

IN THE COURT OF MS. VRINDA KUMARI,
ADDITIONAL SESSIONS JUDGE-02, SOUTH
DISTRICT, SAKET COURTS, NEW DELHI

CNR NO. DLST01-000643-2014

SC NO. 6997 OF 2016

FIR NO. 834/2013

PS MEHRAULI

U/s 323/147/149/34 IPC & 3 OF SC & ST ACT

IN THE MATTER OF

State

Versus

- (i) Amit Balhara**
S/o Sh. Omvir Balhara,
R/o House No. 25/1,
Village Neb Sarai, New Delhi.
- (ii) Pankaj Balhara**
S/o Sh. Kuldeep Balhara,
R/o House No. 17,
Village Neb Sarai, New Delhi.
- (iii) Parveen Balhara**
S/o Sh. Kuldeep Balhara,
R/o House No. 17,
Village Neb Sarai, New Delhi.
- (iv) Pawan Balhara**
S/o Sh. Ishwar Balhara,
R/o House No. 17,
Village Neb Sarai, New Delhi.
- (v) Paramjeet @ Mota (now deceased)**

**S/o Sh. Jai Singh,
R/o Roop Apartment,
Upper Ground Floor,
Neb Sarai, New Delhi.**

..... Accused persons

ORDER ON CHARGE

1. Vide this Order, I shall decide the point of charge in the present case.
2. I have heard detailed arguments on point of charge and have perused the records carefully.
3. As per the FIR, accused Pawan Balhara called the complainant Dinesh Kumar, who was sitting at his office with his brothers Nirmal and Harish on 06.10.2013 at 06:20 PM at Harijan Basti, Neb Sarai, outside on the pretext of Pawan's father wanting to talk to the complainant. Not suspecting anything amiss, the complainant went outside where he was surrounded by 10 to 12 boys. Accused Pankaj Balhara, Pawan Balhara, Praveer Balhara, Amit Balhara, Ashish, Paramjeet Sehrawat (now deceased) and other unknown boys had a scuffle with him. All the accused persons said that since the complainant had got an FIR lodged against one Anni and another police case had also been lodged about two years ago, they would not spare him and would kill him. Casteist slurs were also hurled at the complainant. Upon hearing the ruckus, complainant's *bua* Resham Devi who resides in *gali* no. 02 reached

the spot with brothers of the complainant, namely, Nirmal and Harish. The assailants also beat up Resham Devi, Nirmal and Harish with *dandas*, kick blows and fist blows.

4. It is alleged by the complainant that accused Pawan Balhara snatched gold chain from the complainant. Accused Amit Balhara (Nattu) snatched gold chain from Resham Devi and also snatched mobile phone of Nirmal. The accused persons suddenly attacked the complainant with iron rods and *dandas* because of which his head got ruptured at three places.

5. The MLC of the complainant, however, shows that he suffered *laceration at occipital region 1 x 1 cm* only. Resham Devi suffered simple injuries. No visible injuries have been cited in the MLC of Resham Devi. Injured Nirmal suffered *laceration 0.2 x 0.2 x 0.05 cm over upper lip and lower lip, laceration 1 x 0.5 x 0.5 cm over RT & LT palm, multiple abrasion RT forearm, swelling LT upper eyelid and abrasion multiple over LT elbow*.

6. During the course of investigation, the allegations of robbery or dacoity and house trespassing could not be substantiated. All the injured persons suffered simple injuries.

7. There is a specific allegation that the accused persons called the complainant out of his office on false pretext and hurled casteist slurs on him. *Prima facie*, the incident took place at a place

within public view attracting Section 3(1)(x) of the SC & ST Act, 1989 (prior to the Amendment of the year 2016). The accused persons constituted unlawful assembly and committed violence with the common intention and in prosecution of common object of causing hurt to the complainant party. The complainant party also suffered simple injuries. As per the Schedule of the SC & ST Act, offences punishable u/s 147 IPC and u/s 323 IPC are scheduled offences attracting the provisions of Section 3(2)(va).

8. At the stage of framing of charge, a *prima facie* case is required to be seen. There is nothing on record to frame charge for the offences punishable u/s 307/354/392/397 IPC. The contentions of Ld. Counsel for the accused persons that the incident did not take place in public view is subject matter of trial. The accused persons have relied upon ***Swaran Singh Vs Swaran Kaur & Ors (2004) 137 PLR 184*** and ***Judgment dated 05.11.2020 of Hon'ble Supreme Court of India in Crl. Appeal No. 707 of 2020 (Arising out of SLP (Criminal) No. 3585 of 2020)*** titled as ***Hitesh Verma Vs The State of Uttarakhand & Anr.*** I have considered these judgments carefully. At the stage of framing of charge, these judgments do not help the accused persons. Whether or not the insults or intimidation in the present case were intentional as envisaged in Section 3(1)(x) of the SC & ST Act is a subject of matter of trial. The contentions related to false implication and inconsistencies in prosecution's case are also subject matter of trial.

9. *Prima facie*, there is sufficient material on record to frame charge for the offences punishable (i) u/s 147 IPC, (ii) Section 323 r/w Section 149 IPC *in alternate* u/s 323/34 IPC, (iii) Section 506 r/w Section 149 *in alternate* u/s 506/34 IPC, (iv) Section 3(1)(x) of the SC & ST and (v) Section 3(2)(va) of the SC & ST Act against the accused persons.

PRONOUNCED IN OPEN COURT ON THIS 24th JANUARY 2023

**(Vrinda Kumari)
ASJ-02, South District
Saket Courts, New Delhi.**