

**Court No. - 89**

**Case :-** CRIMINAL REVISION No. - 137 of 2023

**Revisionist :-** Ramji Prasad And 4 Others

**Opposite Party :-** State of U.P. and Another

**Counsel for Revisionist :-** Manoj Kumar Chaudhary

**Counsel for Opposite Party :-** G.A.

**Hon'ble Syed Aftab Husain Rizvi, J.**

Heard learned counsel for the revisionist, learned AGA for the State and perused the record.

This criminal revision is directed against the order dated 08.07.2022 passed by Sessions Judge, Varanasi in S.T. No.268 of 2022 (*State vs. Brijesh and another*) crime no.480 of 2015 under section 147, 148, 149, 308, 323, 504, 506 IPC, P.S. Cantt. District Varanasi.

The FIR of this case was lodged by opposite party no.2 alleging therein that today on 19.08.2015 at about 10:00 am, the accused Brijesh Kumar, Guddu, Rakesh Kumar came at the door of the revisionists and started to abuse. Meanwhile, Brijesh and other family members Ramji, Randheer Kumar and Anil Kumar and Arun Kumar also came at the door of the complainant and started to assault the complainant and his brother Ravi Kumar with iron rod, bricks danda and butt of country made pistol causing serious head injury to Ravi Kumar. The complainant also suffered injuries on his head, back and waist and became unconscious on the spot. The accused-persons ran away presuming that the complainant and his brother are dead. The injured were medically examined and after investigation, charge-sheet was submitted against all the named accused persons. The accused-revisinist moved an application U/s 227 Cr.P.C. alleging therein that the injured have not suffered any grievous injury. The doctor who has conducted the medical examination has not stated that injuries of the injured are grievous in nature which may cause death. Doctor has given the opinion that injuries are simple in nature. No supplementary report has been prepared on the basis of X-Ray report and C.T. Scan. Hence no offence U/s 308 is made out. The learned trial court by the impugned order, after hearing both the parties has rejected the aforesaid application. Aggrieved with it, this revision has been filed.

Learned counsel for the revisionists mainly contended that all the injuries are simple in nature. No supplementary report on the basis of X-Ray and C.T. Scan is prepared. The doctor has also stated that injuries are simple in nature. Hence no offence

U/s 308 IPC is made out. It is also contended that while considering the bail application, the sessions court has observed that nature of the injuries is not serious. The medical report never support to frame the charge U/s 308 IPC. The learned court below has passed the impugned order without applying judicial mind, without appreciating the fact and circumstances of the case and without taking into consideration the evidence available on record. The order passed by learned court below is based on conjunctures and surmises and bad in the eye of law. The court below has misinterpreted section 308 IPC. It has totally ignored the medical report which is valuable evidence.

Learned AGA opposing the prayer, submitted that the assault has been made with the intention of causing death. Two persons have received injuries. There is no illegality in the impugned summoning order.

Section 308 IPC provides as follows:

*"Whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punishable with imprisonment of either description for term which may extend to seven years, or with fine, or with both."*

Section 308 IPC consists of two parts. The first is related to no injury cases while the second part deals where hurt is caused. So what is the material is intention or knowledge and the circumstances in which the act has been done and not the injuries. The intention or knowledge and the circumstances under which the act has been done is to be gathered from the allegations of the FIR, the evidence and other material and all other attending circumstances of the case. There are allegations in the FIR that accused persons were armed with iron rod, danda and country made pistol. They assaulted the injured with lathi, danda and butt of country made pistol causing head injury. It is also settled that at the stage of framing charge the test of prima-facie case has to be applied. If there is ground for presuming that accused has committed the offence, a court can justifiably say that a prima-facie case against him exists and framing of charge is justified. If on the basis of materials on record, the courts comes to the conclusion that commission of offenc is a probable a case for framing charge exist. An order of discharge would be warranted only in those cases where the court is satisfied that there are no chances of conviction and the trial court would be an exercise infutility.

The learned trial court has considered the entire facts, evidence

and other material available on record and after analyzing it has come to the conclusion that there is sufficient ground to frame charge U/s 147, 148, 149, 323, 308, 504 & 506 IPC and thus has rejected the discharge application. So there is no illegality in the impugned summoning order.

Accordingly, the revision is devoid of merits and is hereby ***dismissed.***

**Order Date :- 17.1.2023**

**C. MANI**