

S.C No.80/18
FIR No.492/2015
PS Harsh Vihar
State Vs. Hemant alias Guddu &
Anr.

(3)

09.01.2019

Present : Sh. Rakesh Mehta, Ld. Addl. P.P. for the State.

Both accused are on bail, their counsel Sh. Deepak Kumar, Advocate is present.

Submissions on the point of charge are heard and concluded.

1. This FIR registered on 28.09.2015 in respect of incident of 2.35 pm, in the gali of H.No.739, Mandoli Extension and complainant in her complaint narrates background that her telephone was to be returned by accused Hemant and that is why she was approached. She was accompanying with her aunt Seema and sisters Maya, Renu and Shashi. However, when complainant knocked the door, then accused Hemant alongwith his brother Kailash and their friend came with danda and iron rod, the complainant and her aunt Seema Devi were assaulted with those weapons. Complainant's sisters were given beatings by leg and fists blows. They received the injuries. Moreover, Hemant had also caught hold the complainant from her shoulder and torn her worn suit. They also threatened for dire consequences to kill the complainant. It is charge-sheet u/s 308/323/506/34 IPC.

2.1 Ld. Defence counsel has two sets of submissions, one is for Kailash and another is for Hemant. It is submitted on behalf of Kailash that on 28.09.2015, he had written his exam/practical test of computer science at Noida Public Senior Secondary School, Sector-23, Noida and he was not present at the spot, as the timings of exam were from 12.00 noon to 3.00 pm. During submissions, photocopy of admission card and of date sheet is shown vis-a-vis that this applicant was admitted on anticipatory bail as this stand was also taken in application also, he was admitted on bail.

So far accused Hemant is concerned, on the face of charge-sheet, the injuries received were simple in nature, it does not spell out charge u/s 308 IPC, he deserves discharge for this head. Similarly, there is nothing culling out charge of criminal intimidation u/s 506 IPC, he also deserves discharge. It is a simple case of 323 IPC to be triable by the court of Magistrate.

2.2 Whereas Ld. Addl. P.P. for the State has reservations that there is sufficient material in the file to frame the charge. The ground of alibi is to be proved in trial, particularly the date sheet reflects that computer science paper/practical examination was from 28.09.2015 to 03.10.2015 and there is no record that he had written the exam on 28.09.2015 itself, the onus to prove this defence is on the accused Kailash. The anticipatory bail order is also not reflecting that the applicant had attended that examination on 28.09.2015 itself, therefore, this plea is not tenable.

There are five injured out of them two were assaulted with iron rod and danda and others were given beatings by fists and leg blows, although injuries opined as simple but the same are to be associated with the weapons used by the accused persons. The accused Hemant had also disrobed the complainant by tearing her clothes. There was also threat to finish the complainant and her family. It makes out charge u/s 308/323/506/34 IPC and section 354B IPC against accused.

3.1 **(Findings with reasoning)** – The submissions of both the sides are considered, they are also compared by looking at the record and paragraph No.1 is already containing salient features of the case and paragraph No.2 is the rival submissions. At the time of framing of charge, it is to be seen whether there is prima facie sufficient material to proceed further in the case and the facts on record makes out that offence has been committed, this test of prima facie case does not mean proof of facts, which is a test of evidence. The law with regard to discharge is dealt in section 227 of Cr.P.C. and framing of charge u/s 228 Cr.P.C, the same is also perused.

3.2 With regard to plea of alibi on behalf of accused Kailash, on the face of contention and record perused, there is no fact appearing that Kailash had actually appeared on 28.09.2015 for writing exam, at that particularly time of incident of 2.35 pm, therefore, it is matter of defence. The charge-sheet is also not reflecting whether this aspect was existing in investigation, however, in the bail order dated

15.01.2016 there is mentioning of fact that accused Kailash was student of 12th class and he has gone for writing practical examination, there is no reference of any timing nor any conclusive inference can be drawn from that order dated 15.01.2016, therefore, this issue is to be kept alive, the onus will be on the accused to prove it.

3.3 Ld. Defence counsel is looking at the MLCs of injured that the injuries opined are simple in nature, however, this is not the sole test for determination. The circumstances of the case, intention or knowledge of accused, the acts performed by accused and the consequences happened are to be seen. Complainant and her aunt had received head injuries, although the same are simple in nature but the weapons used were rod and danda; it makes out charge u/s 308/34 IPC. The sisters of complainant had received injuries by beatings through leg and fists blows, they had received simple injuries and charge u/s 323/34 IPC is made out against the accused persons. The complainant was threatened to finish her and family, it is offence of criminal intimidation and charge u/s 506/(Part-II)/34 IPC is made out against the accused persons.

3.4 It is accused Hemant who used criminal force by caught holding the complainant and then tearing her worn clothes, the complainant was disrobed, it attracts section 354B IPC against accused Hemant and this charge is made out against him.

3.5 Accordingly, Charge-I u/s 308/323/506(Part-II)/34 IPC and

Charge-II u/s 354B IPC are framed and explained to the accused, to which they plead not guilty and claim trial.

3.6 However, any observations recorded in the present order will not be construed any opinion on the merits of the case.

4. List for P.E. -

(i) on 25.04.2019 (i.r.o. witnesses at serial No.1, 2 and 3) and

(ii) 26.04.2019on (i.r.o. witnesses at serial No.4, 5 and 6) besides notice to MHC(M) and IO for both dates.

An application is filed u/s 294 Cr.P.C. for admission and denial of documents, copy is given to accused, it will also be considered on the next date.

(Inder Jeet Singh)
Additional Session Judge-04(Shahdara)
Karkardooma, Delhi/09.01.2019

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