

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Judgment delivered on : July 8, 2016

+ CRL.REV.P. 742/2015 & Crl.M.A. No.16862/2015
STATE (GOVT OF NCT OF DELHI) Petitioner
Through Mr.Rajat Katyal, Additional Public
Prosecutor for the State

versus

MOHD RAJA @ SHAHNAWAZ Respondent
Through Nemo.

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

P.S.TEJI, J.

1. By this revision petition filed under Section 397 read with Section 401 of Cr. P.C. the petitioner seeks for setting aside the order dated 14.09.2015 passed by the learned Additional Session Judge, Central, Delhi , whereby the respondent has been discharged from the offence punishable under Section 302/392/397/34 of IPC.

2. Brief facts of the case are that on 02.12.2014, DDA No.11A was recorded at Police Station Karol Bagh at 7.00 am regarding one person receiving knife injury who seemed to have expired at Regarpura, Hardhyan Singh Road, Aggarwal Dharamshala. Thereafter, the police party reached the spot and found that at the road side one person of the age about 25-30 years was lying dead. Crime team was called at the place of occurrence. It was observed by the

Investigating Officer that somebody had used some sharp edged weapon in committing the murder of the deceased. Accordingly a case under Section 302 of IPC was registered.

3. During the course of investigation, statement of occupants of house – namely Prem Parkash, who informed the PCR, was recorded. Exhibits were lifted from the place of occurrence. Since the identity of the deceased could not be established, the dead body was subjected to postmortem and last rites of the same were performed. As per post mortem report, the deceased received as many as ten injuries and out of it, injury No.1 to 8 were stab wounds and Injury Nos. 4,5 and 7 were sufficient to cause death individual and collectively in the ordinary course of nature.

4. Thereafter, on 08.01.2015, the Investigating Officer of the present case received DD No.32A through MHC (R) from Police Station Prasad Nagar regarding arrest of an accused in FIR No. 26/2015 under Section 302 of IPC, Police Station Prasad Nagar in which the accused made a disclosure about his involvement in the present case. The Investigating Officer of the instant case collected the copy of FIR, copy of Tehrir, MLC of deceased, seizure memo, arrest memo, disclosure statement of accused and sketch of knife recovered from deceased – Ankit in FIR No. 26/2015. As per disclosure statement of accused made in FIR No. 26/2015, it was disclosed that he alongwith the deceased Ankit in the other case were roaming around in the area of Aggarwal Dharamshala for committing theft

about one month back after closure of Monday market and one person was stopped by them and this person was asked to handover the money on point of knife. On resistance by him he was stabbed by Ankit 7-8 times on his chest and other parts of the body and a sum of Rs.500/- was taken out from the pocket of the deceased in the present FIR No. 917/2014, Police Station Karol Bagh. Accused was formally arrested in the present case. He had also identified the place of occurrence and accordingly the memo of the place of occurrence was prepared.

5. During the further investigation in the present case, in a disclosure statement, the accused named a person namely Khujli vagabond who met them on the date of occurrence on this case and after committing the incident in the present case, he alongwith Ankit had informed Khujli about the incident and thereafter ran away from Sharda Chowk.

6. Statement of Mohd. Parvez @ Khujli, who was a juvenile of the age of 17 years, disclosed in his statement that he was involved in criminal activities and has also been apprehended twice. He narrated the incident that about one and a half month before the date of recording of his statement, he accompanied accused and Ankit and after closure of the Monday market one person was stopped near the Dhaba by Raja (respondent herein) and Ankit and they forcibly searched him. He was having Rs.500/-. He started abusing both of them and Raja and Ankit took him towards Shani Mandir. According

to his statement, he remained present at dhaba only and after about five minutes Raja and Ankit came to him running and told him to run away as they have stabbed the said person. Thereafter, he ran away with them. Khujli also stated that he had seen knife with Ankit. He further stated that in the morning, he alone gone to near Shani Mandir where he had seen the dead body of the person from whom Ankit and Raja had snatched Rs.500/-. He also corroborated his statement under Section 164 of Cr. P.C.

7. The knife recovered in other case from the possession of Ankit, was sent for Forensic medical department in which the report was received to the effect that injury No.1 to 10 are possible by examined weapon or similar type of weapon. The knife was submitted to FSL for examination and as per the FSL Report, no blood could be detected on the knife.

8. On the premises of the aforestated facts, the charge sheet under Section 302/392/397/34 of IPC against the respondent herein. It was submitted in the charge sheet that the case is based on circumstantial evidence and is supported by the statement of Parvez @ Khujli. It is submitted on behalf of the prosecution that the incident of stabbing and armed robbery in this case has been committed by the accused (respondent herein) alongwith deceased Ankit and as Ankit is no more alive, charge was framed against the respondent only. It is pertinent to note that no judicial TIP of the accused – Raja was conducted in this case through the witness Khujli to ascertain as to whether it was the

respondent who was involved in the commission of offence alongwith Ankit.

