
(2018) 09 DEL CK 0407

In the Delhi High Court

Case No : Criminal Leave Petition No. 651 Of 2017

State

APPELLANT

Vs

Suman Malhotra

RESPONDENT

Date of Decision : 26-09-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 324
Code of Criminal Procedure, 1973 — Section 313

Citation : (2018) 09 DEL CK 0407

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : Ashok K. Garg, Sanjay Suri

Final Decision : Dismissed

Judgement

Mukta Gupta, J

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.