

CNR No. DLNT01-001558-2022
SC No. 123/2022
FIR No. 468/2021
PS Prashant Vihar
U/s. 307/34 IPC & 25/27/54/59 Arms Act
State v. Rahul Thakur @ Haddi & Ors.

22.11.2022

Present: Ms. Sweta Verma, Ld. Substitute Addl. PP for State.

Accused Rahul Thakur @ Haddi and Paras @ Brijesh Jha on bail with Ld. Counsel Sh. Dinesh Mathur, Adv. Accused Suraj Tiwari @ Shiva produced from JC. Sh. Pankaj Kumar Dubey, Adv. Ld. Counsel for accused Suraj Tiwari @ Shiva. He has filed his Vakalatnama on behalf of accused Suraj Tiwari @ Shiva.

I have heard arguments on the point of charge on behalf of Ld. Substitute Addl. PP for the State and Ld. Counsel for accused persons. I have gone through the case file and have also gone through the statements of witnesses recorded u/s.161 Cr.P.C. Counsel for accused Rahul and Paras conceded to the framing of proposed charges.

Ld. Counsel for the accused Suraj Tiwari @ Shiva has argued that there is nothing on record to suggest commission of offences u/s. 307/34 IPC and u/s. 25/27/54/59 Arms Act by Suraj. It is further argued that the accused is innocent and nothing has been recovered from him or at his instance. The alleged recovery, if any, has been planted one. It is argued that so far as accused Suraj Tiwari @ Shiva is concerned, he was merely driving the motorcycle, as alleged, and that he did not commit any assault and for that matter nor was even near the place of

alleged assault, that is why he is not visible in the CCTV footage. It is further argued that nothing offending or illegal was recovered from accused Suraj Tiwari @ Shiva, nor any weapon was recovered or got recovered by him.

On the other hand, Ld. Substitute Addl. PP for the State has argued that the complainant sustained grievous injury on his person due to gun shot injury by the accused persons and that his MLC is clear regarding the injury caused to him. It is also argued that there are serious and specific allegations against the accused with regard to the injury caused to the victim. Ld. Substitute Addl. PP for the State has also argued that accused Suraj Tiwari @ Shiva was correctly identified by the victim during his Test Identification Parade whereas other two accused had refused to participate in the Test Identification Parade, therefore, adverse inference may be drawn against them.

Section 307 of IPC, for ready reference, is reproduced herein below:

307 – Attempt to murder – Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to [imprisonment for life], or to such punishment as is hereinbefore mentioned.

Attempts by life convicts: [When any person offending under this Section is under sentence of [imprisonment for life], he may, if hurt is caused, be punished with death].

It is settled proposition of law that at the time of framing of charge, the Court is not required to marshal any evidence and only grave suspicion is to be seen and when grave suspicion arises, charge can be framed against the accused.

Reliance can be placed upon ***Alpana Dass v. CBI 2006 (90) DRJ 441.***

In the case of ***Union of India v. Prafulla Kumar Samal*** 1979 SSC (3) 609, their lordship laid down the parameters that must weigh in the mind of the Court while considering the issue on charge. It was observed as under:

(i) That the Judge while considering the question of framing of charges under Section 227 of the Code has the undoubted power to shift 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;

(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 test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(iv) That in exercising his jurisdiction u/s.227 of the Code the Judge which under the present Code is a senior and experienced 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 appearing in the case and so on. This however, does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

Considering the overall facts and circumstances of the case, nature of injury mentioned in the MLC, coupled with the nature of injury caused to the victim and other additional and attending circumstances, it appears that the assault was such which could have resulted into death of the victim. Primarily, it

is the intention and / or the knowledge that an act done in a peculiar fact and circumstance may have the potential to cause death, is what is of vital importance. Intention or knowledge is something which is abstract but then the same can be inferred with the help of the acts, utterances, gesture and a combination of all or anything of the nature where inferences can be drawn about the intention or the knowledge.

When the overall facts and circumstances of the instant cases are tested on the aforesaid parameters, then it emerges that all the three accused persons stopped the complainant just before the gate of the mall and started beating him. When the victim tried to run away, he was chased and pinned down on the gate of the mall. He was assaulted on his head with the butt of country made pistols by Rahul @ Haddi and also by the third person who turned out to be Paras. He was thereafter shot at by both of them. It was in revenge of an earlier killing of one 'Mukhiya Bhai' as alleged.

Perusal of MLC of the victim shows that the nature of injury has been opined as grievous since, as per radiology examination, there was 'distal humeral shaft' comminuted. The MLC report further disclosed that there was bleeding from the scalp of the victim due to multiple lacerated wounds on his scalp. The head is a very vulnerable part of the human body and there are instances where a minor injury resulted into death of a person. It is said that the Mughal King Humayun died due to head injury sustained simply by a fall from staircase of his library.

