



2024:DHC:1257

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

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Judgment delivered on: 19.02.2024

+ **CRL.REV.P. 92/2024**

HIMANSHU

..... Petitioner

versus

STATE OF NCT OF DELHI

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Yash Chaturvedi & Mr. Pravesh Kr. Yadav, Advs.

For the Respondent : Mr. Pradeep Gahlot, APP for the State
Inspector Anuj Kumar, PS – Sonia Vihar

CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT**CRL.M.A. 1997/2024 (for exemption)**

1. Exemptions allowed, subject to all just exceptions.
2. The application stands disposed of.

CRL.REV.P. 92/2024 & CRL.M.A. 1998/2024 (for directions)

3. The present petition is filed under Section 401 of the Code of Criminal Procedure, 1973 ('CrPC') seeking setting aside of the order on charge dated 23.12.2023 (hereafter '**impugned order**'), passed by

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the learned Additional Sessions Judge (Special Judge NDPS), North East District, Karkardooma Courts, Delhi, in SC No.196/2023, arising out of FIR No.279/2023, registered at Police Station Sonia Vihar, whereby charges for offences punishable under Sections 302/149 of the Indian Penal Code, 1860 ('IPC') have been framed against the petitioner and the other co-accused persons.

4. The brief facts of the case are as follows:

a. The deceased and the accused persons, including the petitioner, were admitted in the Drug De-Addiction and Rehabilitation Centre. It is alleged that the deceased used to regularly bully and beat the other inhabitants at the Centre.

b. On 02.06.2023, at about 10:00pm, the deceased was allegedly beating up one Abhinav Mishra using a bamboo stick, when Ankush (one of the co-accused persons) snatched the said bamboo stick/ *Danda* from the deceased, and started beating the deceased with it instead. The deceased in return pulled the hair of co-accused Ankush, whereafter four of the other accused persons, namely Arshad, Navneet @ Sonu, Ved Prakash and Appu, also started kicking and beating the deceased. The said four accused persons also allegedly stated that "*Aaj Isko Sabak Sikhana Hai Yeh Bahut Maarpeet Va Pareshan Karta Hai*".

c. At the same time, accused Navneet brought a *Palta* (spatula) from the kitchen and used it to beat the deceased as well. It is further alleged that the petitioner along with the other remaining accused persons, that is, Ravi, Sanjeet, Sunil, Aman,



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Zia-Ul-Hasan, Neetu, Ozair and one child in conflict of law, had also indulged in the scuffle and beaten the deceased. Allegedly, the accused persons only stopped beating the deceased when he tendered an apology.

d. Thereafter, all the accused persons went to sleep while the deceased ate his meal and was given medicine when he complained of pain in his entire body. At about 1:00am on 03.06.2023, the health of the deceased deteriorated after which he was taken to hospital where he died.

e. On 03.06.2023, FIR No.279/2023 was lodged at the instance of a drug addict admitted in the Drug De-Addiction & Rehabilitation Centre, namely Abhishek (complainant), for the offence punishable under Sections 302/34 of the IPC, at Police Station Sonia Vihar, against the petitioner and other thirteen co-accused persons, alleging that they had brutally beaten the deceased in a scuffle, which caused his death.

5. The postmortem report of the deceased revealed that he had suffered from nineteen external *ante mortem* injuries on his entire body. The cause of death was opined to be “hemorrhagic shock and cerebral injury” caused due to blunt force trauma to the head and chest of the deceased. The said injuries were deemed to be sufficient to cause death in the ordinary course of nature.

6. The doctor who had conducted the post mortem of the deceased, in his subsequent opinion, opined that twelve of the nineteen injuries were possible by both the *Palta* and a wooden lathi, while the remaining



seven injuries could be inflicted by the object similar to the *Palta*.

7. The learned Trial Court, by the impugned order, after perusing the post mortem report and statements of the complainant and other public witnesses, namely Mandeep @ Karan, Alok Sharma, Anshul @ Ansh Malik, Rahul Sharma and Haseen, had framed charges under Sections under Sections 302/149 of the IPC against the petitioner.

