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IN THE HIGH COURT OF DELHI AT NEW DELHI

Order reserved on: 21st November, 2017

Order pronounced on: 4th January, 2018

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CRL. REV.P.669/2015

PANKAJ VERMA

..... Petitioner

Through: Mr. Pradeep Narula, Ms. Urmila Verma
and Ms. Bhawna Khanna, Advocates.

versus

STATE OF DELHI & AN

.....Respondents

Through: Ms. Anita Abraham, APP for the State
with SI Pramod Kumar from PS-Narela
for R-1.

Mr. Anirudh Joshi, Adv. for R-2.

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

1. The present Criminal Revision Petition has been filed under Section 397/401 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') assailing the order dated 07.08.2015 passed by the Additional Sessions Judge-2 (North), Rohini Courts, Delhi in case FIR No. 729/13, whereby charge under Section 307/34 of the Indian Penal Code, 1860 (hereinafter referred to 'IPC') was ordered to be framed against the present petitioner and other co-accused persons.
2. Factual matrix emerging from the record is that, on 19.10.2013 at about 12:50 a.m. a PCR Call was received from Beggar Home. On enquiry it was found that a scuffle had taken place between one Amit Rana/injured victim and one Babu/main accused wherein the

latter inflicted injuries on the former with a knife. The injured was taken to SRHC Hospital from where SI P.L. Meena collected the MLC bearing No.3202/13 of victim Amit Rana wherein the doctor had opined that injury had been caused by sharp object and the injured was unfit for statement. Accused Babu was also under the influence of liquor and hence did not make any statement. No eye witness was found. On the basis of surrounding circumstances the subject FIR was registered under Section 307 IPC. The weapon of alleged offence i.e. the knife was recovered and sent to FSL Rohini for examination.

3. On 27.08.2014, Amit Rana regained consciousness and his statement was recorded under Section 161 Cr.P.C. wherein he stated that when the quarrel was going on between him and Babu, three persons namely Pankaj Verma, caretaker Rakesh and Harish intervened and caught hold of him and in the meanwhile Babu brought a knife from the kitchen and hit his neck while Harish hit him with a mushli.
4. Vide impugned order dated 07.08.2015, the Additional Sessions Judge (hereinafter referred as 'ASJ'), directed to charge the petitioner under Section 307/34 IPC. On 28.08.2017 the Trial Court framed charges against the petitioner alongwith other co-accused persons under Section 307/34 IPC and fixed the matter for prosecution evidence. Hence the present petition.
5. Assailing the impugned order, Mr. Pradeep Narula, learned counsel for the petitioner contended that the Trial Court erred in framing the charges against the petitioner merely on the statement of the

victim Amit Rana without examining the documents and statements as filed in the charge sheet; that the petitioner who was initially a prosecution witness has been made an accused without taking into consideration the very fact that he has himself supported the case of the prosecution and all other witnesses have deposed on similar lines; that the entire evidence as collected by the prosecution in the charge-sheet as well as the supplementary charge-sheet nowhere points towards the involvement of the petitioner in the commission of the alleged offence; that a perusal of the Examination-in-Chief of the petitioner clearly shows that it was he who had called the PCR and informed about the quarrel that had taken place between Amit Rana and Babu; that hence in the aforementioned circumstances the impugned order be set aside and the petitioner be discharged.

6. Per Contra, Ms. Anita Abraham, learned APP for the State opposed the Revision Petition filed on behalf of the petitioner and submitted that impugned order on charge does not suffer from any illegality or material irregularity so as to warrant any interference by this Court; that the victim Amit Rana in his statement recorded under Section 161 Cr.P.C. has specifically mentioned the role of each accused person including the petitioner in the commission of the alleged offence; that in view of the evidence so far placed on record, the petitioner has been rightly charged by the Trial Court under Section 307/34 IPC and no interference in the impugned order is called for by this Court.

7. I have heard the submissions made by the learned counsel for the parties and perused the material available on record.
8. As per the records, on 19.10.2013 a quarrel had taken place between inmates of a Beggar Home i.e. between one Amit Rana and Babu, and Amit Rana had sustained grievous injuries upon being attacked with a knife by Babu/main accused. A PCR call was made by the present petitioner/Superintendent of the Beggar Home, and both the inmates were taken to the hospital for medical examination. As per the MLC, Amit Rana had sustained grievous injuries. It was only on 27.08.2014 that the doctor declared him fit for statement.
9. In his statement recorded under Section 161 Cr.P.C., injured Amit Rana stated that on 19.10.2013 at about 04:00 p.m., Superintendent Pankaj/present petitioner had sent him to Narela to purchase vegetable and as he had bought Bottle Gourd (lauki) instead of Brinjal, Pankaj got angry on him; that thereafter he alongwith Babu/main accused prepared food for the Beggar Home; that Pankaj ordered him to clean the varandah and then gave him a bottle of wine which he consumed with Babu and other Beggar Home members; that thereafter Pankaj ordered him to prepare paneer vegetable and when he asked Babu to prepare the dough, Babu refused to do so and slapped him; that thereafter Harish, caretaker Rakesh and Pankaj reached there and started favouring Babu; that Pankaj and Rakesh caught hold of him and in the meantime Babu got a knife from the kitchen and hit him on his

neck; that cook Harish hit him with a mushli on his head and he became unconscious.

10. Further During his Examination-In-Chief victim Amit Rana specifically delineated the role of each accused person including the present petitioner whilst deposing as under:-

".....Pankaj alongwith cook Harish and caretaker Rakesh caught hold me. Pankaj had asked Babu to bring knife and to assault me. Babu had brought the knife from the kitchen and gave knife blows on my neck. As a result of which I suffered injury."

11. As per records, injured Amit Rana fell unconscious after the alleged incident. It was only on 27.08.2014 that he was declared fit for statement whereafter he gave a vivid detail of the entire incident to the police officials and deposed the same before the Court whilst stating the individual role of each person involved in the commission of the alleged offence. The evidence so put forth by him cannot be ignored and must necessarily be given due weightage as he has sustained injuries at the time and place of occurrence which lends support to his testimony that he was present during the occurrence. Strong reliance shall be placed on his evidence unless there are grounds for rejection on the basis of major contradictions and discrepancies therein.
12. In ***Sajjan Kumar v. Central Bureau of Investigation***, reported in ***(2010) 9 SCC 368*** the Apex Court held that:-

"On consideration of the authorities about the scope of Sections 227 and 228 of the Code the following principles emerge:

(i) *The Judge while considering the question of framing the charges under Section 227 Cr.P.C. has the undoubted power to shift and weight the evidence for the limited propose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.*

(ii) **Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.**

(iii) *The court cannot act merely as a post office and a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.*

(iv) **if on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.**

(v) *At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.*

(vi) *At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as*

it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

13. Hence keeping in view the well settled principles of law, absence of any credible evidence to discredit the testimony of the injured witness Amit Rana and the totality of the facts and circumstances of the present case, this Court does not see any reason to interfere with the order on charge dated 07.08.2015 passed by the Trial Court.
14. Under the circumstances, the petition being bereft of merit is dismissed.

SANGITA DHINGRA SEHGAL, J.

JANUARY 4, 2018

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