So far as the role of accused Suraj Tiwari @ Shiva is concerned, perusal of complaint of complainant Gaurav shows

that the motorcycle, on which the accused persons were riding, was being driven by accused Suraj Tiwari @ Shiva and the other two accused persons were on the pillion. The complainant was beaten up by all the three accused persons just before the gate of the mall. However, when the victim tried to run away, he was chased, pinned down and assaulted with the butt of country made pistols by accused Rahul Thakur @ Haddi and Paras @ Brijesh Jha. Thereafter, both of them shot at him with the said country made pistols.

Perusal of copy of Test Identification Parade shows that accused Suraj Tiwari @ Shiva was correctly identified by the complainant/victim Gaurav. However, other two accused have refused to participate in the Test Identification Parade, thus adverse inference is to be drawn against them. Two country made pistols were recovered alongwith empty cartridges, latter from the spot.

The contention of the counsel for accused Suraj Tiwari @ Shiva that he cannot be held responsible for the offence u/s.307 IPC since he was not present at the spot, rather at a far off place, is not sustainable. If two or more persons intentionally do an act jointly, the position in law is just the same as if each of them has done it individually by himself. As per the allegations leveled by the complainant/victim, prima facie it seems that a criminal act for commission of offence u/s.307 IPC was done by the accused persons in furtherance of their common intention.

Section 34 of IPC, for ready reference, is reproduced herein below:

34. Acts done by several persons in furtherance of common intention.—When a criminal act is done by several persons in furtherance of the common intention of

all, each of such persons is liable for that act in the same manner as if it were done by him alone.

Hon'ble Supreme Court has observed in **Raju Pandurang Mahale v. State Of Maharashtra And Anr.** AIR 2004 SC 1677, as under:

*Section 34 has been enacted on the principle of joint liability in the doing of a criminal act. The Section is only a rule of evidence and does not create a substantive offence. The distinctive feature of the Section is the element of participation in action. The liability of one person for an offence committed by another in the course of criminal act perpetrated by several persons arises under Section 34 if such criminal act is done in furtherance of a common intention of the persons who join in committing the crime. 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. 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 for which they are charged with the aid of Section 34, be it pre-arranged or on the spur of moment; but it must necessarily be before the commission of the crime. The true concept of Section is that if two or more persons intentionally do an act jointly, the position in law is just the same as if each of them has done it individually by himself. As observed in **Ashok Kumar v. State of Punjab**, AIR (1977) SC 109, the existence of a common intention amongst the participants in a crime is the essential element for application of this Section. It is not necessary that the acts of the several persons charged with commission of an offence jointly must be the same or identically similar. The acts may be different in character, but must have been actuated by one and the same common intention in order to attract the provision. For applying Section 34 it is not necessary to show some overt act on the part of the accused.*

Hon'ble Supreme Court has also observed in **Parasa Raja Manikyala Rao and Anr. Vs. State of A.P.** [79] AIR 2004 SC 132, as under:

Section-34 really means that if two or more persons intentionally do a common thing jointly, it is just the same

as if each of them had done it individually. It is a well recognized canon of criminal jurisprudence that the Courts cannot distinguish between co-conspirators, nor can they inquire, even if it were possible as to the part taken by each in the crime. Where parties go with a common purpose to execute a common object each and every person becomes responsible for the act of each and every other in execution and furtherance of their common purpose; as the purpose is common, so must be the responsibility. All are guilty of the principal offence, not of abetment only. In combination of this kind a mortal stroke, though given by one of the party, is deemed in the eye of law to have been given by every individual present and abetting. But a party not cognizant of the intention of his companion to commit murder is not liable, though he has joined his companion to do an unlawful act.

Considering the above position of law laid down by Hon'ble Supreme Court, it is clear that Section 34 IPC is not a penal section in itself. It defines the common intention when more than one person commit a crime with common intention. In such cases this section is applied alongwith the substantive offence. The offence in the present case was committed with common intention and Section 34 IPC was applied accordingly.

In view of above, prima facie a case u/s. 307/34 IPC is made out against all the three accused persons and prima facie a case u/s.25/27/54/59 Arms Act is made out against accused Rahul Thakur @ Haddi and Paras @ Brijesh Jha.

Let charge for the said offences be framed against the accused persons accordingly.

Nothing expressed herein shall tantamount to any expression on the merits of the case.

(Vimal Kumar Yadav)
Principal District & Sessions Judge (North)
Rohini Courts, Delhi (sb)

22.11.2022 (Later)

Present: Ms. Sweta Verma, Ld. Substitute Addl. PP for State.

Accused Rahul Thakur @ Haddi and Paras @ Brijesh Jha on bail.

Accused Suraj Tiwari @ Shiva produced from JC.

Sh. Dinesh Mathur, Adv. Ld. Counsel for all accused.

Formal charge u/s. 307/34 IPC against all the three accused persons and formal charge u/s.25/27/54/59 Arms Act against accused Rahul Thakur @ Haddi and Paras @ Brijesh Jha, have been framed separately to which they pleaded not guilty and claimed trial.

List on 22.12.2022 for PE. Witnesses mentioned at sl.no. 1, 4, 14 & 16 be summoned for the next date of hearing. MHC(M) and the IO be also summoned.

(Vimal Kumar Yadav)
Principal District & Sessions Judge (North)
Rohini Courts, Delhi (sb)