8. The learned Trial Court observed that the statements of the public witnesses are clear on the aspect that all the accused persons had beaten Anil with *Palta*, *Danda*, fist and kick blows, some of the accused persons were saying “*Aaj Isko Sabak Sikhana Hai Yeh Bahut Maarpeet Va Pareshan Karta Hai*” while they were beating the deceased and that the accused persons continued to beat the deceased till he tendered an apology. He observed that such conduct of the accused persons *prima facie* showed that all the assailants were in an unlawful assembly in prosecution of their common object of teaching a lesson to the deceased.

9. The learned Trial Court also referred to the post mortem report of the deceased to note that the deceased had suffered nineteen *ante mortem* injuries at the hands of the accused persons and that the deceased had suffered injuries on his head and ribs as well which are sufficient in the ordinary course to cause death.

10. The learned Trial Court rejected the argument of the learned counsel for the petitioner that the case falls within the ambit of Section 304 of the IPC on the ground that as the accused persons were all a part of an unlawful assembly, then every member of such unlawful assembly is held to be liable in the manner, as if, the act has been done by himself



alone.

11. The learned counsel for the petitioner submits that the only allegation against the petitioner is that he had given beatings to the deceased, however, the Medical Opinion of the doctor who had conducted the postmortem of the deceased clearly indicates that the injuries that caused the death of the deceased were inflicted by two weapons, that is, a wooden lathi and a *Palta* (spatula), and therefore, only a case under Section 323 of the IPC, at best, could be made out against the petitioner.

12. He submits that even if the case of the prosecution is taken at its highest, no offence under Section 302 of the IPC is made out against the petitioner as the present case falls within the contours of Exception 1 to Section 300 of the IPC as it was the deceased who started the fight and provoked the accused persons. He further submits that Exception 4 to Section 300 of the IPC is also squarely applicable to the present case as the death of the deceased was caused without any premeditation in a sudden fight in the heat of passion.

13. He submits that the learned Trial Court had erroneously framed the charges against the petitioner under Sections 302/149 of the IPC, even though the charge sheet was filed under Sections 302/34 of the IPC, and the prosecution had not made out any case to attract Section 149 of the IPC.

14. He further submits that the ingredients of “unlawful assembly” as stipulated under Section 141 of the IPC have not been satisfied, and that in absence of such ingredients, no case under Section 149 of the



IPC can be made out. He submits the learned Trial Court has erroneously concluded that the assembly allegedly formed by the accused persons, including the petitioner, was unlawful because the common object of the said assembly was to teach a lesson to the deceased.

15. I have heard the learned counsel for the petitioner and perused the record.

ANALYSIS

Scope of interference under Revisional Jurisdiction

16. The present petition has been filed under Section 401 of the CrPC. The Hon'ble Supreme Court in the case of ***Krishnan v. Krishnaveni : (1997) 4 SCC 241***, has noted that in the matter of exercise of power of revision, Section 397 and Section 401 of the CrPC are required to be read together.

17. Before delving into the facts of the present case, it is important to note that it is a settled law that the scope of interference by High Courts while exercising revisional jurisdiction is limited and ought to be exercised sparingly, in the interest of justice, so as to not impede the trial unnecessarily.

18. It is trite law that the trial court, while framing charges under Section 228 of the CrPC, is not required to conduct a mini trial and has to merely weigh the material on record to ascertain whether the ingredients constituting the alleged offence are *prima facie* made out against the accused persons. The Hon'ble Apex Court, in the case of



Sajjan Kumar v. CBI: (2010) 9 SCC 368, has culled out the following principles in regards to the scope of Sections 227 and 228 of the CrPC:

“21. 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 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose 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 or 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."

