

CNR No.:DLNT01-008564-2022
SC No. 748/2022
STATE Vs. Md. Rustam @ Mukhiya
FIR No. 560/2022
PS Jahangir Puri
U/s: 302/201/323/34 IPC

03.05.2025

Present: Sh. Sanjay Jindal, Ld. Addl PP for State.
Complainant along with Ld. Counsel Sh. Bijender Sharma.
Accused persons namely Mohd. Rustam @ Mukhiya and Mohd. Ruhtaz produced from J/C.
Accused persons namely Mohd. Ashraf and Mohd. Shamsher Alam @ Funnu in person on bail.

Sh. Gajraj Singh and Sh. Abhishek Nagar, Ld. Counsels for accused persons namely Mohd. Rustam @ Mukhiya and Mohd. Ruhtaz.
Sh. Mayank Chauhan, Ld. Counsel for accused persons namely Mohd. Ashraf and Shamsher.

Arguments on the point of charge qua accused Mohd. Shamsher Alam @ Funnu heard at length from both sides.

Ld. Addl. PP for the State has submitted that there is sufficient material to frame charge qua accused Mohd. Shamsher Alam @ Funnu, therefore, charges for the offences punishable under section 302/34 IPC may kindly be framed against accused Mohd. Shamsher Alam @ Funnu.

Ld. Counsel for accused Mohd. Shamsher Alam @ Funnu has argued that no case of murder is made out against accused Mohd. Shamsher Alam @ Funnu. It is further argued that the name of accused Mohd. Shamsher Alam @ Funnu has

not been mentioned in the FIR and he has been falsely implicated in the present FIR case only on the basis of disclosure statement made by co-accused persons. It is argued that case of accused Mohd. Shamsher Alam @ Funnu is similar to accused Mohd. Ashraf who was merely present at the spot and at the most, he may be charged for offence punishable under section 323 IPC for giving beatings to injured persons. It is argued that no material evidence is available in record to constructively make accused Mohd. Shamsher Alam @ Funnu liable for the offence of murder, therefore, he accused Mohd. Shamsher Alam @ Funnu may kindly be discharged for the offence of murder punishable under section 302 IPC.

Submissions heard. Record perused.

Perusal of the record shows that charges for the offences punishable under section 302/34 have already been framed against accused persons namely Rustam @ Mukhiya and Mohd. Rauhtaz vide order dated 14.11.2022. Further, separate charges for the offences punishable under section 201 IPC and 323 IPC have been framed against accused persons namely Mohd. Rauhtaz and Mohd. Ashraf respectively.

Perusal of the record further shows that main charge-sheet was filed qua accused persons namely Rustam @ Mukhiya, Mohd. Rauhtaz and Mohd. Ashraf only and accused Mohd. Shamsher Alam @ Funnu was absconding at that time. Perusal of the record further shows that later on, accused Mohd. Shamsher Alam @ Funnu was arrested in the present FIR case and

supplementary charge-sheet qua him was filed in the Court.

Perusal of the record further shows that in the present case, accused Mohd. Rustam @ Mukhiya had called the other co-accused persons by making a mobile phone call by stating “*Jaldi Se Fatafat Mere Ghar Aao Kisi Ko Marna Hai*” and subsequent to this mobile phone call, the other accused persons had come and actively participated in the commission of alleged offence which prima facie shows that they shared common intention with accused Mohd. Rustam @ Mukhiya.

Section 34 IPC is reads as under:-

“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”.

Section 34 IPC has been framed to meet cases in which it may be difficult to distinguish between the acts of individual members of a party, or to prove exactly what part played by each of them (*R. v. Cruse, 1838*). ‘Common intention’ and ‘participation’ , both are necessary for the application of Section 34 IPC. Common intention necessarily implies a prearranged plan or prior concert or prior meeting of minds. It may be noted that common intention can be formed at the spur of moment, but the plan must precede the act constituting the offence.

Section 34 IPC is applicable also where the act actually done is not exactly the act jointly intended by the

conspirators to be done. The common intention can be to do an act, and another act can be done in furtherance of common intention. Thus, the shooting of a wrong man could be said to be in furtherance of common intention (*Shankar Lal v. State of Gujrat*, AIR 1965 SC 1260). Further, common intention is a question of fact and it can be inferred from the facts and circumstances of an individual case.

In the present case, accused Mohd. Shamsheer Alam @ Funnu is clearly seen in the CCTV Footage and he is actively participating in commission of the alleged offence as he is seen giving Danda blows to victims even after the murder of deceased Mohd. Mutalif S/o Sh. Abdul Motif which prima facie shows that he shared common intention with his co-accused persons namely Mohd. Rustam @ Mukhiya and Mohd. Rauhtaz, therefore, accused Mohd. Shamsheer Alam @ Funnu is prima facie liable for the offence punishable under section 302 read with section 34 IPC.

At the stage of framing of charge, this Court has to see whether there is prima facie ground for proceeding against the accused. It is axiomatic that even the strong suspicion that the accused has committed the crime, is sufficient to frame the charges. It is also well settled that the standard of proof adhered to at the final decision of the case is not to be adopted at the stage of framing of charge. The Court is not to appreciate or weigh the evidence, which the prosecution proposes to lead during the trial. Even, otherwise, the veracity of the Complainant

can only be ascertained after recording his / her evidence in the Court.

Considering the facts and circumstances of the case and in view of the above discussion, this Court is of the considered view that prima-facie case is made out against accused Mohd. Shamsheer Alam @ Funnu for the offences punishable U/s 302/34 IPC. Accordingly, Charge for the offences punishable under section U/s 302/34 IPC is framed against accused Mohd. Shamsheer Alam @ Funnu to which he pleaded not guilty and claimed trial.

Perusal of the file shows that five prosecution witnesses have been examined in the present FIR case. Let PW-1 to PW-5 be summoned afresh for examination qua accused Mohd. Shamsheer Alam @ Funnu along with along with IO / Inspector Dharmender Kumar for NDOH.

Be put up for PE on 19.08.2025. and 20.08.2025.

(Sushil Kumar)
Addl. Sessions Judge-04
North District Rohini Courts Delhi
03.05.2025 ^(R)