

SC No. 58/2017
State Vs. Sabir @ Shahjad
FIR No.344 /2016
PS Karawal Nagar

Physical hearing
22.02.2022

Present: Sh.Maqsood Ahmed, Ld. Chief. PP for State.
Accused Hasmuddin is produced from J/C.
Accused Sabir @ Shahjad is on bail.
Sh. Parmanand Jaint, d. Counsel for both accused.
Arguments on charge heard.

Ld. Chief PP for the State has submitted that both the accused in furtherance of their common intention committed robbery of chain from two unknown girls and this information was passed on to complainant Ct. Shyamvir, who immediately reached the spot and saw that both accused were committing robbery. It is further submitted that he challenged both the accused, but one of the accused tried to flee, but other instigated him to kill the complainant and co-accused, who was later apprehended by the complainant at the spot and revealed his name Sabir @ Shahjad, fired on him and was also found in possession of weapon of offence. It is further submitted that accused opened fire towards the complainant by his pistol and caused him head injury and complainant apprehended accused persons at the spot. In fact, both the accused stopped the complainant from discharging his public/official duties, due to both the accused are liable to be charged under sections 186/353/332/394/397/307/34 IPC and appropriate charges may be framed against them.

On the other hand, Ld. Counsel for both accused has strongly opposed these submissions and has submitted that there is no material on record against the accused that they ever stopped the complainant from discharging of his official duties or tried to kill him. It is further submitted that both the accused have been falsely

implicated to this case by the complainant in a pre planned manner, whereas there is no incriminating evidence against them and they are entitled for discharge.

I have heard the arguments and perused the record.

As per the allegations of the prosecution, both the accused were robbing two unknown scooty bound girls when complainant was informed and he reached the spot immediately. Complainant also witnessed this incident, but prosecution has not examined both girls who were being robbed by the accused person or shown weapon during robbery. Since both the girls have neither been examined nor cited witnesses to this case, accordingly I am of the opinion that there is no material against both accused for framing of charges under section 394/397/34 IPC.

However, it is clear from the statement of complainant Ct. Shyamvir that he reached the spot of incident during robbery, but both the accused in furtherance of their common intention stopped him from discharging his official duty to protect those girls from robbery and also to stop crime, but under the instigation of accused Hasmuddin, accused Sabir @ Shahjad fired on him and caused head injuries. Weapon was also recovered from the possession of accused, who was apprehended at the spot itself by the complainant. As such, prima facie offence under sections 186/332/307/34 IPC are made out against both accused.

So far recovery of weapon is concerned, admittedly one pistol along with cartridges was recovered from the accused at the spot itself, but prosecution has failed to prove sanction of prosecution under section 39 of Arms Act to frame charge under section 25 of Arms Act. Even FSL report is also not on record. However, prima

facie offence under section 27 of Arms Act is made out against accused Sabir @ Shahjad as he used unauthorized weapon in contravention of Section 5/7 of Arms Act, accordingly charge under section 27 of Arms Act is also made out against him.

Charges under sections 186/332/307/34 IPC are framed against both accused. Charge under section 27 of Arms Act is also framed against accused Sabir @ Shahjad. Both the accused pleaded not guilty and claimed trial.

Put up for PE on 28.05.2022.

Material witnesses be summoned for next date of hearing.

(Devender Kumar)
ASJ-02(NE), KKD/Delhi
22.02.2022