

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

CRL. REV. P. 653/2018

Reserved on : 25.02.2020

Decision on : 27.02.2020

IN THE MATTER OF:

CRL.REV.P. 653/2018

STATE (GNCTD)

..... Petitioner

Through: **Ms. Manjeet Arya, APP for State with
SI Jaibir Singh, P.S. Anand Vihar**

versus

OMBIR & ORS.

..... Respondents

Through: **Mr. Mukesh Anand and Mr. Manish
Sachan, Advocates**

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

1. The present revision petition has been directed against the order dated 20.03.2018 passed by the Addl. Sessions Judge in SC No. 19/2018 whereby the respondents were discharged under Section 308 IPC.

2. Briefly, the facts as noted in the impugned order are:

“The case of complainant is that it was 17.09.2008 and time was 8:00 am, when complainant Shyam Singh along with his family was sitting in his room, the accused persons entered his room and picked up quarrel with the complainant and his family. They made criminal assault with danda and iron rod, since accused Kamlesh and Ombir were carrying danda and Krishan Pal and Neelam were having iron rod.

Complainant received head injuries and police took him for medical treatment. While leaving the spot, they threatened to kill the complainant in case report is lodged against them.”

3. The report of the incident was lodged with the police through a telephonic call made by the complainant. A PCR van reached the spot and took the complainant to Dr. Hedgewar Aarogya Sansthan where he was medically treated and his MLC was prepared. Though, IO from P.S. Anand Vihar collected the MLC but no FIR was registered.
4. The complainant made a representation to the DCP (East), however no action was taken on his complaint. The complainant filed an application under Sections 200 read with Section 156(3) and Section 190 Cr.P.C. before the court of ACMM, Karkardooma, Delhi for the offence punishable under Sections 308/452/506(II)/34 IPC. Subsequently, FIR No. 547/2008 was registered under the aforesaid sections at P.S. Anand Vihar. After investigation, a cancellation report was filed on 28.01.2009. The complainant filed a protest petition and the case was committed to the court of Sessions as the allegations were made under Section 452/308/506/34 IPC.
5. After hearing arguments on charge, the court of Addl. Sessions Judge framed charges under Sections 452/323/506(II)/34 IPC against the respondents and discharged them under Section 308 IPC.
6. During the pendency of the present revision petition, it has been informed that the complaint case was proceeded and the respondents have been acquitted for the offences punishable under Sections 452/323/506(II)/34 IPC vide judgment dated 06.08.2019. A copy of the aforesaid judgment has been placed on record in the present case. A perusal

of the judgment would show that the trial court disbelieved the testimony of the complainant/injured on the ground that whereas in the complaint it was stated that the complainant was present in his house along with his family members, however in the cross-examination he deposed that at the time of the incident he was alone in the house. The trial court also noted that there were prior litigations between the complainant and respondents/accused with respect to property no. 326/B, Village Karkardooma, Delhi. Further, the testimony of the complainant was not corroborated by any supporting evidence of his family members who were alleged to be present. The non-recovery of weapon of offence and not handing over of his blood stained clothes were also held to be fatal against the complainant's case. The trial court also noted that there was non explanation of the injuries on the accused persons who were taken to the hospital at the same time. Learned APP, on instructions from the IO, has informed that the aforesaid judgment of acquittal has not been challenged by the complainant till date.

7. The only question that remains to be examined in the present case is whether the discharge of the respondents for the offence punishable under Section 308 IPC was justified. It is relevant to note that by the impugned order noting that the injuries were opined to be simple in nature, framed an alternate charge under Section 323 IPC for which the respondents now stand acquitted.

8. I have heard learned counsels for the parties and gone through the case records.

9. A perusal of the MLC of the complainant-Shyam Singh dated 17.09.2008 would show that a single injury (lacerated wound of 3 cm x .3

cm x .3 cm on the frontal region of scalp) has been opined to be simple in nature. The impugned order was passed while relying on the decisions in Rajiv Sharma v. State reported as **2015 (4) JCC 2419** and Sheela Devi v. State in Crl. Rev. 217/2015 decided on 13.09.2015. It was also noted that the complainant did not specify the use of weapon by a particular accused with respect to the injury.

10. On perusal of the impugned order, I do not find any infirmity, illegality or perversity in the same. Accordingly, the revision petition is dismissed.

(MANOJ KUMAR OHRI)
JUDGE

FEBRUARY 27, 2020
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