

\$~29&30

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

8

+ CRL.REV.P. 608/2009

MOHD.USMAN

..... Petitioner

Through Mr. Abdul Sattar, Adv.
versus

STATE & ORS.

..... Respondent

Through Mr. Manoj Ohri, APP for State with
SI Rakesh Sharma, PS Malviya
Nagar.

+ CRL.REV.P. 121/2010

STATE OF NCT OF DELHI

..... Petitioner

Through Mr. Manoj Ohri, APP for State with
SI Rakesh Sharma, PS Malviya
Nagar.

versus

SAINA & ORS.

..... Respondent

Through None

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

%

28.11.2011

1. By the present petitions the complainant and the State challenge the impugned order dated 17th August, 2009 wherein the Respondents Saina, Shehzabi and Bilkis have been discharged for offences punishable under Section 307/34IPC.

CRL.REV.P. Nos. 608/2009 & 121/2010

page 1 of 4

Signature Not Verified

Digitally Signed By: AMULYA
Certify that the digital file and
physical file have been compared and
the digital data is as per the physical
file and no page is missing.

2. In the present petitions notices were issued to the Respondents which were duly served. Despite service initially though none appeared on behalf of the Respondents, however on 29th November, 2010 the husband of Shehzabi and father of Bilkis appeared stating that his counsel Mr. Javed Khan was not available and sought for an adjournment. Subsequently, on 4th August, 2010 in CRL.REV.P.No. 6608/2009 though the learned counsel had appeared, however thereafter he has not entered appearance. Since the Respondents are not appearing despite service, this Court has proceeded to decide the matter on perusal of the Trial Court Record and after hearing the learned counsel for the Petitioners.

3. Briefly the allegations as set out in the FIR are that Shahabuddin the main accused was the former Imam of the mosque and since then he was in possession of 4 rooms of the mosque and had not vacated the same. On 7th March, 2008 at about 2.30 PM after the Namaj since the water-supply was not available, one Hafiz Maqsood Ahmed a caretaker and teacher in the Madarsa sent two boys namely Bilal and Wajid, his students to the roof of the mosque to check the water in the water tank. On this Shahabuddin said to the two boys to go away from the said place and instantly hit those two boys with the bat on their head which led to injuries and bleeding from the

parietal region. On hearing the noise of the two boys crying, Mohd. Usman and Hafiz Maqsood rushed towards the spot. In the meanwhile Shehzabi wife of Shahabuddin along with Bilkis daughter of Shahabuddin and Saina caught hold of Mohd. Usman. On this Shahabuddin uttered "aaj inko khatam hee kar dete hein" and saying this he put the loop of the rope in the neck of Mohd. Usman and pulled the same in order to murder Mohd. Usman. However, Bilal and Wajid managed to save Mohd. Usman. Mohd. Usman lost his conscious. On the statement of Hafiz Maqsood Ahmed FIR No. 229/2008 under Sections 307/308/448/34 IPC was registered at P.S. Malviya Nagar.

4. During the investigation the statements of the witnesses were recorded and a charge-sheet was filed. After the committal the Learned Additional Sessions Judge vide the impugned order discharged the Respondents.

5. A perusal of the FIR itself shows that the Respondents herein are named in it. Further, statements of Taj Mohd., Ahmed Ali, Yaseen, Master Bilal and Master Wajid also support the prosecution case as per which Shehzabi, Bilkis and Saina caught hold of Mohd. Usman and Shahabuddin put a rope on the neck of Mohd. Usman and pulled it stating to finish him that day so that he does not trouble in future. It is thus apparent from the

statements of the witnesses and the complainant that the Respondents are liable to be charged for offences under Section 307/34 IPC. Thus, the impugned order passed by the Learned Additional Sessions Judge is modified to this extent.

6. Petitions stands disposed of.
7. Trial Court Record be sent back.
8. Learned Additional Sessions Judge will now proceed in accordance with law against the Respondents Shehzabi, Bilkis and Saina.


MUKTA GUPTA, J

NOVEMBER 28, 2011
'ga'