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

**Date of Decision: 23<sup>rd</sup> July, 2025**

+ CRL.REV.P. 393/2021

STATE

.....Petitioner

Through: Mr. Tarang Srivastava, APP for State  
with Mr. Santosh Kr. Gupta, Insp.,  
PS-Kashmere Gate.

versus

GOVINDA @ GOLU

.....Respondent

Through: Ms. Malvika Raj, Adv. Pulkit Jain,  
Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE SANJEEV NARULA**

**JUDGMENT**

**SANJEEV NARULA, J. (Oral):**

1. The present revision petition is directed against order on charge dated 27<sup>th</sup> October, 2020 passed by the Additional Sessions Judge-02 (Central District), Tis Hazari Court in SC No. 211/2020, titled "***State v. Govinda @ Golu***". These proceedings emanate from FIR No. 358/2019, registered at P.S. Kashmere Gate under Section 302 of Indian Penal Code, 1860<sup>1</sup>.
2. The case of the Prosecution is that the deceased, Chander Shekhar, and the Respondent were acquainted with each other, having previously resided in the same neighbourhood and often engaged in playing cards together. On 8<sup>th</sup> December, 2019, the Respondent visited the deceased's

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<sup>1</sup> "IPC"



*dhaba* to play cards, during which an altercation broke out after the deceased allegedly reprimanded him. Pursuant thereto, the deceased and the Respondent began physically assaulting each other by slapping and kicking. Later the same day, at around 5:00 p.m., another confrontation took place between the deceased and the Respondent near Bara Bazaar Road, in front of Tilak Gali, Kashmere Gate, Delhi, over a card game. This encounter, again reportedly over a card game, escalated into a fight during which the Respondent is alleged to have landed a forceful fist blow to the deceased's head and kicked him in the stomach. The deceased collapsed at the scene and sustained serious injuries. He was rushed to the hospital but was declared brought dead. Based on these allegations, the present FIR was registered and the Respondent was arrested. Statements of eyewitnesses were recorded, a post-mortem examination was conducted, and a charge-sheet was filed against the Respondent for the offence punishable under Section 302 IPC.

3. Upon hearing arguments on the point of charge, the Trial Court, by the impugned order, framed a charge against the Respondent under Section 304(2) of the IPC, while discharging him of the offence punishable under Section 302 of the IPC. Aggrieved by the said order, the State has preferred the present revision petition challenging the framing of charge under the lesser provision and seeking restoration of the charge under Section 302 IPC.

4. Mr. Tarang Srivastava, APP for the State, contends that the impugned order is founded on conjectures and surmise, inasmuch as the Trial Court discharged the Respondent for the offence under Section 302 IPC, without any substantive or factual basis. He argues that at this preliminary stage, the



Court is only required to ascertain whether a *prima facie* case is made out on the basis of the material produced by the prosecution, and that a meticulous evaluation of evidence or an assessment of probable defences is neither required nor permissible.

5. It is further submitted that the Respondent inflicted injuries on the deceased that were, by their very nature and severity, sufficient in the ordinary course of nature to cause death. The fact that the assault may not have been premeditated, it is urged, cannot by itself serve as a ground to exclude the application of Section 302 IPC. The absence of planning does not, *per se*, negate the presence of intent or knowledge required under Sections 299 and 300 of the IPC. Mr. Srivastava argues that at the stage of framing of charge, the Court is not required to evaluate the probative value of evidence or engage in a detailed scrutiny of competing versions. The Prosecution's case, if taken at face value, discloses sufficient material to proceed under Section 302 IPC, and the Trial Court was obliged to consider the entirety of the record with judicial circumspection before altering the nature of the charge.

6. The Court has considered the aforementioned contentions. The legal principle that, at the stage of framing of charge, the Court is not required to conduct a meticulous evaluation of evidence or assess its probative worth is indeed well settled. What is required is the existence of a *prima facie* case based on the materials placed on record. However, it is equally well settled that while the final determination of guilt is not to be undertaken at the stage of charge; yet, the material on record and the facts emerging therefrom must be consistent and compatible with the charge sought to be framed. The test is whether the material on record, if accepted as true without any additions



or qualifications, is sufficient to ground the charge in law. The Supreme Court, in *State of Bihar v. Ramesh Singh*,<sup>2</sup> discussed the principles to be considered by Courts at the stage of framing of charge or discharging an accused. The relevant observations made by the Supreme Court are as under:

“4. .... Reading the two provisions together in juxta position, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under section 227 or section 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the, initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not.”

7. Further, the Supreme Court, in *P. Vijayan v. State of Kerala & Anr.*,<sup>3</sup> examined the scope of discharge under Section 227 of the Cr.P.C., and observed as follows:

“227. Discharge. — If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that

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<sup>2</sup> (1977) 4 SCC 39.

<sup>3</sup> (2010) 2 SCC 398.



*there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.”*

**If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage he is not to see whether the trial will end in conviction or acquittal.** Further, the words “not sufficient ground for proceeding against the accused” clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution.”

