



2024:DHC:8585



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

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Date of Decision: 01st August, 2024+ **CRL.REV.P. 369/2017 & CRL.M.A. 8362/2017**

STATE

.....Petitioner

Through: Mr. Naresh Kumar
Chahar, APP for the State
with Mr. Anand Seth, Ms.
Manisha Singh, Ms.
Mughda Dwivedi, Mr.
Kartikey Awasthi and Mr.
P.C. Kaushik, Advs. with
Insp. Manish Bhati, PS
Bhalswa Dairy.

versus

RAJ KUMAR MISHRA & ORS

.....Respondents

Through: Mr. Arvind Kumar
Tiwary, Adv. with Ms.
Aqsa, Mr. Mohan Lal and
Mr. Prerit Shukla, Advs.
for Respondent No.1,2 3, 4
& 6 (through VC)

CORAM:**HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN, J. (Oral)**

1. The present petition is filed challenging the order on charge dated 22.06.2016, passed by the learned Additional Sessions Judge (ASJ)-04, North, Rohini Courts, Delhi in FIR No. 57/2016 (hereafter '**the impugned order**').

2. The impugned order has been challenged to the extent that

the charges have been framed against the respondents/accused



2024:DHC:8585



persons under Sections 347/304(I)/34 of the Indian Penal Code, 1860 ('**IPC**') and not under Section 302 of the IPC. The learned ASJ observed that no *prima facie* case was made out for the offence punishable under Section 302 of the IPC.

3. It is the case of the State that the charges should have been framed under Sections 302/347/34 of the IPC.

Brief Facts:

4. The FIR in the present case was registered pursuant to the statement made by the complainant – Smt. Phooljaan (wife of deceased Rafikul) who alleged that on 24.01.2016, she received a phone call on her mobile number and was told that her husband has been caught committing theft and has been confined behind a gas godown. The complainant was made to speak with her husband who told her that he has been confined by public persons and was also beaten by them.

5. The complainant along with her sister rushed to the place of incident and saw that her husband was tied up with electricity pole and four to five persons were beating him with wooden sticks and *sarias*. One of those persons told her that her husband had committed theft and she should pay ₹5,000/- as pre condition for sparing her husband. The complainant returned back to her house and came back to the place of incident with her cousin and at that time, eight to ten persons were found present and four-five of them were still beating her husband – Rafikul. Subsequently, someone made a phone call at 100.

6. Thereafter, the complainant's husband was taken to nearest hospital but he could not survive and was declared dead, which

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CRL.REV.P. 369/2017

Page 2 of 10



2024:DHC:8585



led to the registration of the FIR.

7. The chargesheet was, thereafter, filed on 21.04.2016 for offences under Sections 302/347/34 of the IPC. The crime team inspected the scene of crime and the respondents were apprehended on being identified by the complainant and their disclosure statements were recorded. Statements of certain witnesses were also recorded under Section 161 of the CrPC in relation to the alleged offence.

8. As noted above, the learned ASJ, thereafter, by impugned order, framed charges against the respondents under Sections 347/304-I/34 of the IPC and discharged the accused persons for offence under Section 302 of the IPC which led to the filing of the present petition.

9. Since the prosecution has assailed the impugned order framing charges against the respondent, it will be apposite to succinctly discuss the statutory law with respect to framing of charge and discharge as provided under Sections 227 and 228 of the CrPC. The same is set out below:

“227. Discharge

If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

228. Framing of Charge

(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which--

(a) is not exclusively triable by the Court

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CRL.REV.P. 369/2017

Page 3 of 10



2024:DHC:8585



of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, 1 [or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate] shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.”

10. The scope of interference by High Courts while exercising revisional jurisdiction in a challenge to order framing charge is well settled. The power ought to be exercised sparingly, in the interest of justice, so as to not impede the trial unnecessarily.

