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

+ **CRL.M.C. 3847/2017 & CrI.M.A.No.15528/2017**

**AHSAN ALI** ..... Petitioner

Represented by: **Mr.Ashok Gurnani, Advocate**

versus

**STATE, NCT OF DELHI & ORS** ..... Respondents

Represented by: **SI Ram Avtar, PS Chandni Mahal**  
**Mr.Ramesh Kumar, Advocate for R-2**  
**and R-4**

**CORAM:**

**HON'BLE MS. JUSTICE MUKTA GUPTA**

**ORDER**

% **01.08.2018**

1. Learned counsel for respondent Nos.2 to 4 states that respondent No.3 has since passed away.
2. Petitioner filed a complaint before the learned Metropolitan Magistrate for offences punishable under Sections 323/304/34 IPC which was dismissed by the learned Metropolitan Magistrate vide order dated 7<sup>th</sup> February, 2017. Aggrieved by the said order, the petitioner filed a revision petition before the learned ASJ who partly allowed the revision, set aside the order of dismissal of the learned Metropolitan Magistrate and directed him to issue process against respondent Nos.2 to 4 only for offences punishable under Sections 323/34 IPC as Section 304 IPC was not attracted. Hence the present petition by the petitioner.

3. Case of the petitioner is that the petitioner along with his family was residing in a tenanted premises belonging to respondent Nos.2 and 3 for the last 30 years and the respondents wanted to get the premises vacated from the petitioner and his family members. A compromise was arrived at between the parties in the civil proceedings however an eviction petition was pending. Father of the petitioner was a patient of tuberculosis and the respondent Nos. 2 to 4 did not want a tuberculosis patient to live in their house. It is alleged that on 29<sup>th</sup> April, 2001 in the evening respondent Nos.2 to 4 entered the tenanted premises and asked father of the petitioner to vacate the premises and on his refusal, they gave him fist and kick blows. When the petitioner tried to save his father, he was also given fist and kick blows. Father of the petitioner was taken to LNJP Hospital from where he was referred to a private hospital where he remained admitted till 7<sup>th</sup> May, 2001 and thereafter in St.Stephens Hospital till 6<sup>th</sup> June, 2001 when he passed away on 6<sup>th</sup> June, 2001.

4. Admittedly the father of the petitioner was suffering from pulmonary tuberculosis and had undergone the said treatment. In respect of the alleged incident of 29<sup>th</sup> April, 2001 the first complaint filed by the petitioner was on 28<sup>th</sup> June, 2001 after his father passed away. Death of the petitioner's father was not due to injuries but because of his ailment and no post-mortem report was got conducted.

5. Considering these facts and that the allegations were only of kicks and fist blows, the learned ASJ held that offence punishable under Section 304 IPC was not made out as there was no evidence to show that the death of Asalat Ali was the result of injuries caused to him on 29<sup>th</sup> April, 2001.

However, the learned ASJ also noted that on the facts of the case, offences under Sections 323/334/34 IPC were made out, hence it directed the learned Metropolitan Magistrate to issue the process to respondent Nos. 2 to 4 for the said offences.

6. Considering the facts noted and that the father of the petitioner died due to tuberculosis and not as a result of the injuries, this Court finds no error in the impugned judgment.

7. Petition and application are dismissed.

**MUKTA GUPTA, J.**

**AUGUST 01, 2018**

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