8. In the recent judgement of *Shashikant Sharma v. State of U.P.*,<sup>4</sup> the Supreme Court reiterated the settled principle that if necessary ingredients of an offence are not made out, the Court is not obligated to frame charge for such offence against an accused.

9. Keeping the afore-noted principles in mind, we proceed to examine the relevant portion of the impugned order, which reads as follows:

*“5. As per the own case of the prosecution, it was a sudden fight between the deceased and the accused. As per chargesheet, when the accused reached at the Dhaba of the deceased he asked him to play cards on that altercation took place between them which converted into fight with kicks and blows and in the said fight the accused gave a forceful fist blow on the head of the deceased and kicks on his stomach due to which deceased fell down on the floor and sustained injuries and in the hospital he was brought dead. The allegations against the accused contained in the chargesheet does not indicate that he had any pre-plan or pre-meditation or intention to kill the deceased but he had kicked and gave forceful blow to a man of 60 years, therefore, he had knowledge that the kicking and giving blows to an old man of 60 years may result into death of 60 years old person. In the facts and circumstances, no charge u/s 302 IPC is made out against the accused. But prima-facie sufficient material is in record to frame charge u/s 304 (2) IPC against the accused. Charge is accordingly framed through Video Conferencing and sent to E-mail ID, scj3-tihar@nic.in of the Jail in pdf form.”*

10. The Trial Court, in its reasoning, observed that the incident in

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<sup>4</sup> 2023 SCC OnLine SC 1599



question stemmed from a sudden and unplanned altercation between the Respondent and the deceased. Referring to the Prosecution's own version as set out in the chargesheet, the Trial Court noted that the dispute arose over a card game, escalating into a physical scuffle wherein the Respondent allegedly delivered a forceful fist blow to the head and a kick to the stomach of the deceased, a man aged around 60 years. The Trial Court held that while there was no material to suggest any premeditation or intention to kill, the nature of the assault demonstrated that the Respondent had knowledge that such an act could likely result in death. On that basis, the Court concluded that a charge under Section 302 IPC was not made out and proceeded to frame a charge under Section 304 Part II of the IPC.

11. Indeed, the Prosecution itself describes the event as having occurred in the heat of the moment, during a sudden quarrel arising out of a verbal exchange. The allegation that the Respondent inflicted kicks and a fist blow, while serious, must be viewed in the context of the alleged facts, that a personal dispute escalated into a physical altercation, without weapons or pre-existing animosity, and without any suggestion that the Respondent intended to cause death. Moreover, the injuries recorded in the post-mortem report are not shown to have been inflicted on particularly vital parts of the body, nor do they indicate an assault of such intensity as would, by themselves, support a presumption of intent to kill. The deceased's post-mortem report, indicates the presence of following external injuries:

- “1. Reddish bruise with swelling 4.5x3.2cm present at outer aspect of left eye brow. On dissection: infiltration of blood present
2. Reddish brown abrasion 1.5x1.2cm present at front of left knee joint.”

12. In order to sustain a charge under Section 302 IPC, it must be shown



that the act by which death was caused, was committed with the intention of causing death, or with the intention of causing such bodily injury as the offender knew to be likely to cause death, or was sufficient in the ordinary course of nature to cause death, within the meaning of Section 300 IPC. In contrast, Section 304 Part II IPC applies where death is caused by an act done with the knowledge that it is likely to cause death, but without any intention to cause death or such bodily injury as is likely to cause death. The distinction between the two provisions has been repeatedly clarified by the Supreme Court, including in *Laxman Kalu Nikalje v. State of Maharashtra*,<sup>5</sup> where it was held that for a conviction under Section 302, it must be established that the accused intended to inflict a bodily injury that was sufficient in the ordinary course of nature to cause death. In contrast, Section 304 Part II applies to cases where the act is done with the knowledge that it is likely to cause death, thereby constituting culpable homicide not amounting to murder. In *Kalu Ram v. State of Rajasthan*,<sup>6</sup> the Supreme Court observed that since the fatal injury was caused without premeditation or intent to kill, the conviction under Section 302 IPC was modified to Section 304 Part II IPC. Applying these principles to the present case, the allegations indicate that the Respondent, in the midst of a sudden altercation, delivered a fist blow and kick without the aid of any weapon and without any prior enmity or provocation of grave nature. The post-mortem findings do not reflect grave or extensive injuries that could, on their face, satisfy the third clause of Section 300 IPC. On these facts, the knowledge that harm may result is attributable to the Respondent, but the intent to cause

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<sup>5</sup> 1968 SCC OnLine SC 113.

<sup>6</sup> (2000) 10 SCC 324.



death or inflict fatal injury is absent. The act, therefore, cannot be elevated to murder.

13. Having regard to the facts and circumstances of the case, this Court finds no error in the Trial Court's conclusion that the case does not attract the ingredients of murder under Section 302 IPC. The material on record, at best, makes out a *prima facie* case for culpable homicide not amounting to murder, attracting the offence under Section 304 Part II IPC, where the knowledge of the likely consequence of the act, but not the intent to cause death, is sufficient.

14. The petition is dismissed.

**SANJEEV NARULA, J**

**JULY 23, 2025**

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