

SC no.54/2023
STATE Vs. PONTY @ RAHUL & ORS.
FIR No.438 /2022
PS :Gokul Puri
under Section 308/342/325/34 IPC

19.05.2023

Present: Sh. Sunil Dutt, Ld. Addl. P.P (substitute) for
the State.

All three accused persons are on court bail with
Sh. V. S. Chauhan, Advocate.

1. Heard arguments on charge.
2. Ld. Addl. P. P submitted that as per the evidence collected, on 22.10.2022 all the accused persons facing trial along with some other persons had taken Devender, the injured, to a room in a house situated at A Block, Gokalpuri, Delhi confined him there and gave him beatings alleging that he has become informer of the police. It is submitted that the accused persons continued to assault Devender till he lost his consciousness. This fact itself shows the intensity and severity of the injuries caused by the accused persons on the person of Devender. Even the MLC shows that there were multiple bruises over the back, pain and swelling over both limbs. Laceration over chin and pain in entire body. The X-ray report shows that he has also sustained fracture. The doctor has opined the nature of injuries as grievous. Keeping in view these facts, prima facie offences punishable under Section 308 r/w Section 34, 342 r/w Section 34 and 325 r/w Section 34 of IPC are made out. It is

prayed that the accused persons be charged accordingly.

3. Ld. counsel for the accused persons submitted that according to the complainant Devender, the incident had taken place on 22.10.2022 at 4 AM but surprisingly he did not make any complaint to the police on that date. He alleges that he reached home and went to sleep. He has not even gone to hospital for treatment. It was only on the next day i.e 23.10.2022 at 11:40 AM that he reached hospital. Even thereafter he did not make any complaint to the police and it was only on 27.10.2022, after the delay of five days, that he made a complaint to the police.

4. Ld. counsel further submitted that the MLC of injured shows that the complainant had not sustained injuries on any vital part of the body. The circumstances does not disclose that accused persons had any intention or knowledge or gave beatings to Devender under the circumstances that if he would have died, they would have been guilty of culpable homicide not amounting to murder. Ld. counsel submitted that firstly the complainant himself is not believable. There is no explanation of delay of five days in lodging of the complaint and the MLC also does not disclose any offence under Section 308 IPC. It is prayed that under the circumstances no offence exclusively triable by the Sessions Court is made out and as the complainant is not reliable and trustworthy, therefore, the accused persons be discharged.

5. After hearing arguments and through the record, I found that in the present case, the incident took place on 22.10.2022. The complainant has explained the delay in the complaint itself

wherein he has mentioned that police came to him in GTB hospital while he was under treatment but due to severe pain, he could not give any statement. Even otherwise at the stage of charge, evidence is not required to be scrutinized minutely to find out whether the trial will culminate in conviction or acquittal. Prima facie the delay has been explained.

6. So far as the other averments are concerned, he has specifically mentioned that he was confined in a room which was also bolted from inside which shows that the accused persons confined him in a room and did not allow him to go outside the room. They have beaten him continuously and mercilessly which is also evident from the MLC that there were multiple bruises on the back as well as on both limbs. He has sustained fracture. There is laceration on chin and pain in the whole body. It is settled law that for making out an offence punishable under Section 308 IPC, the nature of injury is not important. The fact to be taken into consideration is whether the accused persons had intention or the knowledge that under the circumstance if the injured had died, they would have been guilty of culpable homicide not amounting to murder.

7. In the present case, six persons gave beatings to Devender after confining him in a room till he lost his consciousness. All these facts clearly show that they had intention or knowledge that under the circumstances if Devender would have died, they would have been guilty of culpable homicide not amounting to murder.

8. Keeping in view the facts, the evidence placed on

record and above discussion, I am of the opinion that prima facie case for offences punishable under Section 308 r/w Section 34 and 342 r/w Section 34 of IPC are made out. All the accused persons are accordingly charged to which they pleaded not guilty and claimed trial.

9. As offence punishable under Section 308 IPC is an aggravated form and also covers offence under Section 325 r/w Section 34 IPC, hence, no separate charge for offence under Section 325 r/w Section 34 IPC is framed. The observations made herein shall not tantamount to an expression of opinion on the merits of the case.

10. Now to come up for PE on 19.07.2023.

11. PW Devender, Dr. Vishal Kumar, Dr. Rukhsar Khan, Dr. Sandeep B. Rathod and IO SI Satyadev Panwar be summoned for the next date.

(V. K. BANSAL)
Principal District & Sessions Judge
North-East, Karkardooma Courts,
Delhi/19.05.2023