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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment delivered on: 03.09.2025*

\+ **CRL.REV.P. 1299/2024**

KAILASH KATYAL .....Petitioner

Through: Mr. C.L. Gupta and Mr. Vaibhav Gupta, Advocates

versus

STATE GOVT. OF NCT OF DELHI .....Respondent

Through: Mr. Naresh Kumar Chahar, APP for the State with Ms. Puja Mann, Advocate, and SI Amit Kumar, P.S. Moti Nagar

CORAM:
HON'BLE DR. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

DR. SWARANA KANTA SHARMA, J

1. By way of the present petition, the petitioner is seeking setting aside of the order dated 27.09.2024 [hereafter '*impugned order*'], passed by the learned Additional Sessions Judge-08, Tis Hazari Court (West), Delhi [hereafter '*Sessions Court*'] *vide* which charges were framed for offence under Sections 308/353/332 of the Indian Penal Code, 1860 [hereafter '*IPC*'] against the petitioner herein.

2. Briefly stated, the facts of the present case are that on 21.06.2017, an FIR bearing no. 217/2017 came to be registered at

Police Station Moti Nagar, Delhi, alleging that a car bearing no. DLICS1129, driven by the accused had been found overspeeding near Zakhira Pul, Rohtak Road at 8:20 AM, and had caused injuries to Constable Parikshit (victim), who was then on traffic duty along with ASI Bhagat Ram and Constable Ram Kishan, intercepting the overspeeding vehicles. The case of the prosecution is that the victim had received a message through wireless from an interceptor operator that the car driven by the accused was over-speeding, pursuant to which, the victim had signalled to him to stop the car, however, the accused, despite initially slowing the car down, did not comply. Instead, allegedly, the accused had told the victim, *"hat ja nahi to uda dunga".* However, before the victim could process what had happened, the accused had hit him and fled towards Punjabi Bagh. It is alleged that the victim's colleague had also tried to stop the accused, but to no avail. Thereafter, as stated, a PCR van was called upon which took the victim to the hospital, accompanied by Constable Ram Kishan. The statement of the victim was subsequently recorded and the FIR was registered.

3. During the course of investigation, a notice under Section 113 of the Motor Vehicles Act, 1988 (hereafter *'MV Act'*), was served upon the registered owner of the car, Sonam Katyal, who pleaded unawareness of the said incident, stating that she had handed over the keys of the car to the driver of the petitioner/accused at his instructions. Pursuant thereto, during investigation, on 15.07.2017, the victim had identified the petitioner/accused as the driver of the

offending vehicle when he had come to P.S. Moti Nagar to make enquiries whereafter the chargesheet and a supplementary chargesheet were filed along with a complaint under Section 195 of Cr.P.C. of Sh. Jaswant Singh, ACP, Central District, Traffic Delhi, dated 06.01.2024.

4. By way of impugned order dated 27.09.2024, the learned Sessions Court was pleased to frame charges against the petitioner for offence under Sections 308/353/332 of the IPC. The relevant observations in the order are as under:

> "15. From the facts of the case, this court is of the opinion that the accused had no intention to cause the death of the victim as the death been caused of the victim, the same would not have fallen under any of the clauses u/s 300 IPC. There is no evidence to show that by the act of the accused, the death of the victim was most likely to occur. However, at this stage, there is sufficient material on record that accused had the knowledge that death could have been likely' by his act, which was covered under clause (b) of Section 299 and punishable u/s 304 IPC. Thus, accused is liable to be charged for the offence u/s 308 IPC.
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> 16. The complaint u/s 195 Cr.P.C. was signed by the ACP on 06.01.2024. The offence took place on 21.06.2017. The Ld. MM had taken the cognizance of the offence on 10.02.2020. The Ld. MM did not specify that the cognizance of Section 186 IPC was not taken as there was no complaint u/s 195 Cr.P.C., hence, the accused cannot be charged for the offence u/s 186 IPC as at that time, there was no complaint u/s 195 Cr.P.C.
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> 17. Section 279 IPC talks about the rashness or negligence of person driving a motor vehicle. Since, accused had been charged u/s 308 IPC, hence, he cannot be charged for offence u/s 279 IPC as the accused cannot be charged for both, in as much as, rashness or negligence on one hand and knowledge on the other hand are the different type of mens rea, thus, the accused cannot be charged for offence u/s 279 IPC as well.
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> 18. From the material available on the record, it is clear that

> victim Ct. Parikshit was on official duty at the spot, thus, prima facie there are sufficient material on the record for the commission of offence w/s 332/353 IPC.
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> 19. I have also gone through the judgments relied by the accused. However, the said judgments are not helpful to the arguments advanced by the accused as they are not relevant in view of the facts of the case, especially, on the point of charge.
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> 20. Accordingly, in view of the above-said facts and circumstances, the accused is liable to be charged for the offence u/s 308/353/332 IPC.
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> 21. Let the charges be framed accordingly."

