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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.REV.P. 399/2018
ANIL SHARMA & ORS Petitioners
Through: Mr. D. Hasija and Mr. S.B. Saikia,
Adv.
versus

STATE OF DELHI(NCT) OF DELHI Respondent
Through: Ms. Manjeet Arya, APP for State.

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

ORDER
% **09.05.2018**

Aggrieved by the framing of charge under Sections 308/34 IPC against them by the trial court, petitioners have preferred this petition under Section 397 of the Code of Criminal Procedure, 1973.

By placing reliance on Man Singh & Ors. vs. State NCT of Delhi MANU/DE/0413/2016, learned counsel for the petitioners contends that assault was not pre-mediated, inasmuch as, the injuries suffered by the injured persons were initially opined simple caused by a blunt object, that is, brick and which were not sufficient in the ordinary course of nature to cause death, thus, ingredients of offence under Section 308 IPC are not attracted. At best, offence committed by the petitioners would fall under Section 325 IPC. It is contended that subsequently, opinion regarding 'grievous injury'

was taken from the doctor, after scoring of word 'simple'. Thus, trial court has erred in framing the charge under Sections 308/34 IPC against the petitioners.

Learned APP has contended that assault was pre-mediated as is evident from the statements under Section 161 Cr.P.C. of injured persons, namely, Mehtab Singh, Mahinder Singh and Ajay. Injuries of Mehtab Singh have been opined by the doctor as grievous, inasmuch as sustained injuries were caused on the vital parts of the body, that is, scalp and face. Mahinder was also given blows on his scalp. From the circumstances in which injuries were caused coupled with the nature of injury and the portion of body where such injuries were caused discloses that petitioners had knowledge and intention that had they caused death of injured, in the ordinary course of nature, they would have been guilty of having committed culpable homicide not amounting to murder.

I have considered the rival contentions of the parties and perused the material placed on record carefully. I am of the, prima facie, view that assault was pre-mediated. Mahinder Singh, Mehtab Singh and Ajay have categorically stated in their statements that they had gone to attend the marriage function of their neighbour Chetan Sharma on 25th November,

2015 at Sanjog Farmhouse, Chattarpur. When they reached there, petitioners commented that they had come uninvited only to eat free food. When they objected to their taunts petitioners quarrelled with them, however, persons present there got the matter pacified. At about 11:45 when they were returning home, petitioners assaulted Mehtab Singh, Mahinder Singh and Ajay with bricks. Roles of the petitioners have been specifically described by them in their statement. MLC of Mehtab Singh clearly shows that doctor has opined the nature of injuries as 'grievous'. Both Mahinder Singh and Mehtab Singh had sustained injuries on their scalp which is vital part of the body. I do not find any force in the contentions of the petitioners' counsel that initially injuries of Mehtab Singh were opined as simple but subsequently doctor changed his opinion by mentioning the word 'grievous'. A perusal of MLC of Mehtab Singh shows that 'simple' word was printed against the column of Nature of Injury (Simple/Grievous/Dangerous). Doctor has cut the printed word 'simple' while giving his opinion and has mentioned it as 'grievous'. Doctor has appended his signatures on his opinion. At the stage of framing of charge, statements of witnesses recorded under Section 161 Cr.P.C. and other documents have to be considered as it is. Contentions raised by the petitioners' counsel are subject matter of trial.

Scalp is a vital part of the body. The assault was pre-meditated one. At the stage of framing of charge, only a prima facie view has to be taken. From the facts and circumstances of the case as detailed above intention and knowledge on the part of the petitioners can be inferred that had they caused death of injured in the ordinary course of nature they would have been guilty of committing culpable homicide not amounting to murder.

For the foregoing discussions, I do not find any illegality or irregularity in the impugned order. Petition is dismissed. Miscellaneous applications are disposed of as infructuous.

A.K. PATHAK, J.

MAY 09, 2018

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