

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

Reserved on : 21.11.2019

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Pronounced on : 27.05.2020

+ **CRL. REV. P. 801/2019 & CRL. M.A. 32563/2019**

RAJINDER @ RAJU

..... Petitioner

Through: Mr. G.S. Narula, Mr. Dishank
Dhawan and Mr. Mohsin Sarwar,
Advocates.

versus

STATE & ANR.

..... Respondents

Through: MR. Amit Ahlwat, APP for the State
with SI Ranjit Tokas from Police
Station Kotla Mubarakpur.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

1. The present revision petition has been filed by the petitioner with the prayer to set aside the impugned order dated 16.05.2019 passed by Dr. Neera Bharihoke, Ld. ASJ-06, South East, Saket Court, New Delhi vide which charges have been framed against the petitioner under Section 307/341/452/506/34 IPC in case FIR No. 637/2015 registered at P.S. Kotla Mubarakpur, Delhi.

2. In brief the facts of the case are that out of an incident dated 29.05.2015, cross FIR No. 636/15 for the offence under section 302/34 IPC and the present FIR bearing No. 637/15 for the offence under section

307/341/452/506/323/34 IPC were registered at police station Kotla Mubarakpur in which accused persons as well as complainant had also suffered injuries.

3. Complainant, Asha Tanwar, (respondent No. 2 herein) in her statement dated 29.05.2015 has stated about her brother-in-law, (Jeth) Bachchu Singh, being given knife blows by accused Rajkumar @ Rajan, Bachchan Singh @ Chi who were having knives in their hands and accused Rahul and accused Azab Singh (now deceased) causing blows on the person of Bachchu Singh by iron pipe and saying that they would take revenge of the previous day and that they would kill the whole family of Bachchu Singh.

4. The complainant in her statement has stated that Rajan attacked Bachchu Singh at his stomach by a knife however he saved himself by bending down and that knife struck him on his armpit due to which he started bleeding and accused Bachchan Singh stabbed Bachchu Singh on his chest and when Bachchu Singh tried to rescue himself, accused Azab (now deceased) and Rahul who were having iron pipe in their hands gave blows with the same on the person of Bachchu Singh on his body parts as a result of which Bachchu Singh, fell down and accused Rajan and Bachchan Singh gave several knife blows to him.

5. The complainant has further stated in her statement that when she tried to go near Bachchu Singh to save him, accused Rohit who was having a danda, nephew of accused Rohit, namely Sonu, who was having a sword and son of his maternal aunt (Mausi) namely Rajbir (whose name she later

corrected/revealed to be Rajender Raju) who was having a danda and were standing there ran towards the complainant and started beating her and that Rajbir had hit on her head with the danda due to which she suffered injury on her head. She ran towards her home to save herself and accused Rohit, Sonu, Rajbir ran after her but she managed to reach inside the house and saw that accused Rajan, Bachchan Singh, Azab (now deceased), Rahul thinking that Bachchu Singh had died, were running towards her home. She latched the door from inside but all of them started breaking her door due to which she along with her mother-in-law entered inside a room and bolted from inside. She could hear the noise and hustle bustle of things being broken and later on she found that all the things in house were scattered. On the basis of this statement of the complainant (respondent No. 2 herein), the present FIR was registered.

6. The Ld. Trial Court vide impugned order dated 16.05.2019, framed the charge U/s 307/341/452/506/34 IPC against all the accused persons. Feeling aggrieved from the charges framed against him vide impugned order dated 16.05.2019, the petitioner has filed the present revision petition.

7. I have heard the Ld. counsel for the petitioner, Ld. APP for the state and have also gone through the records of the case.

8. It is argued by the Ld. Counsel for the petitioner that the impugned order dated 16.05.2019 is arbitrary, illegal and liable to be set aside because the Ld. ASJ failed to record the submission made by the counsel for the petitioner with regard to the defense of plea of alibi which was one of the argument made by him. He further argued that the Ld. ASJ has failed to

appreciate the fact that the documents with respect to the plea of alibi, due to unavailability of certificate U/s 65 B of the Indian Evidence Act, were annexed in the charge sheet only.

9. He further argued that the Ld. ASJ has failed to appreciate the fact that respondent No. 2 and the petitioner are relatives and they know each other since a long time, so giving a supplementary statement (dated 10.02.2016) after about 8 months of the registration of the FIR raises a doubt upon the authenticity and validity of the said statement and on the correct and true facts of the case, which have been changed as per the whims and fancies of respondent No. 2 in connivance with the police personnel.

10. It is further argued by the Ld. Counsel for the petitioner that since the respondent No. 2 and the petitioner are relatives which can also be corroborated from the supplementary statement of the respondent No. 2 dated 08.04.2017, so while leveling the allegations how can respondent No. 2 mistook the name of petitioner who is her relative with some other name which possess no phonetic similarity with the real one i.e. Rajbir with Rajender in the present case.

11. He further argued that the petitioner has been falsely implicated by the respondent No. 2 and the supplementary statements dated 10.02.2016 and 08.04.2017 given by the respondent No. 2 are contradictory statements. He argued that in the statement dated 10.02.2016 respondent No. 2 submitted that she knew Rajinder as Rajbir, whereas in the statement dated 08.04.2017 she claims that Rajender is also known as Raju and she knew him very well.

12. It is further argued by the Ld. counsel for the petitioner that the petitioner has been falsely implicated by the respondent No. 2 in connivance with the police personnel, in order to make a settlement, as the relatives of the respondent No. 2 are the accused persons in FIR No. 636/15.

