

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

% Decided on: 26th September, 2018

+ **CRL.L.P. 622/2018**

THE STATE (GOVT. OF NCT OF DELHI) Petitioner
Represented by: Ms. Meenakshi Chauhan, APP
for the State.

versus

MANISH BHALLA & ORS. Respondent
Represented by: None.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

Crl. M.A. No. 32974/2018 (Exemption)

Allowed, subject to all just exceptions.

Crl. M.A. No. 32973/2018 (Delay)

For the reasons stated in the application, delay of 14 days in filing the leave to appeal petition is condoned.

Application is disposed of.

CRL.L.P. 622/2018

1. Aggrieved by the judgment dated 17th May 2018, whereby the learned Additional Sessions Judge acquitted the respondents for the offences punishable under Sections 325/34 IPC and additionally respondent no.1 was also acquitted for the offence punishable under Section 308/34 IPC, the State has preferred the present leave petition.
2. Brief facts of the prosecution case are that on 15th October 2012 at about 1:15 P.M., ASI Gurvinder Singh Gill received a call regarding a

quarrel in front of Mosque and Guru Gobind Singh Hospital and recorded the same vide DD No.11B (Ex.PW-5/B). ASI Gurvinder Singh Gill along with Ct. Deepak reached the spot where they came to know that the persons who were quarrelling, had already left the spot. Thereafter, on receipt of DD No.5A (Ex.PW-7/B), ASI Gurvinder Singh Gill along with Ct. Deepak reached DDU Hospital where the victim Shakti had been admitted. The victim was declared unfit for statement. On the basis of DD No.11B, FIR No. 397/12 was registered for offence punishable under Section 308/34 IPC at PS Rajouri Garden.

3. On 17th October 2012, when Shakti Rana was declared fit for statement, his statement was recorded vide Ex.PW-4/F wherein he stated that on 14th October 2012 after drinking some liquor, he had gone to Ramu Ka Dhaba to eat. At about 11:30 P.M., when he was going out of the Dhaba at Tagore Garden, one car was parked in front of the Dhaba in which the respondents were drinking liquor. Respondent no.1 called him and asked him to sit in the car to go for a drive. Shakti Rana sat in the car and all of them went for a drive towards Guru Gobind Singh Hospital. Respondent no.1 was sitting on the front seat along with respondent no.2 who was driving the car. Respondent no.1 gave him some liquor to drink. While on the drive, he told the respondents to drop him home as it was already very late. When they stopped the vehicle near Masjid, Raghubir Nagar, Main Road, respondent no.1 asked him to bring a packet of cigarettes when he informed them that he had no money and his purse was missing. Respondent no.1 then got angry and asked him that “*tera purse kya humne nikala hai*” and told the respondent no.2 and 3 to throw him out of the car. Respondent no.1 then told respondent no.2 and 3 that he was the same person who had

hit his brother a few months back, so they should take revenge from him. Pursuant to this, all the respondents gave beatings with kicks and fist blows to the him. Before leaving the spot, respondent no.1 hit him with a cemented brick on his head 2-3 times. Thereafter, all of them fled the spot. In the meanwhile, he received a phone call from his father and one public person who answered his phone informed his father about the incident who then came to the spot and got him admitted in DDU Hospital.

4. Site plan of the spot was prepared vide Ex.PW-4/E at the instance of the Shakti Rana. The cement brick was seized vide seizure memo Ex.PW-4/A. On 18th October, 2012, ASI Gurvinder Singh Gill along with Ct. Dharmender arrested the respondents vide Ex.PW-4/C1-C3, their personal search was conducted vide Ex.PW-4/B1-B3 and their disclosure statements were recorded vide Ex.PW-4/D1-D3. The car bearing no. HR 26 S 7641, used in the incident was taken into possession vide Ex.PW-6/A.

5. On completion of investigation chargesheet was filed. Charge was framed for offences punishable under Sections 325/34 IPC. Respondent no.1 was also charged for offences punishable under Sections 308/34 IPC.

6. Shakti Rana (PW-4), victim deposed in sync with his statement made before the police. He additionally stated that he did not hear his father's phone call and does not remember a public person answering his phone. He was informed of the same by his father later. In his cross examination he stated that he was introduced to respondent no.2 by respondent no.1 and had met him 4-5 time prior to the incident. There were generally 10-15 vehicles outside the dhaba, but on the day of the incident only the car of the respondent was present outside the dhaba. He stated that he was not a habitual drinker and does not remember that a case was registered against

him for quarrelling after drinking in the year 2010. He also denied registration of a case against him by his father in 2011 for drinking and quarrelling with him. He denied that FIR No.430/12 was registered against him in the year 2012 for eve-teasing a girl.

7. Subhash Chand Rana (PW-1), father of the victim deposed that on the intervening night of 14th and 15th October 2012, his son had gone to eat at the Dhaba of Ram Bhuj. When he did not return he called him and one public person picked up his phone and informed him that his son had been assaulted and was lying in front of Guru Gobind Singh Hospital in a mosque in a bad condition. He along with his wife reached the spot and took his son to DDU Hospital.

8. Learned Additional Sessions Judge acquitted the respondents on the ground that no eye-witness from 'Ramu Ka Dhaba' was examined who had seen Shakti Rana arriving there at 11:00 P.M. and eating food. Neither was there any cash receipt to confirm the presence of the victim at 'Ramu ka Dhaba'. The place of incident was about 5 minutes by car and 15 minutes by foot from 'Ramu Ka Dhaba'. It was generally a crowded place as it is surrounded by important landmarks like a Police Booth, Mosque, Guru Gobind Singh Hospital and the DDA Market. Public person who answered the phone of Shakti Rana was not examined by the prosecution neither have their statements been recorded by the police. Statement of the father of Shakti Rana was also not recorded by the police making his presence at the spot doubtful. The mobile number recorded in the DD No.11B is that of the father of Shakti Rana. The information recorded in DD No.11B was not to the effect that the caller's son was lying injured on the spot above. Mother of Shakti Rana who was also presumably on the spot as per the testimony of

Shakti Rana was not examined by the prosecution. Moreover, the MLC also revealed that Shakti Rana smelled positive for alcohol and that he was 'drowsy disoriented'. ASI Gurvinder Singh Gill in his deposition stated that the statement of Shakti Rana was recorded at his house while in his cross-examination he stated that he had recorded the statement of the victim at the spot.

9. Details of injuries as per the MLC were a) Swelling over left parietal region and b) Abrasion over right elbow at posterior aspect which remain unproved by the prosecution as Dr. Pavitra has not been examined and there is nothing in the testimony of Dr. Surender Sharma to show that she had left the hospital and cannot be traced. No date was mentioned on the MLC. Shakti Rana claimed to have received three blows on his head by the cemented brick from respondent no.1. No final opinion on the nature of injury was given as the MLC noted '*nature of injury seems to be grievous, however, final opinion has to be given by CMO*' but no such opinion was obtained.

10. ASI Gurvinder Singh Gill in his testimony admitted that he had arrested the victim in a Kalandra under Section 107/151 Cr.P.C. about a month prior to his cross-examination dated 15th July 2017 regarding a dispute between the victim and his father. He also stated that the victim was a habitual drinker and frequent complaints regarding him fighting in the locality with people were received at PS Rajouri Garden. However, the victim has not offered any suitable explanation for the various cases that have been instituted against him one of them being by his father.

11. From the facts noted above findings of the learned Additional Sessions Judge, acquitting the respondents cannot be said to be perverse

warranting interference of this Court.

12. Leave to appeal petition is dismissed.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 26, 2018

‘yo’

