

## Sunil Kumar vs N.C.T. Of Delhi And Ors. on 12 December, 1997

**Equivalent citations: (1998)8SCC557, AIRONLINE 1997 SC 95, 1998 (8) SCC 557, (1999) 16 OCR 307, 1999 ADSC 445, 1998 SCC (CRI) 1522**

**Bench: M.M. Punchhi, M. Srinivasan**

### JUDGMENT

1. Leave granted.

2. The High Court has quashed charge framed against the respondents under Sections 308/34 IPC and has sequels quashed proceedings against the respondents under Sections 323/34 IPC on the ground that the police could not have investigated the said offence without the permission of a magistrate.

3. The dispute is between the tenants and the landlords of a premises in Delhi. On 27-9-1992, there was a clash between the two sides. Both sides allegedly were injured. The landlords are the accused in the instant case. Sunil Kumar is the victim of the crime. After the matter was reported to the police, his medico-legal examination was conducted by the doctor-in-charge, who after enumerating the injuries opined them to be grievous. Dr Dabbas, whom we have summoned today to explain the medico-legal report, was the doctor who supervised and endorsed the report. According to him, the injuries have been termed grievous because two of them were lacerated wounds and one was a haematoma and since the blows were aimed at the head, they had endangered life. The learned Additional Sessions Judge to whom the case was committed had framed charges against the respondents under Sections 308/34 IPC, the gravamen of the charge being that an attempt to cause culpable homicide not amounting to murder had been made. 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. The High Court observed as follows:

"I have perused the FIR as well as the statement of the witnesses recorded under Section 161 of the Criminal Procedure Code by the police. No person including the complainant has made any allegation in their statements that injuries were inflicted by the petitioners with an intention to cause their death. As already mentioned above, in order to constitute an offence under Section 308, not only it should be proved that the act was committed by the accused but it was committed with the intention or knowledge to commit culpable homicide not amounting to murder and that offence was committed under such circumstances if the accused by that act had caused death he would have been guilty of culpable homicide. Therefore, the most important circumstance in a case under Section 308 would be that an act should have been committed with intention or knowledge to commit culpable homicide not amounting

to murder. The injuries sustained by the complainant are not such that could in any manner result in the death of the injured persons. The injuries were caused by a blunt object and it was one-and-a-half-inch lacerated wound in the scalp. The doctor who examined the complainant had opined that there was no evidence of head injuries and it did not even require hospitalisation and he was asked to attend the OPD the next date. The word 'grievous' against the injuries has been written and had not given any opinion about his alleged head injuries. Merely because an injury has been found on the head, it cannot be said that such an injury was caused with the intention or knowledge to commit culpable homicide not amounting to murder. The evidence and circumstances of the case otherwise show that there was no intention or knowledge on the part of the accused to cause such injuries which would have resulted in the death of the complainant as a result of which they would have been guilty of murder or culpable homicide not amounting to murder. The fact that the petitioners have also been injured and a case under Section 324 IPC has been registered against the complainant clearly shows that it was a scuffle between two parties without any intention on either side to cause injuries which might result in the death of the accused. The material before the Additional Sessions Judge, in my view, was not such which could give rise to grave suspicion against the petitioners of their having the intention or knowledge to cause such an injury that had the death been caused, they would have been guilty of culpable homicide.

For the foregoing reasons, I am of the considered opinion that the petitioners could not have been charged for an offence punishable under Sections 308/34 IPC."

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. 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.

5. The appeal is thus allowed.