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

+ **CRL.REV.P. 522/2018 & CrI. M.A. No.11058/2018**

BRAHAM SINGH & ANR. Petitioners

Through: Ms. Sweety Chattopadhyay,
Advocate.

Versus

STATE Respondent

Through: Mr. Tarang Srivastava, Additional
Public Prosecutor for State with
SI Sohan Lal, P.S. Mehrauli.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **01.08.2018**

This petition impugns an order dated 13.10.2017, whereby the order of conviction for the offences under sections 323/341/506/34 IPC against the petitioners has been upheld.

It is the petitioners' case that there is a doubt about the situs of the incident i.e. whether it was inside the Arora Farm House or outside the Farm because the State contends that it was at the gate, whereas, according to Head Constable Subhash Chand (PW4), it was inside the Arora Farm House. Nevertheless, the Court would notice that the injured – Raju (PW2) and his wife – Dhanno (PW3) have deposed that they were assaulted and pushed around at the gate, which means the situs of the incident was the gate. This aspect has been adequately dealt with in the impugned order:-

“11. PW2 injured Raju in his testimony categorically stated that when he alongwith his wife PW3 Dhanno going to market,

he was stopped by both the accused and they started abusing him and started giving fists and leg blows on his body due to which he fell down and thereafter when his wife tried to rescue him they started beating her also. PW3 also corroborated his statement and stated that when she alongwith her husband going to market, accused persons stopped them and beaten her husband and thereafter she was also beaten. In cross-examination of PW3, it is not even suggested to her that both the accused were not present and beaten PW2, however suggested that PW2 was beaten by security/chowkidar of Manish Arora. PW2 was not suggested this fact that she was beaten by any security guard or chowkidar of Manish Arora.

12. Ld. Counsel for the appellants tried to discredit the testimony of I PW2 on the ground that PW2 in cross-examination stated that blood also oozed out due to injuries, however no blood was found on the spot nor any blood stained clothes were seized. These infirmities do not hit at the root of the prosecution case because both PW2 and PW3 remained unimpeached over the factum of beating. These kind of deficiency do not in any manner displace the factum of beating by accused persons.

13. The testimony of PW2 is duly corroborated by the MLC Ex. PW9/A which suggests that the injured suffered simple injuries with complaints of pain in the abdomen, back ache and headache during the assault at 7.30pm. PW1 owner also corroborated the statement of PW2 by stating that both PW2 and PW3 alongwith children reached his house and thereafter he took injured PW2 to the hospital. PW3 was not medically examined, however this do not suggest that she was not present and nothing came in her cross-examination that she was not present at the spot at the time of commission of offence.”

The other argument by the learned counsel for the petitioners is that although PW2 states that he was bleeding, the police officer had not noticed

any such thing. The Court is not persuaded by this argument because the MLC Ex. PW9/A records bruises on the body of the injured (PW2).

In view of the above, this Court finds no infirmity in the impugned order, which has reasoned as under:-

“15. On overall appreciation of evidence on record, the testimony of PW2 and PW3 are duly corroborated with the medical evidence and also supported by the testimony of PW3. The mere delay in lodging of FIR in these facts and circumstances had no material effect on the prosecution case. The infirmities as pointed out by the Ld. Counsel for the appellant do not hit at the core of the prosecution case. The presence of the appellants at the spot at the time of incident is duly proved by the prosecution. The prosecution is able to prove its case beyond reasonable doubt. The Ld. Trial Court passed detailed and reasoned judgment. I do not find any infirmity in the said judgment. Therefore, the present appeal stands dismissed.”

The petition is without merits and should be dismissed.

At this stage, the learned counsel for the petitioners wishes to withdraw the petition.

Accordingly, it is dismissed as withdrawn.

NAJMI WAZIRI, J.

AUGUST 01, 2018

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