

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

% Decided on: 13th August, 2018

+ **CRL.L.P. 31/2017**

STATE (GOVT. OF NCT OF DELHI)

..... Petitioner

Represented by: Ms. Meenakshi Chauhan, APP
for State.

versus

MOHD.ZAHID & ANR.

..... Respondents

Represented by: Mr. H.Rehman, Advocate with
respondents in person.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

CrI.M.A. No.1022/2017 (Delay)

For the reasons stated in the application delay of 16 days in filing the leave to appeal petition is condoned.

Application is disposed of.

CRL.L.P. 31/2017

1. By this petition State seeks leave to appeal against the acquittal of respondents in case FIR No. 84/2012 under Section 308/34 IPC registered at PS Chandani Mahal, Delhi on the complaint of Tahir.

2. The above noted FIR was registered on the complaint of Tahir who stated that he was residing at House No.1133, behind Delight Cinema, Chandani Mahal and had four brothers. He along with Mojahid and Asif, his two brothers and their father Shahid Ali were residing together. However, their elder brother Zahid was residing separately in another house on the first floor. He stated that the ground floor and the first floor of their house was being utilized by the three brothers and their father and for the

second floor there was court case going on with their elder brother Zahid, for which 6th December, 2012 was the date before the Court. On 6th December 2012 at around 8.45 PM after having dinner while he was sitting in his house, his elder brother Zahid called him upstairs so that they could talk about the house. On the calling of his brother he went upstairs where Zahid, son of Sharif, his uncle's son was also present who was also residing in the same house. While Zahid and Tahir were talking about the house, he heard the voice catch hold and Hamid caught hold of him whereafter Zahid injured him on his head by some pointed object. Thereafter his neighbour took him to the LNJP Hospital where he received treatment.

3. In his deposition before the Court Tahir though substantially stated in conformity with his statement on the basis of which FIR as noted above was registered however, he admitted that while they were talking he might have spoken some hot words and an altercation took place, whereafter Hamid caught hold of him from the back and his brother Zahid gave him blows on the head, backside of the neck and stomach by a screwdriver. He came down to the ground floor and his neighbours took him to the hospital.

4. Learned Trial Court noted that the version of Tahir does not give complete facts and cannot be relied upon to convict the respondents for the reasons FIR No.83/2012 was registered on the complaint of respondent No.2 Mohd. Zahid against Tahir, wherein Mohd. Zahid had received injuries. Complaint by Tahir is absolutely silent as to how injuries were caused to Mohd. Zahid despite the fact that he admits that the altercation started after he used hot words.

5. The learned Trial Court also noted that though the screw driver was recovered however, the said screw driver is not connected with the offence

for the reason neither any witness identified the said screw driver nor was any medical opinion sought nor was it connected with the presence of the blood of the injured. According to the version of Mohd. Zahid, who appeared as DW-3, Mohd. Mujahid caught hold of his hand from behind whereas Tahir inflicted a blow on his head with a wooden hammer and Mohd. Asif inflicted injury on his right hand with a wooden danda. When he raised hue and cry neighbours came, called the PCR and removed him to the hospital.

6. It is the case of the respondents that this FIR by Tahir was an afterthought after Zahid received serious injuries.

7. A perusal of the record also reveals that though the MLC notices three lacerated wounds on Tahir however, they are neither by a sharp object nor opined to be grievous in nature, nor any opinion regarding the nature of injury has been given. Hence, the injuries on Tahir would be treated as simple in nature.

8. Considering the fact that Tahir is not coming clean with the entire facts and the nature of injuries to him were not grievous or with the intention of causing injuries if death would have entailed the same would have been culpable homicide not amounting to murder, learned Trial Court committed no error in acquitting the respondents.

9. Leave to appeal is declined and the petition is dismissed.

10. Trial court record be sent back.

(MUKTA GUPTA)
JUDGE

AUGUST 13, 2018/‘vn’