

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

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Decided on: 6th February, 2019

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CRL.L.P. 509/2017

MAHAVIR SINGH

..... Petitioner

Represented by: Mr. B.S. Chaudhary and Ms.
Sneh Lata Rana, Advocates

versus

STATE (NCT) OF DELHI & ORS.

..... Respondent

Represented by: Ms. Meenakshi Chauhan, APP
for the State with SI Balbir,
P.S. Khajuri Khas.
Mr. Shiv Kumar and Mr. Raja
Jain Advocates for respondent
No. 2 to 6.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

CRL.L.P. 509/2017

1. Aggrieved by the judgment dated 14th July 2017, whereby the learned Additional Sessions Judge acquitted the respondents for the offences punishable under Sections 147/148/149/323/324/308 IPC, the Petitioner has preferred the present leave petition.
2. Brief facts of the prosecution case are that on 24th July 2013 at about 11:35 P.M. a call regarding a quarrel at B-170, Gali No.2 Chandu Nagar was received at PS Khajuri Khas. Aforesaid information was recorded vide DD No.39A (Ex.PW-1/D) and assigned to SI Parvesh Kumar. He along with Ct. Manoj reached the spot where they came to know that the injured persons

had already been taken to GTB Hospital. Thereafter, he went to GTB Hospital where he collected the MLCs of injured persons namely Mahavir Singh, Surender, Mohan Lal, Kapil and Ajay. He recorded the statement of Mahavir Singh who stated that he has a shop of spare parts. Kunwar Pal stays opposite his house with his three sons. There are some notorious boys who are friends of Kunwar Pal's sons Gaurav, Pawan and Rohit and visit his house often. They play loud music in the house and eve-tease his daughter and other girls who pass by the locality. Whenever the residents of the locality try to make them understand, they start misbehaving with them. On 24th July 2013, when he was discussing these issues with Kunwar Pal a fight ensued amongst them. Thereafter, they went to PS Khajuri Khas where on enquiry they were advised to settle the matter through mediation. When they returned home from the PS at around 11:00 P.M., Kunwar Pal's sons Gaurav, Pawan and Rohit and their friends on Kunwar Pal's instructions started fighting with them and abusing them on the pretext that they complained about them to the police which is why they should be taught a lesson. Kunwar Pal's sons Gaurav, Pawan and Rohit got a stick and his daughter Aarti and wife Suman caught hold of him from behind and Gaurav hit him with a sharp object on his head and Kunwar Pal kept saying '*Aaj saale ko sabak sikhayo*'. Kunwar Pal's son Pawan tried to save him. They hit his neighbour on his head with a brick. Many people from the locality gathered there who hit Kunwar Pal also and one of the persons from the crowd called the police on 100 number after which the police officials took them to GTB Hospital. On basis of the aforesaid statement, FIR No. 373/2013 was registered for offences punishable under Sections 308/323/324/114/34 IPC at PS Khajuri Khas.

3. In the meantime, the investigating officer returned to the spot where Kunwar Pal's family met him and informed them that they had also sustained injuries. Thereafter, he took Kunwar Pal and his family members Pawan, Gaurav, Suman, Aarti and Ajay to Jag Parvesh Chand Hospital for their medical examination. Thereafter, he inspected the place and prepared the site plan at the instance of Mahavir Singh vide Ex.PW-16/A. He lifted three *dandas/lathis* from the spot and sealed them in three separate cloth parcels vide seizure memo Ex.PW-12/A. He also lifted blood sample and earth control from the spot which were converted into two parcels and sealed with the seal of PK and seized vide seizure memo Ex.PW-12/B. Thereafter he arrested Kunwar Pal, Suman, Aarti, Gaurav and Pawan. He collected the opinion of the doctor with respect to nature of injury and was informed that nature of injury qua Mahavir Singh could not be opined as he had left the hospital. On completion of investigation chargesheet was filed. Charge for offences punishable under Sections 147/148/149/323/324/308 IPC was framed against the respondents.

4. Prosecution examined 16 witnesses. Mahavir Singh (PW-2), victim deposed in sync with his statement made to the police. In his cross-examination he stated that Kunwar Pal had made a complaint against him under the SC/ST Act. Kunwar Pal and his family were the only ones from their caste residing in that street.

