

(2012) 10 DEL CK 0152
In the Delhi High Court
Case No : Criminal Rev. P. 489 of 2012

Girdhari Lal and Others

APPELLANT

Vs

State NCT of Delhi and Another

RESPONDENT

Date of Decision : 08-10-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 308, 323, 324, 325

Citation : (2013) 2 JCC 909

Hon'ble Judges : Manmohan, J

Bench : Single Bench

Advocate : Rajiv K. Garg with Ms. Kavita Rawat, for the Appellant; Manoj Ohri, APP for State with SI Jitendra Kashyap, PS Safdarjung Enclave, for the Respondent

Judgement

Manmohan, J.

Crl. M.A. 15944/2012

Allowed, subject to just exceptions.

Crl. Rev. P. 489/2012 & Crl. M.A. 15943/2012

1. Present revision petition has been filed challenging the order dated 13th August, 2012 passed by learned Additional Sessions Judge-2, SD,

Saket, New Delhi whereby petitioners have been charged u/s 308/34 IPC. Mr. Rajiv K. Garg, learned counsel for the petitioners submits that the

trial court has failed to appreciate that the doctor had in no uncertain words opined the injury as simple after examining the same. He further

submits that as the doctor had opined the injury not to be dangerous or grievous, petitioner could not have been charged u/s 308 IPC. In this

connection, he relied upon following judgments of this Court:-

i) Brahm Dutt & Ors. Vs. State & Ors., 1996 JCC 183.

ii) Surinder Kumar Vs. State, 1997 JCC 45.

iii) Desh Raj Vs. Kewal Krishan & Ors., CrI. Rev. P. 544/2001 decided on 23rd November, 2009.

2. However, the Supreme Court in Sunil Kumar Vs. N.C.T. of Delhi and Others, has held that to make an offence u/s 308 IPC, the nature of

injury is not conclusive. The relevant portion of the Sunil Kumar (supra) is reproduced hereinbelow:-

4. The view taken by the High Court is obviously erroneous because offence punishable u/s 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 u/s 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.

Qualitatively, these offences are different. The High Court was thus not well advised to take the view as afore-extracted to bring down the offence

to be under Sections 323/34 IPC and then in turn to hold that since that offence was investigated by the police without permission of the

magistrate, the proceedings under that provision be quashed. For the view afore-taken as to the commission of the offence under Sections 308/34

IPC, it is not necessary to dwell on the correctness of the second part of the order relating to quashing of proceedings under Sections 323/34 IPC.

Thus, the entire order of the High Court deserves to be and is hereby quashed, restoring the status quo ante of the trial remaining with the

Additional Sessions Judge to proceed in accordance with law.

3. The Supreme Court in State of M.P. Vs. Kashiram and Others, , Ratan Singh Vs. State of M.P. and Another, and State of Madhya Pradesh

Vs. Imrat and Another, has reiterated that whether there was intention to kill or knowledge that death will be caused is a question of fact and

would depend on the facts of a given case. The circumstance that the injury inflicted by the accused was simple or minor will not by itself rule out

application of Section 307 IPC. Consequently, an accused charged u/s 307 IPC cannot be acquitted merely because the injuries inflicted on the

victim were in the nature of a simple hurt.

4. This Court is of the view that in view of the subsequent Supreme Court's judgments, the judgments of this Court Brahm Dutt (supra) and

Surinder Kumar (supra) offer no assistance to the petitioners.

5. This Court is also of the opinion that the judgment in Desh Raj Vs. Kewal Krishan & Ors (supra) offers no assistance to the petitioners as in the

said case the Court was hearing an appeal against a conviction order. In fact, in Desh Raj Vs. Kewal Krishan & Ors (supra) the Court not only

made a distinction between the stage of framing of charge and the stage of conviction, but also clearly pointed out that in view of the ocular

evidence in the said case, the ingredient of Section 308 IPC had not been made out. Consequently, in view of the Supreme Court's judgments

referred to hereinabove, the impugned order framing charge requires no interference. Accordingly, present petition and application are dismissed.