

(2011) 05 DEL CK 0003

In the Delhi High Court

Case No : Criminal Revision Petition No. 129 of 2009

Samar Singh Puri

APPELLANT

Vs

The State (NCT of Delhi)

RESPONDENT

Date of Decision : 09-05-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 308, 323, 324, 354

Citation : (2011) 05 DEL CK 0003

Hon'ble Judges : V.K. Shali, J

Bench : Single Bench

Advocate : Rajesh Samanotra, for the Appellant; Pravin Sharma, APP, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Shali, J.—This is a criminal revision petition filed by the Petitioner against the order dated 09.03.2009 passed by the learned Additional District & Sessions Judge, Ms. Indermeet Kaur Kochhar (as his ladyship then was) directing the framing of charge u/s 308/354 IPC in respect of FIR No. 20/06 registered by PS Hauz Khas.

2. Briefly stated the facts of the case are that Shri Satish Kakkar, the complainant is the landlord residing in the property situated at B-48, Ground Floor, Panchsheel Enclave, New Delhi. He lodged a complaint that on 10.01.2006 at about 10:30 AM, he was parking his scooter in the front portion of the property in question when his tenant Shri S.S. Puri, the present Petitioner who resides on the first floor, came down and uttered that the complainant has made his life hell and, therefore, he would not spare him. He allegedly picked up a cemented brick and hit Shri Satish Kakkar on his head as a consequence of which blood started oozing and he suffered injuries. He was taken to the hospital where he allegedly remained admitted for 3 days. The doctors had opined the nature of the injuries to be simple.

3. At the time when the complainant Shri Satish Kakkar was attacked and hit on the head, he raised an alarm and started crying for help as a consequence of which his wife Smt. Ramesh Kakkar came to his rescue. It is alleged that the present Petitioner pulled her from the hair and dragged her and also slapped her on face. On the basis of these allegations, the learned Additional District & Sessions Judge framed charges on 09.03.2009 against the Petitioner u/s 308, i.e., attempt to commit culpable homicide and Section 354, i.e., assault on a woman with an intention/knowledge to outrage her modesty.

4. The learned Counsel for the Petitioner has contended that so far as the charge u/s 308 IPC is concerned, that has been erroneously framed against the Petitioner inasmuch as the injuries on the person of the Petitioner are simple in nature. It was also contended by the learned Counsel that merely because the Petitioner remained admitted in the hospital for 3 days for which there is no prima facie proof, the charge u/s 308 is not sustainable. The learned Counsel for the Petitioner relied upon two judgments of this Court in this regard Surinder Kumar v. State 1997 JCC 45 and Brahm Dutt and Ors. v. State and Others 1996 JCC 183

5. The learned Counsel for the Petitioner contended that in the case of Surinder Kumar, the facts were almost similar to the facts of the present case. In the reported case, the assailant had picked up a sword at the time of scuffle between the two parties because of which injuries were caused on the person of the victim which were opined to be simple and the Court had observed that the facts of the case did not warrant framing of charge u/s 308 IPC for attempt to commit culpable homicide as the injuries were simple in nature and inflicted with a blunt object which would not have been sufficient to cause the death of the injured. Similarly in Brahm Dutt's case also the charge u/s 308 IPC was converted into Section 323, IPC on the ground that the nature of injuries which were suffered by the victim were simple and, therefore, could not be considered to be sufficient to cause the death of the injured.

6. The learned Counsel for the Petitioner has also placed reliance on the judgment of Punjab & Haryana High Court in a case titled Jangir Singh v. State of Punjab 1987 C.C.C 134 (HC) which is somewhat similar to the earlier two cases with regard to the nature of injuries being opined as simple though suffered on the head. In this case also, it was observed that there was no intention or knowledge to cause the death of the victim.

