

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

% Judgment delivered on: 03rd July, 2019

+ CRL.REV. P. 271/2017 & CrI.M.A.6025/2017

MANISH SHARMA

..... Petitioner

versus

STATE (NCT OF DELHI)

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. D.N.Goburdhun, Adv.

For the Respondent : Ms.Meenakshi Dahiya, APP with SI Ranveer Mavi,
P.S.Anand Vihar.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J.

1. Petitioner impugns order dated 22.02.2017, whereby, Trial Court has dismissed the application filed by the petitioner under section 227 Criminal Procedure Code seeking a discharge and further directing that the a charge is liable to be framed against the petitioner for the offence mentioned in the charge sheet. Charge Sheet has been filed under Sections 308/34 Indian Penal Code.

2. Learned counsel for the petitioner submits that petitioner has been falsely implicated. He submits that there no cogent material on record for trial court to proceed against the petitioner for commission

of offence under section 308 IPC. He submits that it is not the case of the prosecution that the petitioner inflicted any injury or incited, exhorted or even provoked the co-accused to commit the subject offence.

3. It is submitted that the allegation is that when the complainant slapped the co-accused Amit Kumar, he asked the petitioner to bring a rod from the car and the petitioner is alleged to have brought the rod and handed it over to co-accused who then hit the complainant with the rod on his forehead. He further submits that the complainant was completely drunk and his version given to the police cannot be relied upon. It is contended that there is absence of *mens rea* or common intention or conspiracy.

4. As per the FIR, the complainant while he was driving his car hit the car of another person. The person in the car at front came down and started fighting with the complainant. Observing the fight, two boys (petitioner and the co-accused Amit Kumar) stopped their car and intervened. One of the boys berated the complainant for being drunk while driving.

5. It is alleged that in a fit of rage, complainant slapped the co-accused Amit Kumar, who then asked the petitioner to bring a rod from the car stating that lets teach a lesson to the complainant. It is alleged that the petitioner brought the rod from the car and handed it

over to co-accused who then hit the complainant with the rod on his forehead.

6. The role ascribed to the petitioner is of handing the rod to co-accused Amit Kumar, when he asked him to bring the same from the car. The co-accused thereafter hit the complainant.

7. It is submitted by learned counsel for petitioner that there was no element of mens-rea or common intention to cause hurt or injury to the complainant as the act done by the petitioner was on the spur of the moment due to grave and sudden provocation. The injury was caused in the course of a sudden quarrel, and there was no proper planning or pre-meditation. Thus it is urged that ingredients required to constitute an offence under section 308 are not attracted.

8. Further it is submitted that as per the MLC, the complainant sustained injuries on his forehead, hand and forearm and sustained fracture on his little finger. He was discharged on the same day after treatment and then was asked to come to OPD after 5 days which shows that the injury sustained by the victim was neither grievous nor life threatening.

9. It is contended that the MLC on record shows that the blood alcohol content of the complainant was 182% and as such his statement could not have even been relied on by the prosecution and it further establishes that he was driving the vehicle in a drunkard state.

10. Per contra, Learned APP for the state submits that there is no illegality or irregularity in the impugned order and the petitioner has been rightly charged under section 308 IPC. It is submitted that petitioner along with co-accused had the common intention to cause death and further that it is a matter of trial and petitioner cannot be discharged without a trial.

11. Further, it is contended that the MLC on record opines that injuries sustained by the complainant are grievous in nature. It is urged that injuries caused by an iron rod impels one to infer the intention to cause death as any prudent man is aware that the injuries inflicted on the head with a rod may lead to fatality.

12. In the present case, the allegation against the petitioner is that when the petitioner and the co-accused Amit Kumar intervened in the fight between the complainant and a third party, complainant slapped the co accused. The co-accused Amit Kumar, asked the petitioner to bring a rod from the car stating that *lets teach a lesson to the complainant*. The petitioner allegedly brought the rod from the car and handed it over to co-accused who then hit the complainant with the rod on his forehead. The complainant sustained injuries on his forehead, hand and forearm and sustained fracture on his little finger

13. The trial court after perusing the arguments and evidence on record observed:

“The case of the prosecution is that A-2 had given a call to A-1 to bring a rod. Responding to such a call by A-2, the charge sheet allegations reveal that A-1 had actively participated and procured the rod found in the car and had handed over the same to A-2. There upon A-2 had inflicted the injury. Considering the statement recorded by the police during investigation, it cannot be said that there was no common intention among the accused. The common intention seemingly had developed on the spot at the spur of the moment. In the case of Joginder Singh Vs. State of Haryana AIR 1994 SC 462, the Hon'ble Supreme Court gathered the common intention while the accused persons had brought deadly weapons from the house by which the other accused attacked the victim. In view of the above, it is very difficult to sail with the contentions of Ld. Counsel for A-1 that the accused no. 1 is totally innocent and is eligible for discharge without trial.”