[Ref: ***Amit Kapoor v. Ramesh Chander : (2012) 9 SCC 460***]

11. The Hon’ble Apex Court, in the case of ***Sajjan Kumar v. CBI: (2010) 9 SCC 368***, has culled out the following principles in respect of the scope of Sections 227 and 228 of the CrPC while observing that a *prima facie* case would depend on the facts and circumstances of each case. The relevant paragraphs read as under:

“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



2024:DHC:8585



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)

12. In a recent decision in ***State of Gujarat v. Dilipsinh Kishorsinh Rao* : 2023 SCC OnLine SC 1294**, the Hon’ble Apex Court has discussed the parameters that would be appropriate to keep in mind at the stage of framing of charge/discharge, as under :-

7. It is trite law that application of judicial mind being necessary to determine whether a case has been made out by the prosecution for proceeding with trial and it would not be necessary to dwell into the pros and cons of the matter by examining the defence of the accused when an application for discharge is filed. At that stage, the trial judge has to merely examine the evidence placed by the prosecution in order to determine whether or not the grounds are sufficient to proceed against the accused on basis of charge sheet material. The nature of the evidence recorded or collected by the investigating agency or the documents produced in which prima facie it reveals that there are suspicious circumstances against the accused, so as to frame a charge would suffice and such material would be taken into account for the purposes of framing the charge. If there is no sufficient ground for proceeding against the accused necessarily, the accused would be discharged, but if the court is of the opinion, after such consideration of the material there are grounds for presuming that accused has committed the offence which is triable, then necessarily charge has to be framed.

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

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CRL.REV.P. 369/2017

Page 6 of 10



2024:DHC:8585



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.

13. The Court at the stage of framing of charge is to evaluate the material only for the purpose of finding out if the facts constitute the alleged offence, given the ingredients of the offence. Though, for the purpose of conviction, the same must be proved beyond reasonable doubt.

14. It is equally well-settled at the time of framing of charges, the Court has to consider the allegations and the defence of the accused is not to be considered at the stage of framing of charges and the same is a matter of trial.

15. The FIR was registered pursuant to complaint made by wife of the deceased who claimed that a call was received on her mobile phone that her husband was beaten up after being caught while committing robbery.

16. It is undisputed that it is the case of the prosecution that several public persons were involved in confining the deceased and had also given beatings which included the respondents. The identity of the other assailants could not be established during the course of the investigation.

17. Even if the case of the prosecution is taken at the highest, the alleged incident occurred at spur of the moment when the deceased attempted to commit robbery. The said attempt led to various public persons getting hold of the deceased and giving



2024:DHC:8585



him beatings.

18. It is the case of the State that the accused persons should be charged for committing an offence of murder. The offence of murder is defined under Section 300 of the IPC and the same reads as under:-

“Section 300 : Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

Secondly.—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

Thirdly.—If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

Fourthly.—If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Exception 1.—When culpable homicide is not murder.— Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:—

First.—That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.



Secondly.—That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly.—That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation

Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Exception 2.—Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Exception 3.—Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

Exception 4.—Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

Explanation

It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5.—Culpable homicide is not murder when the person whose death is caused, being above the



2024:DHC:8585



age of eighteen years, suffers death or takes the risk of death with his own consent.

19. However, culpable homicide is not a murder if the act is done without premeditation, in the heat of a passion, in a sudden fight, and without the offender taking undue advantage or acting in a cruel or unusual manner. The same is punishable under Section 304 of the IPC. Whether culpable homicide without any premeditation is murder – is a defence and is normally a matter of trial. However, the case of the prosecution itself is that the deceased was allegedly caught while attempting robbery which led to eight-ten public persons getting together and giving beating to the deceased. The element of *mens rea* seems to be missing.

20. The learned ASJ relied upon the statements of the public witnesses. Clearly, there is no complete evidence to show as to which of the accused gave beatings on which part of the body of the deceased during the course of the alleged incident and as per the statements of the witnesses, the accused persons were not the only one giving beatings to the deceased.

21. In light of the material perused, arguments heard and principles considered, no infirmity is found in the impugned order.

22. In view of the above, the petition is dismissed.

AMIT MAHAJAN, J

AUGUST 1, 2024

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CRL.REV.P. 369/2017

Page 10 of 10