(emphasis supplied)

19. In the case of ***Amit Kapoor v. Ramesh Chander: (2012) 9 SCC 460***, the Hon'ble Supreme Court, advertent to a catena of precedents, has noted that the test for interference is whether the allegations, as made from the record of the case, taken at their highest, are patently absurd and whether the basic ingredients of the offence, for which the charge is framed, are not made out.

20. In view of the above, it is clear that this Court, at this stage, is not required to reevaluate the evidence or hold a mini trial as the same would tantamount to this Court assuming appellate jurisdiction. Thus, all that has to be seen is whether the learned Trial Court has adequately appreciated the material on record and whether on the material placed before it, the Court could form an opinion that the accused might have committed the offence.

21. In the present case, the main thrust of the petitioner is on the point that the ingredients of offences punishable under Sections 302 and 149 of the IPC are not satisfied as the petitioner only gave beatings to the deceased while his death was caused by injuries inflicted from the Bamboo stick and *Palta*, and that charges under these sections have thus



been erroneously framed by the learned Trial Court.

Charges for offences under Sections 302/ 149 of the IPC

22. The petitioner has argued that Section 302 is not made out against him as the case falls within the ambit of Exception 1 and 4 of Section 300 of the IPC as the offence was committed in a sudden fight on the provocation of the deceased.

23. The Hon'ble Apex Court has enunciated the ingredients for invoking the benefit of Exception 1 of Section 300 of the IPC, in the landmark case of ***K.M. Nanavati v. State of Maharashtra : AIR 1962 SC 605***, as follows:

“77....Under this exception, culpable homicide is not murder if the conditions are complied with : (1) The deceased must have given provocation to the accused. (2) The provocation must be grave. (3) The provocation must be sudden. (4) The offender, by reason of the said provocation, shall have been deprived of his power of self-control. (5) He should have killed the deceased during the continuance of the deprivation of the power of self-control. (6) The offender must have caused the death of the person who gave the provocation or that of any other person by mistake or accident.”

24. The requirements for availing the benefit of Exception 4 of Section 300 of the IPC have been discussed in the case of ***Surinder Kumar v. Union Territory, Chandigarh : (1989) 2 SCC 217***, where the Hon'ble Apex Court discussed as under:

“7. To invoke this exception four requirements must be satisfied, namely, (i) it was a sudden fight; (ii) there was no premeditation; (iii) the act was done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner. The cause of the quarrel is not relevant nor is it relevant who offered the provocation or started the assault.



The number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. Of course, the offender must not have taken any undue advantage or acted in a cruel manner. Where, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this exception provided he has not acted cruelly....”

25. The question as to whether the said parameters for invoking the exceptions to Section 300 of IPC are satisfied, by its very nature, is a matter of trial and can only be conclusively determined after the prosecution has led its evidence.

26. At this stage, it cannot be said that benefit of exceptions 1 and 4 of Section 300 of the IPC is available to the petitioner from the perusal of the material on record. *Prima facie*, it appears that the accused persons brutally beat up the deceased and some of the other accused persons also said “*Aaj Isko Sabak Sikhana Hai Yeh Bahut Maarpeet Va Pareshan Karta Hai*”. The altercation which took place between the accused persons and the deceased, cannot be deemed to be a sudden act that provoked the petitioner either, as he only joined the scuffle at a later stage. While the petitioner and most of the accused persons didn’t use any weapon to beat the deceased, they joined in the scuffle and continued to beat the deceased together till he apologized. Due to their conduct, *prima facie*, it cannot be said that the accused persons did not act in a cruel or unusual manner or were deprived of their self control.

27. It is contended by the petitioner that the ingredients of Section 149 of the IPC are not made out against the petitioner since there was



no “unlawful assembly”. The object of the assembly of the accused persons, at this stage, cannot be said to be lawful as the assembly of the accused persons, including the applicant, had beaten the deceased brutally with the common objective of “teaching a lesson to the deceased”, which led to the death of the deceased.

