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

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Date of Decision: September 19, 2016

+ CRL.REV.P. 821/2015

SHAMSHER SINGH

..... Petitioner

Represented by: Mr.Gaurave Bhargav, Proxy
Counsel.

versus

STATE

..... Respondent

Represented by: Mr.Kewal Singh Ahuja, APP for
the State with SI Satish Kumar,
PS Ambedkar Nagar.
Mr.Jitender Tyagi & Ms.Ananya
Roy, Advs. for the complainant.

AND

+ CRL.REV.P. 20/2016

JAI NARAYAN & ORS

..... Petitioners

Represented by: Mr.Gaurave Bhargav, Proxy
Counsel.

versus

STATE

..... Respondent

Represented by: Mr.Kewal Singh Ahuja, APP for
the State with SI Satish Kumar,
PS Ambedkar Nagar
Mr.Jitender Tyagi & Ms.Ananya
Roy, Advs. for the complainant.

AND

+ CRL.REV.P. 477/2016

GEETA DEVI

..... Petitioner

Represented by: Mr.Jitender Tyagi & Ms.Ananya
Roy, Advocates.

versus

STATE OF NCT OF DELHI & ORS

..... Respondents

Represented by: Mr.Kewal Singh Ahuja, APP for
the State with SI Satish Kumar,
PS Ambedkar Nagar
Mr.Gaurave Bhargav, Proxy
Counsel for R-2 to 6.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

JUDGMENT (Oral)

Crl.M.A. Nos.10884 & 10886 of 2016 in Crl.Rev.P. No.477/2016

1. For the reason stated in the applications 106 days' delay in filing and 13 days' delay in re-filing the appeal is condoned.
2. Applications are disposed of.

Crl.Rev.P. No.821/2015

Crl.Rev.P. No.20/2016

Crl.Rev.P. No.477/2016

1. By this common order I will dispose of the above captioned three criminal revision petitions i.e. Crl.Rev.P. No.477/2016 filed by Smt.Geeta Devi – complainant in case FIR No.255/2004 under Section 308/324/511/34 IPC registered at PS Ambedkar Nagar and Crl.Rev.P. Nos.821/2015 &

20/2016 filed by the accused persons namely Shamsher Singh, Jai Narain, Bijender Singh and Kartar Singh feeling aggrieved by the order on charge.

2. The petitioners have impugned the order on charge dated October 15, 2015 whereby the accused have been ordered to be charged for commission of the offences punishable under Section 308/506/34 IPC.

3. Heard.

4. The statement made by the petitioner/complainant Geeta Devi which formed basis of registration of FIR No.255/2004 at PS Ambedkar Nagar is to the following effect:-

'Statement of Smt.Geeta Devi wife of Sh.Satbir Singh resident of H.No.507 within Lal Dora of village Khanpur, Delhi aged 25 years.

I live at the abovesaid address along with my family and do house-hold chores. Today at 12 O'clock I along with my mother in law Murti Devi and father in law Radhey Shayam were present at our plot No.507 Devoli Gaon within Lal Dora then Jai Narayan @Jaina son of Kartar Singh came driving tractor No. DL01E-0304 at a very fast speed and struck against the corner of the wall of our plot near main gate. My mother in law, father in law and myself came out said and saw in another vehicle Shamsher singh @ Sammi son of Bhim Singh and his brother in law Bijender with some other persons were present there they were in Qualis Vehicle No.DL-9CG-0083. Then we came out Jaina, Shamsher Kartar S/o Thokha Ram, and Bijender who were armed with Swords and dandas attacked on us and asked either to vacate the house otherwise all will be killed one by one. Jaina was having Pistol. Bijender gave lathi blow on the head of my mother in law and Jaina took the Lathi from his jija and attacked on my head and Shamsher @ Shammi attacked on my father-in-law Radhey Shyam with Sword. They said that today they have done only this and if plot is not vacated then none will be spared. I and my family

members apprehend threat to our life and property. Necessary action be taken against all of them.'

5. The copy of the MLC of all the three injured namely Radhey Shyam, Murti and Geeta Devi have also been placed on record. All the three MLCs were prepared on May 26, 2004 and time of preparation of MLC is recorded as 13:16 hrs on the MLC of Radhey Shyam, as 13:17 hrs on the MLC of Murti and as 13:18 hrs on the MLC of Geeta Devi. As per the said MLCs, while Murti and Geeta have received simple injury by blunt object, the injury received by Radhey Shyam is simple by sharp object. They were brought to hospital by Harbir S/o Radhey Shyam & Murti and brother-in-law (Devar) of petitioner Geeta Devi.

