



2024:DHC:1522



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

Date of Decision: 27.02.2024

+ CRL.REV.P. 278/2024

SURAJ KUMAR (IN JC)

..... Petitioner

Through: Ms.Joshini Tuli, Mr.Joginder
Tuli, Ms.Hemlata, Advs.

versus

STATE NCT OF DELHI & ANR.

..... Respondents

Through: Ms.Priyanka Dalal, APP with
SI Shajid Hussain.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

CRL.M.A. 6213/2024 (Exemption)

1. Allowed, subject to all just exceptions.

CRL.M.A. 6212/2024

2. For the reasons stated in the application, the delay of 150 days in filing the petition is condoned.

3. The application stands disposed of.

CRL.REV.P. 278/2024

4. This Revision Petition has been filed under Section 397 read with Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.'), challenging the order dated 26.07.2023 passed by the learned Additional Sessions Judge, South District, Saket Courts, New



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Delhi in SC No.52/2023, titled *State v. Suraj Kumar & Ors.*, resulting from FIR No.542/2022 registered with Police Station: Malviya Nagar, New Delhi.

5. By the Impugned Order, the learned Trial Court has dismissed the application filed by the revisionist herein, seeking discharge, and further directed the framing of charge against *inter-alia* petitioner herein under Sections 302/34 of the Indian Penal Code, 1860 (in short, 'IPC').

Factual Matrix

6. It is the case of the prosecution that on 11.08.2022, around 5.00 p.m., the complainant/informant-Vikas Panwar alongwith his friend/deceased-Mayank Panwar had gone for a party at *Quila Begumpur*, Sarvapriya Vihar, Malviya Nagar, carrying a bottle of liquor, water bottle, cold drinks, cigarettes and also some food items. At about 7.00 p.m., while they were sitting on the wall inside the Fort and were drinking, 4-5 boys, whom they did not know, came to the spot where the complainant along with the deceased was sitting. They had an altercation with them for passage. These boys left from the spot, however, came back after sometime carrying stones in their hands which they started throwing on the informant and the deceased. One of the boys instigated the others, including the applicant herein by his name, to hit the informant and the deceased. The informant and the deceased ran from the spot to save themselves. While running, the deceased called his friend Vikram on the phone, and ran straight towards the gate no.3, DDA Market, whereas the informant ran into



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the market. Later, the informant saw that the accused boys had taken the deceased towards the car parked on the roadside and were hitting him. One of the boys called out the assailant- Manish that today we will kill the deceased, on which, the assailant- Manish called out the boy Rahul @ Bihari to properly hold the deceased and thereafter, the accused Manish stabbed the deceased numerous times with a knife and fled from there. The deceased, with the help of his friends, who had by then arrived, was removed to a private hospital, from where the doctor advised him to be shifted to AIIMS Trauma Centre. During the treatment at AIIMS Trauma Centre, the deceased unfortunately died.

Submissions of the learned counsel for Petitioner

7. The learned counsel for the petitioner submits that the CCTV Footage of the incident filed alongwith the charge sheet shows that the petitioner herein reached the spot of the incident after the deceased had already been stabbed by the accused Manish. She submits that therefore, the petitioner cannot be charged for a common intention under Section 34 of the IPC. Placing reliance on the judgments of the Supreme Court in *Chellappa v. State through The Inspector of Police*, (2020) 5 SCC 160; in *Vikramjit Kakati v. The State of Assam*, 2022 SCC OnLine SC 967; and of the High Court of Jharkhand in *Kallu Rajak v. The State of Jharkhand*, 2021 SCC OnLine Jhar 839; and of the High Court of Calcutta in *Jagan Gope v. State of West Bengal*, 2019 SCC OnLine Cal 5589 (against which SLP (Crl) No. 2226/2020 filed was dismissed by the Supreme Court vide its order dated 11.03.2022), she submits that as the petitioner did not



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participate in the infliction of the injury on the deceased, and in fact, he reached the spot of the incident after it had already taken place, therefore, no common intention to cause death can be attributed to the petitioner and charge under Section 302/34 of the IPC cannot be framed against the petitioner.

Submissions of learned APP for the State

8. On the other hand, the learned APP submits that it is the case of the prosecution that the petitioner alongwith other co-accused persons had an altercation with the deceased and the informant, thereafter they left the spot, that is, Fort Begumpur, only to return to the spot, armed with stones. They started assaulting the informant and the deceased by pelting stones on them. The petitioner was identified by the informant by the name which was being taken by the co-accused while throwing the stones. To escape from the stone pelting, the informant and the deceased ran from the spot to the DDA Market. The accused persons did not stop even then, and followed the deceased and the informant, cornering the deceased near the market gate and brutally assaulted him by stabbing him numerous times with a knife. Merely because the petitioner reached a few seconds late while running behind the deceased, it cannot be said that he did not share the common intention to kill the deceased alongwith co-accused. She submits that in any case, at this stage, the test to be applied is to only ascertain if there is any sufficient cause to proceed against the accused.