5. Tejbir Singh (PW-5) in his testimony stated that prior to 23rd July 2013 a quarrel had taken place between Kunwar Pal and Mahavir Singh. Kunwar Pal had broken Mahavir Singh's teeth. This matter was settled between both of them at the Police Station. On 24th July 2013 at about 5:00-6:00 P.M., Kunwar Pal and Mahavir entered into a quarrel. Matter was again

settled at the Police Station and all of them returned from there. At about 11:00 P.M. Aarti and Suman caught hold of Mahavir and Kunwar Pal stated that “*Yeh bar bar Complaint Karta Hai isko aaj theek kar do*”. Immediately, Kunwar Pal’s three sons Gaurav, Pawan @ Dal Chand and Rohit attacked Mahavir with dandas and caused injuries on his head due to which he fell down on the road. Some persons took Mahavir to the hospital. Surrender, Kapil, Mohan Lal and Ajay also sustained injuries in this incident when they tried to save Mahavir. Kunwar Pal used to pass caste remarks against Mahavir and also used to extend threats to him. In his cross-examination he stated that he was not present at the spot at the time of the first incident. He further stated that he returned from the police station at 11:30 P.M. after which he went home and slept.

6. Ajay (PW-6) in his testimony stated that on 24th July 2013 at about 5:30 P.M, an altercation had taken place between the family of Kunwar Pal and Mahavir. Thereafter, both the parties went to the Police Station and the matter was settled there in his presence. At about 11:00 P.M., he was inside his house when he heard a noise of ‘*Bachao Bachao*’ from the gali in front of Mahavir’s house. He went to the spot and saw that Kunwar Pal’s wife and daughter were holding Mahavir. Gaurav had some sharp object in his hand and other two sons of Kunwar Pal had *dandas* in their hands. All the family members of Kunwar Pal were beating up Mahavir. When he tried to save Mahavir, he was also given beatings due to which he sustained injuries on his right hand and left arm which had been caused to him by Gaurav and his brother. The Gali was crowded and there was no proper lighting. The PCR officials took Mahavir, Kapil, Mohan Lal, Surrender Pal and the complainant to the hospital where he received stitches on his right index finger. In his

cross-examination he stated that at the time of the incident he was not present at the spot but he was in his house.

7. Mahipal (PW-7) in his testimony stated that on 24th July 2013 at about 4:30 P.M., a quarrel had taken place between Kunwar Pal and Mahavir. Thereafter, both the parties went to the Police Station where the matter was settled between them. He went home after that and had not witnessed any incident thereafter. However, he had heard noise from the gali at about 10:30 P.M. but he did not come out of his house.

8. Surrender (PW-8) in his testimony stated that on 24th July 2013 at about 5:30 P.M., an altercation had taken place in Gali No.2 in front of house of Mahavir between Mahavir and Kunwar Pal. At about 10:30 P.M., he heard a noise from the gali. He went out of his house and saw that Mahavir was lying on the road in an injured condition. Aarti @ Jyoti hit him with bricks on his head while Gaurav hit him on his left arm. Gaurav had also made 3-4 attempts to cause injury on his belly. Suman, Kunwar Pal, Rohit and Pawan had also given beatings to him with dandas. PCR officials took him and other injured persons to GTB Hospital. He received seven stitches on his left arm and two stitches on his head.

9. Mohan Lal (PW-9) corroborated the testimony of PW-6 and PW-8. He stated that the doctor gave him two stitches on one finger.

10. Kapil (PW-10) corroborated the testimony of PW-6 and PW-8. He further stated that he received an injury on his right palm and also on his back. He further stated that the doctors have now opined that he has sustained injuries on his spinal cord and now needs regular bed rest. In his cross-examination he stated that he was informed by his sister that a quarrel had taken place at about 5:00 P.M. – 5:30 P.M. He had visited the police

station as his brother had gone there. He further stated that two FIRs have been lodged against his brother by Aarti after the incident.

11. Dr. Parmeshwar Ram (PW-14), MO IC OPD, GTB Hospital identified the signatures of Dr. Sober, Dr. Vikas Gupta and Dr. Aditya on the MLCs exhibited vide Ex.PW-14/A, Ex.PW-14/B, Ex.PW-14/C, Ex.PW-14/D and Ex.PW-14/E wherein the alleged history was of physical assault. General condition of the injured persons was opined to be normal.