7. The second submission of the learned Counsel for the Petitioner is that the charge u/s 354 IPC is also not sustainable on account of the fact that the present Petitioner had no intention to outrage the modesty of Smt. Ramesh Kakkar, wife of the injured. In this regard, the learned Counsel has relied on the judgment of the Punjab and Haryana High Court in case titled Ms. Kailash v. Hans Kumar 2000 (1) RCR 715 to contend that an offence u/s 354 IPC would prima facie be made out only if the blows are given on the breast to satisfy the carnal pleasure and only then it would come within the term of outraging the modesty of a

woman.

8. Learned Counsel for the State has contested the claim of the Petitioner and stated that the learned Counsel for the Petitioner has very conveniently not referred to the fact that in the instant case, there was a previous enmity between the present Petitioner and the complainant. It is in this background that the words uttered at the time of commission of the offence distinguish the facts of the present case with the facts of the reported judgments and consequently the charge u/s 308 IPC is legally sustainable.

9. With regard to charge u/s 354, IPC, the learned APP contended that the blows or the slaps which were given by the Petitioner though may not have been prima facie for satisfaction of his carnal pleasure but the very fact that he pulled the hair of the victim Smt. Ramesh Kakkar and dragged her shows that he had full intention and knowledge to outrage her modesty.

10. I have carefully considered the submissions made by the respective sides and have perused the record. I do not find that there is any illegality, impropriety or incorrectness in framing the charges u/s 308/354 IPC against the present Petitioner.

11. So far as the charge u/s 308, IPC, i.e., attempt to cause culpable homicide is concerned, the same is prima facie made out in the instant case. There is no dispute about the fact that at the stage of framing of the charge, only a prima facie case must be made out and this will depend upon the facts of each case. The facts of no two cases are comparable. Rather the facts of the reported judgments are distinguishable from the present case. Admittedly, there is a relationship of landlord and tenant between the victim and the assailant and it has also come on record that there was an ongoing feud between the Petitioner and the victim. This is further supported by the fact that the Petitioner had allegedly uttered the words that his life has been made miserable and therefore, he would not spare the complainant. Seen in the light of these facts, the hitting of the victim by the present Petitioner with the help of a brick that too a cemented brick on the head not once but twice and the injuries being suffered by him in the rear portion of the head prima facie establishes that the Petitioner not only had intention but also the knowledge that the injury which he is likely to cause on the vital part of the body of the injured is likely to cause even death and, therefore, the offence of attempt to commit culpable homicide against the present Petitioner has been rightly framed by the learned Additional Sessions Judge.

12. The judgments which have been relied upon by the Petitioner in order to support his submission for toning down the offence to one of Section 323 or 324, IPC are not applicable to the facts of the present case for the simple reason that there is a stark dissimilarity in the facts of the cases reported by the Petitioner and the facts of the case in hand. For these reasons, the prayer of the Petitioner so far as the offence u/s 308 IPC is concerned, has no merit.

13. As regards the offence u/s 354, IPC it is clear from the reading of the ingredients of Section 354, IPC that what is prima facie required to be seen is that there must be an assault or use of criminal force on a woman; such an assault or use of criminal force must have been:

(a) with an intention to outrage her modesty; or

(b) be with the knowledge that her modesty is likely to be outraged The word "modesty" has not been defined in the Code while as in the case of Mrs. Rupan Deol Bajaj and another Vs. Kanwar Pal Singh Gill and another, while referring to Oxford Dictionary, the Supreme Court observed that modesty is a quality of being modest and in relation to woman, it means womanly propriety of behavior, scrupulous chasity of thought, speech and conduct.

14. In the light of the said definition, the behaviour of the present Petitioner in assaulting Smt. Ramesh Kakkar and slapping her on face and the fact that he held the hair of the woman and dragged her is sufficient, in my view, prima facie to satisfy the ingredients of Section 354, IPC that is not the way a normal civilized person would behave with a woman. I do not agree with the judgment cited or the contention of the learned Counsel for the Petitioner that the assault must be for carnal pleasure in my view. It need not be so in all cases of assault.

15. For the aforesaid reasons, I feel that even the charge u/s 354, IPC against the present Petitioner does not call for any interference.

16. For the above mentioned reasons, I do not find any merit in this petition, which accordingly fails and is hereby dismissed.