5. The learned counsel appearing on behalf of the petitioner argues that in the present case, the prosecution has not been able to link the present petitioner with the alleged offence as the identification of the accused in a police station has no evidentiary value in the eyes of the law. Further, it is argued that even if the material placed on record and the State's case is accepted, it still does not justify a trial under the relevant charges, primarily because they fail to reflect any intention of the petitioner-accused to cause death, or disclose any voluntariness in causing other injuries, as alleged. The learned counsel for the petitioner also argues that, for an offence under Sections 307/308 IPC to be made out, the nature of injury, the body part affected, the weapon used, and the background of inter se relations between the accused and the victim are relevant considerations. It is submitted that there is no prior enmity between the victim and the petitioner, the injury caused is simple in nature and located on the leg below the knee, a non-vital part of the body. The injury is also possible by a fall on a hard and rough surface. In these

circumstances, the element of intention to kill cannot, by any stretch, be attributed to the petitioner, and the order framing charge under Section 308 of IPC is not legally sustainable and deserves to be set aside. It is also contended that in face of lack of any cogent *prima facie* case against the petitioner-accused, if two views are possible in a case, the benefit of doubt has to be given to the accused, which applies equally at the stage of charge itself. Thus, it is submitted that the impugned order deserves to be set aside.

6. The learned APP for the State, on the other hand, argues that the petitioner-accused has been identified by the victim, which, when coupled with the other material available on record, is sufficient to show a *prima facie* case for commission of the offences in question qua the petitioner. It is further submitted that this constitutes a sufficient basis for the Court to frame charge and proceed with the trial as a roving enquiry of the material on record is not required to be done by the Court at this stage.

7. This Court has **heard** arguments addressed on behalf of the learned counsel for the petitioner and the learned APP for the State, and has perused the material available on record.

8. At the outset, it is pertinent to note that the present petition assails the order on charge passed by the learned Sessions Court, and it is well-settled that at the stage of framing of charge, only a *prima facie* view of the case is required to be taken to decide if a grave suspicion, based upon the material on record, appears against the

accused or not. It is trite that a mini-trial of the evidence or a roving enquiry is not permissible at this stage to arrive at any final conclusion about the guilt of the accused.

9. It has also been held by the Hon'ble Supreme Court that if an accused files a petition under Section 482 of Cr.P.C. or a revision petition under Sections 397/401 of Cr.P.C., praying for quashing of charges, the Court should not interfere unless there are strong grounds to believe that continuing the case would be unjust or would amount to misuse of the process of Court [Ref: ***Manendra Prasad Tiwari v. Amit Kumar Tiwari and Anr.:*** *2022 SCC OnLine SC 1057*].

10. In the above context, *firstly*, this Court notes that the allegations against the petitioner, in a nutshell, are that while driving an overspeeding car, he had ignored the lawful signal of the traffic constable on duty, threatened him, and thereafter struck him with the vehicle before fleeing from the spot. The petitioner's involvement in the commission of the said act is *prima facie* borne out from the fact that the registered owner of the car, in reply to the notice under Section 133 of the MV Act, stated that she had handed over the keys of the vehicle to the driver of her uncle (the petitioner) on his instructions. This statement *prima facie* links the petitioner with possession and control of the vehicle at the relevant point of time. Moreover, the victim has specifically identified the petitioner as the person driving the offending vehicle. In this regard, the contention of the petitioner that such identification took place only in the police

station, and therefore carries no evidentiary value, cannot be accepted at the stage of framing of charge. At this stage, the Court is only required to ascertain whether a *prima facie* case is made out on the basis of the investigation conducted and filed before the court by way of a final report, and the specific case of the prosecution is that the petitioner was the driver of the vehicle in question and had hit the victim.

11. *Secondly*, this Court notes that the specific case of the prosecution, based on the complaint of the victim, is that the victim while discharging his lawful duty of intercepting overspeeding vehicles, had signalled the petitioner to stop his car. However, instead of complying, the petitioner had allegedly threatened him by saying "*hat ja nahi to uda dunga*" and then deliberately struck him with his vehicle, causing him injuries, after which he had to be taken to hospital. The MLC of the victim reflects that he sustained injuries on his leg, including the knee joint and ankle.