13. It is further argued by the Ld. counsel for the petitioner that the Ld. ASJ failed to appreciate the fact that the petitioner was not present at the time and place of incident on 29.05.2015 which is clearly evident from the CDR of the petitioner, the verification of which was done by H.C. Ram Karan dated 16.03.2017, which is also mentioned in the statement U/s 161 Cr.P.C dated 16.03.2017. He further argued that the verification of the attendance of the petitioner regarding his presence in the office on 29.05.2015 specifically showed his out time from his office to be at 17:02:25 hrs and it was practically impossible for him to be at the place of incident which is about 7 kms from the office where the PCR call was made by the R-2 at 16:57:35 hrs.

14. It is further argued by the Ld. counsel for the petitioner that the Court below failed to appreciate that respondent No. 2 had not even named any person by name of Rajender in her complaint and had described the petitioner as “Rajbir” in the FIR bearing No. 637/15 and it was in her supplementary statement recorded later that she took the name of the accused as Rajender to be one of the assailants. He further argued that in view of the close relation between respondent No. 2 and the petitioner (real Massi’s son), the error in the name of the petitioner mentioned in the FIR is not probable.

15. It is further argued by the Ld. counsel for the petitioner that the Ld. ASJ failed to appreciate the fact that the police authorities did nothing to chase Rajbir named in the FIR No. 637/15 till 10.02.2016, although Rajbir is a real person who is the father of accused No. 2 Sonu Tanwar (in FIR No. 637/15), however, he was not even asked to join the investigation till the supplementary statement of respondent No. 2 dated 10.02.2016 which shows that the petitioner has been falsely implicated.

16. Ld. APP for the state has argued on the lines of his status report. It is submitted by the Ld. APP for the state that complainant Asha had made specific allegations against the petitioner. He further submitted that no doubt there was some confusion with regard to the name of the petitioner but it is a known fact that people are known by different names and sometimes a person is not aware about the initial name or nick name of a person. He further submitted that the contention of the petitioner that he was not present at the spot and was present in his office can only be looked into at the time of trial. He further submitted that there is no infirmity in the impugned order dated 16.05.2019.

17. It is well settled law that at the stage of framing of charge, the court has power to shift and weigh the evidence for the limited purpose of finding out whether or not a prima-facie case against accused has been made out. When the material placed before the court discloses great suspicion against the accused which has not been properly explained, the court will be justified in framing charge. No roving inquiry into the pros and cons of the matter and evidence is not to be weighed as if a trial was being conducted.

If on the basis of materials on record a court could come to the conclusion that commission of the offence is a probable consequence, a case of framing of charge exists.

18. To put it differently, if the courts were to think that the accused might have committed the offence it can frame a charge, though for conviction the conclusion is required to be that accused has committed the offence. At the stage of framing of a charge, probative value of the materials on records cannot be gone into, the material brought on record by the prosecution has to be accepted as true at that stage. The truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged, nor any weight is to be attached to the probable defence of the accused. It is not obligatory for the judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not.

19. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at this stage of deciding the matter under Section 227 or under Section 228 of the Code. But at the initial stage, if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. While deciding the question of framing of charge in a criminal

case, the court is not to apply exactly the standard and test which it finally applies for determining the guilt or otherwise.

20. What is required to be seen is whether there is strong suspicion which may lead to the court to think that there is ground for presuming that the accused has committed an offence. The above proposition is supported with law laid down by the Hon'ble Apex Court and Hon'ble High Court reported as "*Union of India vs Prafulla Kumar*", AIR 1979 Supreme Court 366, "*State of Maharashtra and others vs Som Nath Thapa and other*" JT 1996 (4) SC 615, "*State of Bihar vs Ramesh Singh*", AIR 1997 SC 2018: (1997 CRI LJ 1606), "*Umar Amdula Sakoor Sorathia vs. Intelligence Officer Narcotic Control Bureau*" JT 1999 (5) SC 394, "*Kalu Mal Gupta vs. State*" 2000 I AD Delhi 107.

21. In the instant case, cross FIRs have been registered in regard to the incident dated 29.05.2015. Complainant Asha has specifically alleged that the petitioner had hit on her head with a stick, thereby making categorical allegations against him. The petitioner has raised a plea of alibi contending that at the time of the incident he was not present at the spot and was present in his office. In this regard he has placed reliance on his Biometric Attendance Record. No doubt, the Biometric Attendance Record shows that the petitioner left his office at 5:02 p.m but this in itself is not a ground for discharge of the petitioner as there is an injured eye witness who has assigned specific role to him. During the course of the arguments, the Ld. APP has also argued that at this stage, one cannot ignore the fact that the petitioner could have left his office and then again came back to his office

and in order to create alibi marked his biometric attendance subsequently. In my opinion, this fact needs evidence and at this stage, no finding accepting the plea of alibi can be given in favour of the petitioner as the onus to prove the alibi is upon him which he will have to prove during the trial.

22. It was then contended by the Ld. counsel for the petitioner that PW Asha was not aware of the name of the petitioner which gives credence to the story of the petitioner that he was not present at the spot. The complainant Asha in her initial statement and also in her subsequent statements has categorically assigned roles to the petitioner, however, she was under confusion with regard to the correct name of the petitioner. Simply because PW 1 injured Asha has given different names of the petitioner, the same is not enough to give any benefit to the petitioner at this stage. Complainant Asha would appear for her testimony in the Court and then she can be cross examined in this regard. It is also a fact that people are known by different names and it is not always possible to know the official name as well as nick name of a person.

23. Therefore, in view of the observations mentioned hereinabove, I find no infirmity in the impugned order dated 16.05.2019. The same is, therefore, upheld. Consequently, the revision petition is dismissed and Crl. M.A. 32563/2019 is also disposed of accordingly.

RAJNISH BHATNAGAR, J.

MAY 27, 2020

Sumant