

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

% Decided on: 26th September, 2018

+ **CRL.L.P. 651/2017**

STATE

..... Petitioner

Represented by: Mr. Ashok K. Garg, APP for the
State with SI Dhananjay Dubey,
PS Anand Vihar

versus

SUMAN MALHOTRA

..... Respondent

Represented by: Mr. Sanjay Suri, Advocate.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

Crl.M.A. No.18517/2017 (Delay)

For the reasons stated in the application delay of 90 days in filing the leave to appeal petition is condoned.

Application is disposed of.

CRL.L.P. 651/2017

1. Aggrieved by the judgment dated 5th May, 2017 whereby the learned Additional Chief Metropolitan Magistrate acquitted the respondent Suman Malhotra for the offence punishable under Section 324/34 IPC, the State has preferred the present leave petition.
2. Law was set into motion on 8th March, 2002 at 11:00 A.M. when information was received regarding a quarrel at Hans Apartment, East Arjun Nagar. Aforesaid information was recorded vide DD No. 13A. ASI Yogender Singh reached the spot and came to know that the injured had already been shifted to SDN Hospital. Thereafter, he reached the

Hospital, collected the MLC of the complainant Hemraj Khanna and recorded his statement.

3. Hemraj Khanna stated that at about 10:30 A.M., he went to the office of Hans Apartment Society for getting the NOC for co-operative store where the President and Secretary were present but they failed to give the NOC. The Secretary, in fact, scolded him by stating that the NOC cannot be given in the manner sought. In the mean time, he called his brother and driver to the society office. Hemraj Khanna left the office and started proceeding towards his house. The Secretary came from behind and caught hold of him. His brother inflicted blows on his private parts, took out knife and tried to assault him. He tried to save himself with both his hands, as a result of which, he got injuries on his hands. In the meantime, President, Vice President and their advocate Kishore Rawat came and started instigating the respondent. However, his friend Mahesh Kapoor and his wife came to the spot and called the police. Aforesaid statement was recorded vide Ex.PW-1/A. FIR No.58/2002 (Ex.PW-7/A) was registered at PS Anand Vihar for the offence punishable under Section 324/34 IPC.

4. Thereafter, site plan was prepared vide Ex.PW-10/B. Shirt of the complainant was seized vide seizure memo Ex.PW-1/B. On 11th March, 2002, Suman Malhotra and Rajendra Malhotra were arrested from Saini Enclave Market vide arrest memos Ex.PW-10/C and Ex.PW-10/D respectively and their personal searches were conducted vide memos Ex.PW-10/E and Ex.PW-10/F respectively.

5. Prosecution examined 10 witnesses. Since Rajendra Malhotra passed away during the pendency of the trial, proceedings qua him stood

abated.

6. Suman Malhotra in his statement recorded under Section 313 Cr.P.C. stated that he had been falsely implicated in the present case. He stated that on the date of the incident at 10:30 A.M., he was at Krishna Nagar, Phatphat stand. He received a call from his house regarding Hemraj Khanna quarrelling with the management committee members, who had locked them in the office room. He immediately rushed to the society office and his brother Rajendra Malhotra asked him to call the police at 100 number. He called at police at 100 number from his mobile phone.

7. In defence evidence, respondent examined HC Berender (DW-1) who failed to produce PCR call record, Surender Kumar (DW-2), Nodal Officer, Bharti Airtel, who failed to produce the call detail records as they were already destroyed and Yogender Kumar Chaudhary (DW-3), President of group housing society, who stated that Hemraj Khanna was running an unauthorized co-operative store due to which the expulsion proceedings were initiated against him.

8. On perusal of the evidence on record, there was delay in registration of FIR which has not been explained. The incident allegedly was dated 8th March, 2002 when the statement of the complainant was claimed to be recorded, however, the investigating officer did not proceed for the registration of FIR for the next two days. The attestation on the statement Ex.PW-1/A was stated to be done on the date of incident by the investigating officer ASI Yogender Singh (PW-10) but the same had over writings which clearly showed that the record was ante dated. Thus, it is quite apparent that the statement was recorded after

two days of the incident and Hemraj Khanna was allowed to improve his version and insert embellishments and witnesses.

9. Hemraj Khanna himself contradicted the roles of Suman Malhotra and Rajendra Malhotra (deceased). He stated that the driver of the aforesaid persons caught hold of him first from his back which is contradictory to his earlier statement Ex.PW-1/A. He also claimed that when Suman Malhotra tried to assault him with a knife, he resisted with his hands and sustained injuries on both his hands. However, the testimony of Dr. M.K. Mandal (PW-6) and MLC Ex.PW-6/A belies the aforesaid version. As per the MLC, Hemraj Khanna (PW-1) had received incised wound on his right forearm and cut of scar on the right forearm. Furthermore, the aforesaid injuries were caused by a blunt object which also contradicts the case of Hemraj Khanna as no blunt object was allegedly used to assault him. As per the testimony of Dr. M.K. Mandal (PW-6), there was no bleeding or swelling on the wounds examined by him. Since there was no bleeding, ASI Yogender Singh could not have seized the blood stained shirt. There are contradictions in the testimonies of Hemraj Khanna, Mahesh Kapoor (PW-2), Ira Khanna (PW-3) and Deshraj Chaudhary (PW-8) with respect to the time when each of them reached the spot.

10. Testimony of Yogender Kumar Chaudhary (DW-3), President of group housing society, who stated that Hemraj Khanna was running an unauthorized co-operative store seems to be the cause of the dispute in the society, which fact was not investigated by ASI Yogender Singh.

11. For the facts noted above, findings of the learned Additional Chief Metropolitan Magistrate based on the evidence on record are a plausible

view. Hence, the impugned judgment acquitting the respondent cannot be said to be perverse warranting interference of this Court.

12. Leave to appeal petition is dismissed.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 26, 2018

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