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Analysis and Findings

9. I have heard the submissions of the learned counsels for the parties.

10. I would first remind myself of the test to be applied at the stage of framing of the charge. At this stage, the detailed analysis of the evidence is not to be carried out by the Court. The only test to be applied is whether there is sufficient cause made out by the prosecution to proceed against the accused. As the Supreme Court has held in its judgment of ***State of Gujarat v. Dilipsinh Kishorsinh Rao***, 2023 SCC OnLine SC 1294, what is required while considering framing of charge and discharge is only the satisfaction of the court as to whether a case is made out against the accused to stand trial with the material available. I may quote from the judgment as under:

“It is settled principle of law that at the stage of considering an application for discharge the court must proceed on an assumption that the material which has been brought on record by the prosecution is true and evaluate said material in order to determine whether the facts emerging from the material taken on its face value, disclose the existence of the ingredients necessary of the offence alleged. This Court in State of Tamil Nadu v. N. Suresh Rajan, (2014) 11 SCC 709 adverting to the earlier propositions of law laid down on this subject has held:

“29. We have bestowed our consideration to the rival submissions and the submissions made by Mr. Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out



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whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.”

11. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged. The expression “the record of the case” used in Section 227 Cr. P.C. is to be understood as the documents and articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. The submission of the accused is to be confined to the material produced by the investigating agency.

12. The primary consideration at the stage of framing of charge is the test of existence of a



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prima-facie case, and at this stage, the probative value of materials on record need not be gone into. This Court by referring to its earlier decisions in the State of Maharashtra v. Som Nath Thapa, (1996) 4 SCC 659 and the State of MP v. Mohan Lal Soni, (2000) 6 SCC 338 has held the nature of evaluation to be made by the court at the stage of framing of the charge is to test the existence of prima-facie case. It is also held at the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial.”

11. As far as the charge against the petitioner of common intention under Section 34 of the IPC is concerned, the Supreme Court in its judgment in ***Krishnamurthy alias Gunodu and Ors v. State of Karnataka*** (2022) 7 SCC 521, has elaborated the factors which have to be kept in mind while framing a charge under Section 34 of the IPC. I may quote from the judgment as under:

“ 26. Section 34IPC makes a co-perpetrator, who had participated in the offence, equally liable on the principle of joint liability. For Section 34 to apply there should be common intention between the co-perpetrators, which means that there should be community of purpose and common design or prearranged plan. However, this does not mean that co-perpetrators should have engaged in any discussion, agreement or valuation. For Section 34 to apply, it is not necessary that the plan should be prearranged or hatched for a considerable time before the criminal act is performed. Common intention can be formed just a minute before the actual act happens.



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Common intention is necessarily a psychological fact as it requires prior meeting of minds. In such cases, direct evidence normally will not be available and in most cases, whether or not there exists a common intention has to be determined by drawing inference from the facts proved. This requires an inquiry into the antecedents, conduct of the co-participants or perpetrators at the time and after the occurrence. The manner in which the accused arrived, mounted the attack, nature and type of injuries inflicted, the weapon used, conduct or acts of the co-assailants/perpetrators, object and purpose behind the occurrence or the attack, etc. are all relevant facts from which inference has to be drawn to arrive at a conclusion whether or not the ingredients of Section 34IPC are satisfied. We must remember that Section 34IPC comes into operation against the co-perpetrators because they have not committed the principal or main act, which is undertaken/performed or is attributed to the main culprit or perpetrator. Where an accused is the main or final perpetrator, resort to Section 34IPC is not necessary as the said perpetrator is himself individually liable for having caused the injury/offence. A person is liable for his own acts. Section 34 or the principle of common intention is invoked to implicate and fasten joint liability on other co-participants.”

12. As noted hereinabove, it is the case of the prosecution that the petitioner, alongwith co-accused, had an altercation with the deceased and the informant. They left from the spot, but only to come back armed with stones, which they pelted on the deceased and the informant while asserting that they should be killed. The deceased and the informant ran from the spot to save their lives, however, the



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accused followed them. While the co-accused persons held the deceased, one of them brutally attacked the deceased by stabbing him with a knife, resulting in his death. Merely because petitioner was running a little slow and reached at the spot a little late, presently it cannot be said that he did not share the common intention with the other co-accused persons to cause death of the deceased. Incident happened almost simultaneously and as one sequence of the whole.

13. Considering the factors to be borne in mind at the stage of framing of charge and for invoking Section 34 of the IPC, and keeping the circumstances that have been alleged by the prosecution, the material placed before the learned Trial Court, including in form of the CCTV Footage, in mind, it appears that there is sufficient material placed on record by the prosecution to proceed against the petitioner for the offence under Section 302/34 of the IPC.

14. Accordingly, I find no merits in the present petition. The same is dismissed.

15. It is made clear that any observations made in this order shall in no manner prejudice the petitioner in the trial of the above case.

NAVIN CHAWLA, J

FEBRUARY 27, 2024/Arya/am

Click here to check corrigendum, if any