14. The Supreme Court of India in *State of M.P. v. Saleem*, (2005) 5 SCC 554 held as under:

“12. To justify a conviction under this section, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary

circumstances to cause the death of the person assaulted. What the court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.

13. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. The section makes a distinction between the act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, an accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt.”

15. With regard to the plea on behalf of the petitioner that there was no overt act on his part in the act of causing injuries, the Trial Court, in the impugned order on charge has held that

“9. The charges are under section 308 read with 34 of IPC. No doubt, the common intention should be anterior in the time to the commission of crime. It should be under a pre-arranged plan or under a prior concert. It is difficult in most of the cases to prove the intention of an individual but is to be gathered from the act, conduct, relative circumstances, the attendant situations that cropped up. It is held in several cases that in the absence of pre-concerted plan, the common intention cannot be

gathered. The Id. Counsel for A-1 (petitioner) submits that the accused and the injured were not known to each other and that the incident is only a road rage. He further submits that there has been no intention on the part of his client and that he has not the least idea that A-2 (Co –accused) would inflict such an injury on the person of the complainant -Rakesh Jain. It is held in several cases that to frame or to arraign the common intention, it is not necessary in all the cases to gather the pre-concerted action under a design. The common intention may be develop of the spur of the moment. The Act must be anterior in time to the commission of the offence.

10. The case of the prosecution is that A-2 had given a call to A-1 to bring a rod. Responding to such a call by A-2, the charge sheet allegations reveal that A-1 had actively participated and procured the rod found in the car and had handed over the same to A-2. There upon A-2 had inflicted the injury. Considering the statement recorded by the police during investigation, it cannot be said that there was no common intention among the accused. The common intention seemingly had developed on the spot at the spur of the moment. In the case of Joginder Singh Vs. State of Hariyana AIR 1994 SC 462, the Hon'ble Supreme Court had gathered the common intention while the accused persons had brought deadly weapons from the house by which the other accused attacked the victim. In view of the above, it is very difficult to sail with the contentions of Id. Counsel for A-1 that the accused no. 1 is totally innocent and is eligible for discharge without trial.”

16. In my view, Trial Court has rightly held that though common intention should be anterior in the time to the commission of crime

and involves a pre-arranged plan or a prior concert, however, intention is to be gathered from the act, conduct, relative circumstances, the attendant situations that cropped up. Common intention may be developed on the spur of the moment. The Act must be anterior in time to the commission of the offence.

17. The case of the prosecution is that co-accused had given a call to the petitioner to bring a rod so as to teach a lesson to the complainant. Responding to such a call by co-accused, petitioner actively participated and procured the iron rod found in the car and had handed over the same to the co-accused, who inflicted the injury.

18. Trial Court has rightly held that considering the statement recorded by the police during investigation, it cannot be said that there was no common intention among the accused. Common intention seemingly had developed on the spot at the spur of the moment.

19. No doubt, the statement of the complainant alone, who was admittedly under influence of liquor, having blood alcohol content of 182%, would not be safe to be relied upon, however, the person with whom the complainant had an altercation, prior to the intervention by the petitioner and the co-accused, has also given his statement to the Investigating Officer supporting the case of the prosecution and also stating that the co-accused had given a call to the petitioner to bring a rod so as to teach a lesson to the complainant and petitioner procured

the iron rod from in the car and handed over the same to the co-accused, who inflicted the injury.

20. Several Judgments were cited by learned counsel for the Petitioner in support of his case. Said judgments are the same which were cited before the trial court and have been extensively dealt with by the trial court, in the impugned order. I find no infirmity in the reasoning given by the trial court, in holding that the said judgments are not applicable to the facts of the present case.

21. In the view of the above, I find no infirmity in the view taken by the trial court by the impugned order dated 22.02.2017 in dismissing the application filed by the petitioner under section 227 Cr.P.C. seeking discharge.

22. There is no merit in the petition. The same is accordingly dismissed.

23. Order *Dasti* under signatures of Court Master.

SANJEEV SACHDEVA, J

JULY 03, 2019