6. At the stage of hearing on the point of charge, the learned Trial Court had dealt with the rival contentions as to whether in respect of the injuries suffered by Radhey Shyam, Murti and Geeta prima facie an offence punishable under Section 307 IPC is made out or under Section 308 IPC is made out. Ld. Trial Court, after considering the nature of injuries and taking note of the fact that the injury on the abdomen of Radhey Shyam allegedly caused by some sharp object and the nature of the injury was opined to be simple, was prima facie of the view that had the injury on the abdomen resulted into death of Radhey Shyam, the offender would have been guilty of an offence punishable under Section 304 IPC.

7. On behalf of petitioner Geeta Devi (the complainant) it has been submitted that in the circumstances that the offenders were armed with pistol, sword and *dandas*, the intention to commit murder of all the three injured can be gathered, hence it is a clear case where charge should have been framed

under Section 307/34 IPC irrespective of the nature of the injury suffered by the victims.

8. On behalf of petitioners Shamsheer Singh, Jai Narain, Bijender Singh and Kartar Singh in Crl.Rev.P. Nos.821/2015 & 20/2016 it has been submitted that no charge under Section 308 IPC could have been framed against them for the reason that nature of the injury was simple and despite the allegations that Jai Narain was armed with a pistol, he has allegedly caused injury by taking *lathi* from his *jija* Bijender which prima facie shows that none of the offender had any intention to commit murder or culpable homicide not amounting to murder while allegedly hitting the three injured with *dandas*/sword.

9. I have considered the rival contentions. A perusal of the statement of the complainant Geeta Devi shows that one *lathi* blow was allegedly given to Geeta by accused Jai Narain and another *lathi* blow was given to her mother-in-law Murti by accused Bijender. The third injured Radhey Shyam – father-in-law of the complainant Geeta had been caused simple injury by accused Shamsheer allegedly with a sword. Even as per the complainant on that day the accused persons came to criminally intimidate them to either vacate plot No.507, Deovli Gaon or they would not be spared.

10. A charge for the offence punishable under Section 307 IPC i.e. an attempt to commit murder could have been framed only if from the circumstances and the weapon used it could prima facie be shown that there was an intention to commit the murder and in pursuance thereof the injury was caused. The intention to kill can be gathered from the circumstances like persistence to attack on vital part of the body.

11. In this case, the accused persons were allegedly armed with pistol, *lathi* and sword but each of the injured has been allegedly hit only once i.e. Murti and Geeta with one *lathi* blow each and Radhey Shyam being inflicted injury with a sharp objection with no intent to pierce deep into the abdomen by the alleged offender, there was no intervening circumstance alleged which prevented the accused from attacking with sword with full force. This reflects that there was no deliberate intention to cause death of the injured Radhey Shyam. The warning allegedly given by them while leaving as quoted by the complainant Geeta in the FIR itself shows lack of intention to commit the murder on the part of the accused persons.

12. Thus, the revision petition bearing Crl.Rev.P.No.477/2016 for framing a charge under Section 307 IPC against the accused persons is liable to be dismissed.

13. So far as the two revision petitions bearing Crl.Rev.P. Nos.821/2015 & 20/2016 filed by the accused persons are concerned, the injuries have been caused to Geeta and Murti on the head with a *lathi* and to Radhey Shyam on his abdomen with some sharp object alleged to be sword. It is recorded in the chargesheet that the weapon of offence i.e. sword was not recovered. In the given circumstances, prima facie the knowledge can be attributed to the offenders that had the injuries caused by the accused persons resulted in the death of the injured, they could have been held liable for the offence of committing culpable homicide not amounting to murder.

14. The learned Trial Court has rightly charged the accused persons for committing the offence punishable under Section 308/506/34 IPC.

15. Finding no illegality or infirmity in the impugned order, the three revision petitions are dismissed.

16. No costs.

Crl.M.A. No.18390/2015 in Crl.Rev.P. No.821/2015

Crl.M.A. No.466/2016 in Crl.Rev.P. No.20/2016

Dismissed as infructuous.

PRATIBHA RANI, J.

SEPTEMBER 19, 2016

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