

CNR No. DLNT01-012941-2024  
SC No.558/2024  
State Vs. Dheeraj & Anr.  
FIR No. 265/2023  
PS: S.P. Badli  
U/s 308/34 IPC

24.10.2024

Present : Sh. Girish Giri, Ld. Addl. PP (substitute) for the State.

Both accused are present on bail.

Sh. Rahul, Ld. Counsel for accused Dheeraj.

Ms. Divya, Ld. counsel for accused Dev.

Arguments on the point of charge, have been heard.

Ld. Counsel for accused Dev has argued that there are contradictions with regard to timings of causing injuries to the injured persons in the MLC and the statement of the witnesses. Even, the alleged *danda* has not been recovered by the IO in this case and out of three injured, two injured persons sustained simple injuries. It is argued that only charge for the offence u/s 325 IPC is made out against the accused Dev.

Ld. Counsel for the accused Dheeraj has argued that charge u/s 308/34 IPC is not made out against accused Dheeraj as only co-accused Dev used the alleged *danda* for beating the injured persons. In the statements u/s 161 CrPC of the witnesses also, it is mentioned that Dev used the alleged *danda*.

Ld. Prosecutor for the State has argued that as per the statements of witnesses, accused Dev used a *danda* for beating the injured persons and accused Dheeraj was involved with him in the said beating of the injured persons, with intention to kill him. The statement of witnesses shows that there was a common intention of both accused persons in commission of the alleged offence and the nature of injuries is immaterial when there is clear intention to kill the injured.

Material on record perused.

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Hon'ble Supreme Court has observed in ***Parasa Raja Manikyala Rao and Anr. Vs. State of A.P.*** [79] AIR 2004 SC 132, as under:

*Section-34 really means that if two or more persons intentionally do a common thing jointly, it is just the same as if each of them had done it individually. It is a well recognized canon of criminal jurisprudence that the Courts cannot distinguish between co-conspirators, nor can they inquire, even if it were possible as to the part taken by each in the crime. Where parties go with a common purpose to execute a common object each and every person becomes responsible for the act of each and every other in execution and furtherance of their common purpose; as the purpose is common, so must be the responsibility. All are guilty of the principal offence, not of abetment only. In combination of this kind a mortal stroke, though given by one of the party, is deemed in the eye of law to have been given by every individual present and abetting. But a party not cognizant of the intention of his companion to commit murder is not liable, though he has joined his companion to do an unlawful act.*

On perusal of the record including the charge-sheet, the complaint of the complainant Jitender and the other documents, which have been placed on record, clearly show that both accused in furtherance of their common intention caused injuries on the persons of complainant and his parents / injured persons by using a danda, with such intention or knowledge that they would have caused the death of injured persons.

It is a settled proposition of law that at the time of framing of charge, the Court is not required to deeply marshal evidence and the court does not have to weigh the evidence collected by the prosecution on the scale, which would be applicable after the prosecution has led its evidence and when grave suspicion arises, charge can be framed against the accused. Reliance may be placed upon ***Alpana Dass v. CBI 2006 (90) DRJ 441*** and in the case of ***Union of India v. Prafulla Kumar Samai 1979 SSC (3) 609***.

From the scrutiny of the complaint made by the complainant Jitender and the other prosecution evidence, I am of the opinion that, at this stage, a prima facie case u/s 308/34 IPC, is made out against both accused Dheeraj and Dev.

Formal Charges for offences punishable u/s 308/34 IPC, is accordingly framed against both the accused Dheeraj and Dev, to which, they have pleaded not guilty and claimed trial.

Matter be listed for PE on **15.01.2025, 16.01.2025 and 17.01.2025**. IO and MHC(M) be summoned for all the dates, fixed for PE.

Witnesses be summoned as per the following schedule:

| Date       | PWs (to be summoned)                     |
|------------|------------------------------------------|
| 15.01.2025 | PWs mentioned at serial Nos. 1, 2, 4 & 5 |
| 16.01.2025 | PWs mentioned at serial Nos. 3, 6, 7 & 8 |
| 17.01.2025 | PWs mentioned at serial Nos. 9, 10 & 11. |

(VINAY KUMAR KHANNA)  
Principal District & Sessions Judge (North)  
Rohini Courts, Delhi/24.10.2024