9. The matter was tried by the Session Judge, who after going through all the material facts placed on record, and going through the evidence of the only witness Khujli and the disclosure statement of the accused in other case and particularly the FSL report, according to which no blood was detected on the weapon of offence, i.e., knife used by Ankit, observed that since the only witness Khujli is a vagabond who is already involved in two case and no TIP was conducted in the present case and the mere statement of the witness under Section 161 Cr. P.C. that the accused (respondent herein) is the same person and that too without judicial TIP of the accused, is irrelevant. So far as the disclosure statement of the accused in other case, holding that the same has no meaning and being hit by Section 25 of the Indian Evidence Act, especially when there is no other corroborated material against the respondent, discharged the accused (respondent herein) from the offence under Section 302 as well as for the offence under Section 392/397 of IPC, vide order dated 14.09.2015.

10. Being aggrieved by the aforesaid order, Mr. Rajat Katyal, the learned Additional Public Prosecutor for the State has preferred the present revision petition against the order of discharge. It is contended on behalf of the State that the basis on which the accused has been discharged are not conducting the TIP of the accused and the disclosure statement of the accused in other case being hit under

Section 25 of the Indian Evidence Act. In this regard, it is contended that the witness Khujli in his statement recorded under Section 161 Cr. P.C. as well as under Section 164 of Cr. P.C. stated that the respondent and Ankit had stopped one person near the dhaba and an amount of Rs.500/- was snatched from him, therefore the offence under Section 392 IPC was framed against the respondent. So far as the TIP is concerned, learned Additional Public Prosecutor for the State contended that there was no need to conduct judicial TIP of the accused as witness was knowing the accused previously and in his statement under Section 161 Cr. P.C. stated that the respondent is the same person who was arrested in the case but still the learned Trial Court discarded his statement.

11. Learned Additional Public Prosecutor for the State further contended that at the stage of framing of charge, the trial court is not to examine and assess in detail the materials placed on record by the prosecution nor is it for the court to consider the sufficiency of the material to establish the offence alleged against the accused person. The trial court is required to examine the material with a view to be satisfied that a prima facie case of commission of offence alleged has been made out against the accused person. It is submitted that at the stage of framing of charge the court has to consider the material with a view to find out if there is ground for presuming that the accused has committed the offence or that there is no sufficient ground for proceeding against the accused and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction.

12. On the basis of the aforesaid submissions, learned Additional Public Prosecutor for the State sought for setting aside of the order of discharge dated 14.09.2015 passed by learned Additional Session Judge.

13. I have heard the submission made by learned Additional Public Prosecutor for the State and have also gone through the impugned orders passed by the learned Additional Session Judge discharging the respondent for the offence under Section 302/392/397 of IPC.

14. It is also indisputable that the present case is based on the circumstantial evidence and the essential ingredients to prove guilt of an accused person by circumstantial evidence are:

- (1) *The circumstances from which the conclusion is drawn should be fully proved;*
- (2) *The circumstances should be conclusive in nature;*
- (3) *All the facts so established should be consistent only with the hypothesis of guilt and inconsistent with innocence;*
- (4) *The circumstances should, to a moral certainty, exclude the possibility of guilt of any person other than the accused.*

15. Upon perusal of the impugned order dated 14.09.2015, in the considered opinion of this court, it cannot be said that the learned Additional Session Judge has not passed a reasoned order. The learned Additional Session Judge has specifically dealt with the statement of the only witness Khujli and also dealt with the issue of not conducting

the judicial TIP of the accused. Indisputably, the prosecution has no other material or evidence corroborating with the statement of the only witness Khujli to hold the respondent/accused guilty for the offence with which he is charged.

16. So far as the disclosure statement of the accused in other case, this court observes that the learned Additional Session Judge has specifically mentioned that in absence of the disclosure statement leading to the recording of any fact is admissible only under Section 27 of the Indian Evidence Act, otherwise the disclosure statement is of no meaning and is hit by section 25 of the Indian Evidence Act. Moreover, it is also not disputed that the FSL report regarding the weapon of offence, is to the effect that no blood could be detected on the knife purportedly used for the offence in the present case.

17. In the light of the aforesaid discussion of facts and circumstances of the case, this court does not find any illegality or infirmity in the reasoning given by learned Additional Session Judge for discharging the respondent for the offences punishable under Section 302/392/397 of IPC and this Court finds no reason to take a different view from the said order.

18. Resultantly, the present petition filed on behalf of the petitioner – State is dismissed and the order dated 14.09.2015 passed by the learned Additional Session Judge is upheld and the respondent Mohd.Raja @ Shahnawaz is discharged for offences punishable under Section 302/392/397 of IPC.

19. Finding no merit in the present petition and the application are hereby dismissed.

(P.S.TEJI)
JUDGE

JULY 08, 2016
pkb