12. This Court is, therefore, of the opinion that the learned Sessions Court rightly observed that the material on record does not disclose any 'intention' on the part of the petitioner to cause the death of the victim, which is the highest degree of *mens rea* required to attract Section 307 of IPC (attempt to murder). The existence of such intention must be supported by cogent evidence, which is lacking at this stage. At the same time, however, the conduct of the petitioner, in first slowing down the car and then threatening the victim with dire consequences if he did not step aside, followed by striking him

with the vehicle despite knowing that the victim was a public servant performing his lawful duty, *prima facie* demonstrates a conscious awareness of the nature of his act and its likely consequences. Such conduct reflects 'knowledge' that his actions were imminently dangerous and could likely cause death of the victim. This suffices, at this stage, to attract a charge under Section 308 of IPC (attempt to commit culpable homicide).

13. The contention of the petitioner that since no grievous injuries were caused to the victim and the victim suffered injuries only on his leg, there is no material to frame charge under Section 308 IPC, is also without merit. In this regard, it is apposite to note that the Hon'ble Supreme Court in ***Sunil Kumar v. NCT of Delhi:*** *(1998) 8 SCC 557*, has categorically held that for an offence under Section 308 of IPC, the nature of the injury, whether simple or grievous, is not determinative. What is punishable under Section 308 of IPC is the attempt to commit culpable homicide, and not the gravity of the actual injury, if any, caused to the victim. The relevant observations in the said decision are as follows:

> "3. …Whether the injury was grievous or simple deserved a back seat in face of the charge under Sections 308/34 IPC. Yet the High Court when approached in its revisional power under Section 439 of the CrPC quashed the charge in finding room in the medico-legal report to opine that the injuries were simple…
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> 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. 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."

14. The fact that the petitioner, while being intercepted in the discharge of lawful duty by a traffic police officer, uttered threatening words such as "*hat ja nahi to uda dunga*" and thereafter struck the victim with his vehicle before fleeing the spot, is a circumstance which must be viewed seriously. Merely because the victim, a police officer performing his lawful duty, fortunately did not die or suffer grievous injuries, it cannot be said that the offence under Section 308 of IPC is not made out. What is material is the petitioner's conduct and the knowledge attributable to his act.

15. Next, the contention of the petitioner that since the chargesheet mentioned only an offence under Section 307 of IPC, the learned Sessions Court could not have framed charge under Section 308 of IPC, and that the petitioner thus lacked notice of the said offence, is also without merit. The charge framed under Section 308 of IPC is, in fact, of a lesser gravity than that under Section 307 of IPC. At the

stage of charge, it is the duty of the Court to examine the entire material placed on record by the prosecution, hear arguments from both sides including the accused, and then apply its mind to determine the correct and relevant provision of law under which charge is to be framed. The fact that such provision may or may not have been specifically mentioned in the chargesheet does not preclude the Court from framing the appropriate charge. In the present case, the learned Sessions Court, after due consideration of the record and the essential ingredients of the offences, rightly reached the conclusion that the offence under Section 307 of IPC was not made out, but that the offence under Section 308 of IPC was *prima facie* attracted.

16. This Court is also in agreement with the view of the learned Sessions Court in not framing charge under Section 279 of IPC. The offence under Section 279, relating to rash or negligent driving, is qualitatively different and mutually exclusive to Section 308 of IPC, which requires a higher degree of *mens rea*, i.e. knowledge that death was a likely consequence of the act. The allegations in the present case disclose circumstances sufficient to justify the framing of charge under Section 308 of IPC rather than Section 279 of IPC.

17. *Thirdly*, as regards the charges for offence under Sections 332 and 353 of IPC, even the petitioner in his grounds has conceded that the ingredients of these offences are made out in the present case. His contention, however, is that cognizance of these offences could not have been taken on the basis of the police report, and that, akin to

Section 186 of IPC, a complaint under Section 195 of Cr.P.C. was necessary. However, this contention is also misconceived. A plain reading of Section 195 of Cr.P.C. makes it evident that the bar on cognizance applies only in respect of certain specified offences, including Section 186 of IPC, but does not extend to offences under Sections 332 or 353 of IPC. Therefore, no such complaint is required for prosecuting these offences. Inasmuch as the petitioner himself concedes that the essential ingredients of the said offences are *prima facie* established, the charges framed under Sections 332 and 353 of IPC by the learned Sessions Court are also held valid and justified.

18. Thus, considering the overall facts and circumstances of the case, the material available on record, and applying the settled principles governing the stage of framing of charge, this Court finds no infirmity in the impugned order of the learned Sessions Court which would warrant interference at this stage.

19. Accordingly, the present petition is dismissed.

20. It is, however, clarified that nothing expressed hereinabove shall tantamount to an expression of opinion on merits of the case.

21. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

SEPTEMBER 03, 2025/zp