

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

CRL.REV.P. 255/2018

Reserved on : 06.02.2020

Date of Decision : 19.02.2020

IN THE MATTER OF:

STATE (GOVT OF NCT OF DELHI) Petitioner
Through: Ms. Radhika Kolluru, APP for State
with SI Surender, P.S. Begum Pur

versus

SH. RAMAN KUMAR Respondent
Through: Mr. K.K. Sabharwal, Advocate

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

1. The present petition is directed against the order dated 03.10.2017 passed by the Addl. Sessions Judge in FIR No.147/2017 registered under Sections 304/34 IPC at P.S. Begum Pur whereby the present respondent was discharged from the case.

2. Briefly stated, the facts of the case are that the aforesaid FIR was registered on 15.03.2017 at the instance of the complainant Manish Gupta. It was stated that he was running a Chinese food joint at the ground floor of his house. On 15.03.2017, at about 5:15 to 5:30 P.M., a car stopped in front of his shop and one person got down from the car and went to *Raj Bogh* restaurant which was situated opposite to the complainant's shop. When the complainant objected to parking of the said car outside his shop, it led to an altercation between the complainant and the other person sitting in the car. In the meantime, the

complainant's brother Tarun Gupta (deceased) and his parents came out and tried to pacify the situation. The other occupant of the car also returned from *Raj Bhog* restaurant and the arguments continued. The complainant called at No.100. The occupants of the car tried to reverse the car and in the process hit the complainant's scooty as a result of which the car's mud flap broke and fell off. The father of the deceased complained to the occupants of the car regarding the damage caused to their scooty. The occupants tried to escape and in order to stop them, the complainant banged on the right-side front window of their car with his hand while his brother Tarun Gupta (deceased) tried to stop the car by coming to the front side. In the process, the complainant's brother was run over by the car and ultimately, he succumbed to his injuries in Jaipur Golden Hospital. The complainant gave the number of the offending vehicle in the information given to the police.

3. Learned APP for the State contended that the statements of the witnesses point to the guilt of the respondent as he was present in the car and asked the co-accused to run away from the spot. Learned counsel for the respondent on the other hand has supported the impugned order.

4. I have heard learned APP for the State as well as learned counsel for the respondent and have also gone through the case records.

5. The trial court, after hearing the arguments held that as per the prosecution case, the co-accused Sanjay Kumar Pandey was driving the car and the present respondent was sitting on the passenger seat. It was held that there was no common intention between the driver of the car and the respondent to hit the deceased or to run him over. The trial court has relied on the decision in Rajkishore Purohit v. State of Madhya

Pradesh and Others reported as **2017 VIIIAD (SC) 384**, wherein it was held as under:-

“Common intention is a state of mind. It is not possible to read a person’s mind. There can hardly be direct evidence of common intention. The existence or non existence of a common intention among the accused has to be deciphered cumulatively from their conduct and behaviour in the facts and circumstances of each case. Events prior to the occurrence as also after, and during the occurrence, are all relevant to deduce if there existed any common intention. There can be no straight jacket formula. The absence of any overt act of assault, exhortation or possession of weapon cannot be singularly determinative of absence of common intention.”

6. The trial court has also placed reliance on the decision of the Supreme Court in State of Rajasthan v. Shobha Ram reported as **(2013) 14 SCC 732**, wherein it was held as follows:-

“10. Insofar as common intention is concerned, it is a state of mind of an accused which can be inferred objectively from his conduct displayed in the course of commission of crime and also from prior and subsequent attendant circumstances. As observed in Hari Ram vs.State of UP 6 (SCC p. 622, para 21), the existence of direct proof of common intention is seldom available, and therefore, such intention can only be inferred from the circumstances appearing from the proved facts of the case and the proved circumstances.

Therefore, in order to bring home the charge of common intention, the prosecution has to establish by evidence, whether direct or circumstantial, that there was plan or meeting of mind of all the accused persons to commit the offence before a person can be vicariously convicted for the act of the other.”

7. The trial, so far as co-accused Sanjay Kumar Pandey, the driver of the offending vehicle is concerned, is still going on.

8. The only allegation against the present respondent is that he asked the co-accused to run away from the spot. There is no material collected by the investigating agency to show that the respondent had shared any common intention to hit the deceased and to run him over. There is no material collected which directly or by way of circumstantial evidence shows any meeting of minds between the respondent and the co-accused. The aforesaid sentence alone is not sufficient to impute knowledge on the respondent as required under Section 299 IPC.

9. Having gone through the records, I do not find any illegality, infirmity or perversity in the order passed by the Addl. Sessions Judge. The same is upheld. Consequently, the present petition is dismissed.

(MANOJ KUMAR OHRI)
JUDGE

FEBRUARY 19, 2020

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