12. Dr. Ravi Prasad, Sr. Resident, Neurosurgery, GTB Hospital stated that on 21st August 2013, SI Parvesh Kumar had presented a written request to provide nature of injuries on the MLC of Mahavir Singh. After going through the record available he opined the nature of injuries as simple on the request letter of the IO.

13. Defence examined 4 witnesses. Dr. Devendra, (DW-1) DMS (Telecommunication), GTB Hospital identified the signatures of Dr. Vikas Gupta on the MLC of accused Aarti wherein there was alleged history of physical assault. General condition of the injured persons was opined to be normal.

14. Dr. P.Ram, (DW-2) DMS OPD, GTB Hospital identified the signatures on the MLC of accused Suman by Dr. Sober wherein the alleged history was of physical assault. General condition of the injured persons was opined to be normal.

15. Dr. Ashok, (DW-4) Medical Officer Incharge at Mauj Pur Dispensary proved the photocopies of the MLCs of Dal Chand, Gaurav and Rohit vide Ex.DW-4/A, Ex.DW-4/B and Ex.DW-4/C respectively wherein he opined the nature of injury as simple.

16. Learned Additional Sessions Judge acquitted the respondents on the

ground that there are various inconsistencies in the testimony of Mahavir Singh. It is evident from his testimony that he was alone at the time of the incident and no other witness was present in the street at the time. The testimonies of the other injured/eye-witnesses also make it clear that they did not witness Kunwar Lal and his family members beating up Mahavir Singh. According to Mahavir Singh's statement he raised an alarm due to which neighbors gathered over there. He also stated that he was unconscious at the time. If he was unconscious at the time it would not be possible for him to know who sustained what injury and the details of the persons who had gathered there. Mahavir Singh has made various improvements in his statement to the police. In his statement before the police he stated that Kunwar Pal talked to him and then assaulted him and he also disclosed the names of the accused persons whereas before the court he has not given any description of the accused persons and rather was not aware as to which accused assaulted him or caused the injuries. He denied that his statement was recorded in the hospital and also denied that the accused persons were arrested by the investigating officer at his instance or that the site plan was prepared at his instance. Furthermore, he has failed to identify the *dandas* which were used during the incident. The time of incident in the MLC of Ajay is 6:30 P.M. whereas in his statement before the court he has deposed the incident to have taken place at 11:00 P.M. It appears that MLC of victim was prepared after the first incident allegedly took place at 5:30 P.M. and was not reported to the police, but the prosecution has tried to manipulate the earlier incident to subsequent incident thereby using the previous MLCs of injured and no witness sustained any injury during the incident allegedly took place at 11:00 P.M.

Kapil has deposed that he was caused injury by Pawan by sharp edged weapon whereas other witnesses have deposed that sharp edged weapon was used by Gaurav and not by Pawan. Furthermore, the MLCs of the prosecution witnesses have proved that they failed to report to the doctor for medical opinion and absconded which makes their conduct doubtful.

17. Besides, the injured and the accused persons were well known to each other but still they did not disclose the names of assailants. The DD entry also proved that only incident of quarrel was reported and it cannot be said that the accused persons alone were the assailants. In a free fight, either of the parties may be assailant, especially when the accused persons have also sustained injuries and have proved their MLCs. There is no evidence on record to prove that the accused persons formed an unlawful assembly for rioting or were armed with deadly weapons for this purpose. All the witnesses have deposed about reaching the spot when the incident was already over.

18. Moreover, the sharp-edged weapon with which the injuries were inflicted has also not been recovered. The *dandas* were also not recovered from the accused persons rather they were seized from the street. Since it was an incident of fight between two people it cannot be ruled out as to who used these *dandas* during the incident. The witnesses in their testimony have deposed that they were hit by bricks and stones but no such bricks or stones have been recovered. The witnesses have also deposed that *dandas* had blood stains on it but the Investigating Officer did not seize the blood samples for comparison and even did not send to FSL to ascertain the blood stains on *dandas*.

19. Considering that the view expressed by the learned Additional

Sessions Judge is a plausible view on the evidence led, the impugned judgment acquitting the respondent cannot be said to be perverse warranting interference of this Court.

20. Leave to appeal petition is dismissed.

(MUKTA GUPTA)
JUDGE

FEBRUARY 06, 2019
‘vj/ga’

