del 1247** and **The State (NCT of Delhi) v. Varun Dass & Anr. Crl. Rev. P. 368/2018 decided by Hon'ble High Court of Delhi on 20.09.2022.**

5. On the other hand, Ld. counsel for accused submits that a civil litigation is going on regarding this property before the Hon'ble High Court. The Hon'ble High Court has directed that no unauthorized construction should be done in the said property. It is stated that complainant is the person of the builder and he has made false complaint so that accused may be forced to

withdraw the writ petition filed by them before the Hon'ble High Court regarding this property. It is stated that merely because complainant has sustained injuries on his scalp does not take the allegation to be under Section 308 IPC. It is stated that at the maximum, case under section 323 IPC instead of 308 IPC, is made out. The matter should be sent back to Ld. MM. In support of his submissions, Ld. Counsel has relied upon **State v. Raju@ Lokpal & Ors., Crl. Rev. P. 123/2017 decided by Hon'ble High Court of Delhi on 21.09.2023** and **Lal Kuan Resident Welfare Association v. North Delhi Municipal Corporation and Ors., W.P.(C) 9939/2019 & CM Appl. 41126/2019 decided by Hon'ble High Court of Delhi on 04.11.2022.**

6. As per the complaint, both the accused persons with their associates have assaulted the complainant and two of his labourers with pointed object which was in the hands of accused Babli and as a result of that he sustained injuries on his head. As per MLC of complainant Mohd. Harun, he suffered injury on his head (scalp) i.e. fronto-parital region. The dimension of injury is mentioned in the MLC as 10-15 cm. Injury has been opined to be simple in nature.

7. At this stage, the Court is only to see the existence of prima facie case. Reliance is placed upon **Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4**. The relevant observation made by Apex Court is as follows :

"10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

1) That the Judge while considering the question of framing the charges under [Section 227](#) of the Code 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.

2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

4) That in exercising his jurisdiction under [Section 227](#) of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a Post Office or 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. 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 a trial." (emphasis supplied)"

8. The contention raised on behalf of the Ld. counsel for accused is that merely because the injuries were found on the head, it cannot be said that such injuries were caused with the intention or knowledge to commit culpable homicide not amounting to murder. He submits that though all the allegations are fabricated but even if the allegations are taken on the face

value the necessary ingredients of the offence under section 308 IPC are lacking and the case should be sent back to Ld. MM for trial.

9. In support of his submissions, Id. Counsel has relied upon **State v. Raju @ Lokpala @ Ors (supra)**, Here Court has observed that the Court cannot act merely as a post office or 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, and basic infirmities. It is further observed that if two views are possible and one of them give rise to suspicion only, as distinguished from grave suspicion, the trial judge will be empower to discharge the accused. The Court has placed reliance upon **Pawan Chaddha v. State, Criminal Appeal No.640/2011 decided on 27.01.2016**, wherein it is held as under:-

“In order to constitute an offence under Section 308 IPC it is to be proved that the said act was committed by the accused with the intention or knowledge to commit culpable homicide not amounting to murder and that the offence was committed under such circumstances that if the accused, by that act, had caused death, he would have been guilty of culpable homicide. The intention or knowledge on the part of the accused, is to be deduced from the circumstances in which the injuries had been caused as also the nature of injuries and the portion of the body where such injuries were suffered. In this case, no previous enmity or dispute between the appellants and the complainant could be proved. There was no premeditation. The quarrel had taken place on a trivial issue. The nature of injuries suffered by the complainant was opined to be simple caused by blunt object. Apparently, the injuries were not caused with the avowed object or knowledge to cause his death.”

10. On the other hand, Ld. Addl.PP to buttress his submissions has relied upon judgment **The State (NCT of Delhi) Vs Varun Dass & Anr in CRL. REV.P. 368/2018 decided on 20.09.2022**, wherein the relevant observation in Para no.15 to 17 are reproduced as follows:-

“15. Even causing of hurt is not relevant for this purpose. A similar view was taken by the Hon’ble Supreme Court in the case of Sunil Kumar vs. NCT of Delhi, 1998 8 SCC 557, the relevant portion reads 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 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. 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.....”

16. In the present case, the accused had hit the victim twice on head with iron rod. A person hitting a victim on his head with iron rod twice cannot be presumed not to have knowledge or intention that such hitting on the head of the victim with an iron rod could result into death of a person. The nature of injury being simple was thus not relevant at the stage of consideration of charge. In this case an iron rod was used to cause injuries on the vital part of body of victim, the severity of blows and conduct of accused and their behaviour, motive etc will be clear only during trial and they could not have been discharged.

17. For the foregoing reasons, the present criminal revision petition is allowed and the impugned order passed by the learned ASJ directing discharge of accused persons for the offences punishable under Section 308/34 IPC is set aside”.

11. The Ld. Addl.PP has further relied upon the observations made by our own Hon'ble High Court in **Salman & Ors Vs State & Anr: 2021 SCC OnLine Del 1247**, wherein the relevant observation in para no.14 is reproduced as follows:-

“ 14. Ms. Meenakshi Chauhan, learned APP for the State is right in her submissions that the injury alone sustained by the accused at the time of framing charge cannot be the only criterion to discharge a person from an offence under Section 308 IPC. The attempt of that nature may or may not actually result in injury. What is relevant for framing charges under Section 308 IPC is that an act done by the accused with intention or knowledge that under such circumstances death could have been caused or not. The facts which are relevant at this stage are that the victim has suffered an injury on head which is a vital part of the body and that the injury has been caused by hitting him with an iron rod. The fact that the injury suffered by the victim is simple might not be a very relevant circumstance at this juncture in view of the circumstances of the judgment of Supreme Court in *Sunil Kumar v. N.C.T. of Delhi* (supra)”.

12. Coming back to the facts of the present case, there is no recovery of weapon of offence and injury of complainant is on the scalp and its dimension is 10 cm to 15 cm. The depth of the injury is nowhere mentioned. There may be civil litigation between the parties and as stated by Ld. Counsel for accused they have approached Hon'ble High Court in writ petition regarding the property, but at this stage of the case, allegations made by complainant cannot be ignored. The complainant has specifically stated that he was caught hold by accused Shakil and was assaulted by accused Babli with pointed objected on his head. The injury sustained by the complainant, as already discussed, is measuring 10 cm to 15 cm and it is on the scalp. The way complainant was caught hold by one accused and assaulted by

13. In view of the aforesaid reasons, prima facie allegations for the commission of offences under section 452/308/323/34 IPC is made out against both the accused persons. Let charge be framed against both the accused persons accordingly.

Announced in the open Court on 05th June, 2024.

(SANJAY GARG-I)
Principal District & Sessions Judge
Central District,
Tis Hazari Courts, Delhi^(ak)