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

+ **CRL.REV.P. 181/2019**

STATE (GNCT OF DELHI)

..... Petitioner

Through Mr Amit Gupta, APP for State.

versus

GOPAL SINGH

..... Respondent

Through Mr Anuj Chaturvedi, Mr Richa Dhawan,
Standing Counsel DHCLSC.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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05.02.2020

1. The petitioner has filed the present revision petition impugning an order dated 14.11.2018 passed by the learned ASJ, whereby the learned ASJ declined to frame a charge under Section 308 of the IPC against the respondent.
2. The incident of alleged physical assault was reported on 22.04.2015. A report was received regarding a quarrel that had ensued at Ram Leela Ground, Behind Nehru Nagar, Subzi Mandi, Anand Parbat, Delhi. The said information was reduced into writing as DD No. 67-B and an official of PS Anand Parbat was despatched to the said site, however, he did not find any person or eyewitness. On further inquiry, it was found that the injured had been admitted by the PCR Van to Acharya Shri Bhikshu Government Hospital. The MLC of the injured persons were collected but on 22.04.2015, the statements of the injured persons (Deepak and Jagdish) were not

recorded. However, on 25.04.2015, Deepak, the injured person, came to the Police Station and gave his statement. He stated that he was a resident of 284/5, Gali No. 8, Nehru Nagar, Delhi and was aged twenty-two years. He stated that he lives with his family and is a driver by profession. On 22.04.2015, at around 11 pm, he had parked 'Champion' car behind Nehru Nagar, Sabji Mandi, near Ram Leela Park. He asked one boy there to move so that he could park the car. The said boy started abusing him. When he asked him the reason for his abuses, the boy got instigated and slapped him. A boy who standing there asked them for the reason of the fight and when Deepak narrated the incident, the other boy also slapped him. When he tried taking his phone out, they started threatening him that they would beat him up if he tried threatening them with his mobile phone. The complainant (Deepak) alleged that he managed to extract himself from them and made a phone call to his father regarding the ongoing fight. On being informed, the father of the complainant (Jagdish) reached the site along with the complainant's mother and aunt. On seeing his father, the boys started hurling abuses at him and started throwing bricks and stones at them, with the help of two other accomplices. They also beat them with sticks which led to his father suffering an injury on his head and blood started to ooze from his head wound. On seeing that they had injured the complainant's father, the boys ran away from the spot. The complainant stated that there was one boy who was involved in the alleged incident and was about five and a half feet tall, with a heavy built and fair complexion. The complainant stated that he would be able to recognize him.

3. The police also recorded the statement of the complainant's father,

Jagdish, under Section 161 of the CrPC. He stated that his son, Deepak (complainant) used to work as a driver and used to drive a Champion car. On 22.04.2015, at around 11:00 pm, his son had called him and told that when he was parking the car, he had a fight with two persons and that they had beaten him up. He told his wife, Omwati and the landlady about the said incident and took them along with him to the spot at Ram Leela Park, Nehru Nagar, Sabji Mandi. There, he met Deepak who told him that a quarrel had taken place between him and two other boys and they had beaten him up.

4. Thereafter, four boys, arrived at the said spot and started hurling abuses at him and Deepak and stated that they would beat them up. After saying so, one boy of fair complexion, heavy built and of short height, picked a stone and hit it on his head. Another boy, who was of darkish complexion, hit Jagdish's head with a *danda* (stick). The other two boys were hitting his son with fists and kicks. On seeing blood oozing out from his head, they ran away from the spot. His wife and the landlady had helped them escape from the boys. On asking around about the boy who was short and fair complexioned in the surrounding neighbourhood, they found out that his name was Gopal. They came to know that on the intervening night of 22.04.2015, Gopal, along with his uncle's (*chacha's*) sons were present. The complainant's father stated that he had come to the police station with his wife, Omwati, to give his statement.

5. According to the petitioner (State), the said statement is sufficient to allege commission of an offence under Section 308 of the IPC. It is submitted that it is a fact that the complainant and his father were hit on the head and had suffered injuries on the vital parts of their bodies and this does

indicate that an allegation of commission of an offence under Section 308 of the IPC is made out. It is also alleged that the complainant's father started to bleed from his head and on seeing the same, the assailants had run away from the spot.

6. The ferocity of such an attack as well as the fact that the injured Jagdish had suffered injuries on a vital part of his body such as his head, would justify an allegation under Section 308 of the IPC. However, the learned ASJ has declined to frame a charge on the ground that the statements of the victims were silent as to the circumstances that could be held against the accused, to make out a case under Section 308 of the IPC.

7. This Court is unable to concur with the said view. Clearly, the statements made by the victims do indicate that they were furiously attacked by *dandas*, bricks and stones. One of the victims has also suffered a head injury which is described as being delivered by a blow from a *danda*. If the said injury had resulted in the death of the victim, an allegation of culpable homicide could be maintainable. It would be open to allege that the assailants had full knowledge of the consequences of giving such blows. In the given circumstances of the case, the impugned order is modified to the extent that the learned ASJ has declined to frame a charge under Section 308 of the IPC, is set aside. The matter is remanded to frame a charge under Section 308 of the IPC.

8. The petition is disposed of.

VIBHU BAKHRU, J

FEBRUARY 05, 2020/ pkv