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

% Judgment Delivered on : August 12, 2011

+ **CRL.REV.P. 301/2011**

AMRIT & ORS ..... Petitioners  
Through:Mr. Davender Kumar, Adv.

versus

STATE (NCT OF DELHI ) ..... Respondent  
Through:Ms. Rajdipa Behura, APP for the  
State

**CORAM:**  
**HON'BLE MR. JUSTICE SURESH KAIT**

1. Whether the Reporters of local papers may be allowed to see the judgment? YES
2. To be referred to the Reporter or not? YES
3. Whether the judgment should be reported in the Digest? YES

**SURESH KAIT, J. (Oral)**

**CRL.REV.P. 301/2011**

1. By the instant petition, the petitioner has challenged the impugned order dated 28.05.2011, whereby the learned trial judge while passing order on charge has come to the opinion

that a case under Section 307 r/w Section 34 of the Indian Penal Code is made out against the petitioners.

2. Thereafter, vide order dated 28.05.2011, charges were framed against the petitioners under the aforesaid sections.

3. Brief facts of the case are that, the complainant is a Public Prosecutor posted at Tis Hazari Courts, Delhi. On 24.12.2010, after finishing his court duty, he left the court at 06:30 PM and went to Tis Hazari Metro Station, where he met two other advocates who were known to him as they belong to his home District, Sonapat, Haryana. When he inquired from the aforesaid advocates, namely, Silpesh and Sanjeet Chikara, that where they were going, they replied that they were going to their residence at Sonapat. The complainant accompanied all of them and boarded the metro from Tis Hazari Metro Station and reached Pratap Nagar Metro Station around 07:25 PM. While going from Pratap Nagar Metro Station to Subzi Mandi Railway Station, they decided to have Gole Gappas from a nearby stall, where two boys were present. Silpesh gave ₹ 50/- and asked the boys to give Gole Gappas to them. One boy gave them the plates and served each of them a Gole Gappa each.

4. Further, it is alleged that on eating the Gole Gappa, the complainant found the same to be sour and told the boy of the bad taste. The boys at the stall got angry and asked the complainant to either eat or leave the stall, on which Shilpesh asked for a refund of the remaining amount from the boys to which they refused and told them to forget the money and quietly leave the spot and further taunted the complainant on which the complainant asked them to behave properly deducting the price of three Gole Gappas and refund the remaining amount.

5. It is further alleged that one of the boy who was present at the stall threatened the complainant and the others with a 'Palta' which was sharp on one side and further told them to run away from the premises else he would stab. When the complainant opposed to the threat, he was attacked with the sharp side of the 'Palta' which struck on his upper lip. Thereafter, repeated attacks were made, whereby causing injury on his forehead, nose and left eye. Meanwhile, the second boy who was holding an iron object also struck on the face of the complainant and enticed his accomplice to kill the complainant.

6. Ld. counsel for the petitioner submits that as per MLC, which is annexed at page 57, the injuries caused were opined to be simple and henceforth the attack was neither pre-planned nor intentional.

7. Ld. APP for the State submits that under Section 307 it is not necessary that the injuries should be grievous in nature, however, the type of weapon, veracity of the weapon, the intention and knowledge of the accused has to be taken into consideration.

8. In support of her arguments, ld. APP has relied upon the Supreme Court judgment of ***State of Maharashtra vs. Kashirao, (2003) 7 JT 437*** wherein Para 21 it was observed as under:

“In offence under Section 307 all the ingredients of offence of murder are present except the death of the victim. For the application of Section 307 it is not necessary that the injury capable of causing death should have been actually inflicted. The injuries sustained the manner of assaults and the weapons used clearly make out a case of Section 307 IPC. But since sentence and fine have been maintained alteration of conviction notwithstanding no modification of sentence need be made. It is true that when two views are possible and if one view has been adopted by the

Court to either acquit the accused or to apply a different provision of law, interference should not be made but when the judgment suffers from legal infirmities and application of legal position to the factual scenario is unsustainable, interference is not only necessary but also highly desirable. The appeal deserves to be allowed. In the ultimate, the judgment of the High Court is set aside and that of the trial Court is restored. The respondent shall surrender to custody and serve out the balance sentence.”

9. I find that in the present case the incident took place in a spur of moment and in fit of rage, keeping the fact that the place of incidence being a Gole Gappa stall. Neither was there any previous enmity between the parties nor was there any intention to cause injuries to the complainant. Further, the injuries recorded in the MLC are opined to be simple, which shows that the weapon was not used with a great force to cause grievous injury.

10. In my opinion, and according to the facts and circumstances of this case, at best this case falls under Section 324 of the Indian Penal Code, 1860 which is reproduced as under:-

**“Section 324: Voluntarily causing hurt by dangerous weapons or means** - Whoever, except in the case provided for by Section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

11. On perusal of Section 324 of the Indian Penal Code, the facts of the present case are fully covered under this Section.

12. Therefore, I am of the view that, the order on charge dated 28.05.2011 passed by the learned trial judge is not proper.

13. In view of the above, the order on charge dated 28.05.2011 is set aside.

14. Accordingly, I direct the learned trial judge to frame charge under Section 324 r/w Section 34 of the IPC and proceed with the trial.

15. The CRL.REV.P. 301/2011 is allowed.

**Crl. M.A. No.7674/2011**

Since the petition is disposed of, this application has become infructuous.

Dismissed as being infructuous.

**SURESH KAIT,J**

**AUGUST 12, 2011  
RS**