28. It is also contended by the learned counsel for the petitioner that as per the post mortem report, the injuries caused by the *Palta* and Bamboo Stick caused the death of the deceased, and the fatal injury was thus not given by the petitioner. He submitted that, therefore, the petitioner ought not to be charged for offences under Section 302 of the IPC.

29. The Hon’ble Supreme Court in the case of ***Ramachandran v. State of Kerala: (2011) 9 SCC 257***, has clearly explained the ingredients of Section 149 of the IPC. The relevant excerpt of the said judgment is reproduced hereunder:

“17. Section 149 IPC has essentially two ingredients viz. (i) offence committed by any member of an unlawful assembly consisting of five or more members, and (ii) such offence must be committed in prosecution of the common object (under Section 141 IPC) of the assembly or members of that assembly knew to be likely to be committed in prosecution of the common object.

18. For “common object”, it is not necessary that there should be a prior concert in the sense of a meeting of the members of the unlawful assembly, the common object may form on the spur of the moment; it is enough if it is adopted by all the members and is shared by all of them.

19. In order that the case may fall under the first part, the offence committed must be connected immediately with the



common object of the unlawful assembly of which the accused were members. (Vide Bhanwar Singh v. State of M.P. [(2008) 16 SCC 657 : (2010) 4 SCC (Cri) 378]) Even if the offence committed is not in direct prosecution of the common object of the assembly, it may yet fall under the second part of Section 149 IPC if it can be held that the offence was such as the members knew was likely to be committed. The expression “know” does not mean a mere possibility, such as might or might not happen....There may be cases which would come within the second part, but not within the first. The distinction between the two parts of Section 149 IPC cannot be ignored or obliterated. (See Mizaji v. State of U.P. [AIR 1959 SC 572 : 1959 Cri LJ 777] and Gangadhar Behera v. State of Orissa [(2002) 8 SCC 381 : 2003 SCC (Cri) 32 : AIR 2002 SC 3633] .)

20. However, once it is established that the unlawful assembly had common object, it is not necessary that all persons forming the unlawful assembly must be shown to have committed some overt act. For the purpose of incurring the vicarious liability under the provision, the liability of other members of the unlawful assembly for the offence committed during the continuance of the occurrence, rests upon the fact whether the other members knew before hand that the offence actually committed was likely to be committed in prosecution of the common object. (See Daya Kishan v. State of Haryana [(2010) 5 SCC 81 : (2010) 2 SCC (Cri) 1249] ; Sikandar Singh v. State of Bihar [(2010) 7 SCC 477 : (2010) 3 SCC (Cri) 417] and Debashis Daw v. State of W.B. [(2010) 9 SCC 111 : (2010) 3 SCC (Cri) 1158])”

(emphasis supplied)

30. It is not necessary that a person must have committed some overt act in the actual commission of a crime. Being a member of unlawful assembly, it is enough that the petitioner had the knowledge that the other co-accused persons were using the weapons to beat the deceased, and still he joined the assembly. Thus, once it is *prima facie* established



that the petitioner was part of the unlawful assembly, even if the petitioner did not give the fatal blows that caused the death of the deceased himself, the same is of no consequence. It is not the contention of the petitioner that the injuries caused to the deceased were accidental. The same were *prima facie* caused consciously by the accused persons, which were enough to cause death in the ordinary course of nature according to the post mortem report.

31. Considering the facts, it cannot be said that there is an absolute absence of material against the petitioner for the purpose of trial. The evidence on record, in the opinion of this Court, *prima facie*, gives rise to a grave suspicion against the petitioner.

32. This Court is of the opinion that the learned Trial Court has evidently applied its judicial mind and considered the totality of the acts before framing the charges. In view of the foregoing discussion, no ground is made out to warrant any interference with the impugned order.

33. The petition is dismissed in the aforesaid terms.

34. It is clarified that the observations made in this order are only for the purpose of deciding the present petition and shall not influence the outcome of trial.

AMIT MAHAJAN, J

FEBRUARY 19, 2024

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