

SC No.93/17
FIR No 695/16
PS: Hauz Khas
State vs. Shivam Pandey & ors.

17.08.2017

Present: Mr. Rakesh Mehta, Ld. Addl. PP for State.
Accused Shivam Pandey @ Kittu, Sandeep @ Dishu
and Akash produced from JC.
Accused Ajay @ Appu is present on bail.
Ld. respective counsels for accused persons.

As per the letter of the FSL lying on record, report regarding CCTV footage of the incident shall be ready by 29/08/2017.

However, Ld. Addl. PP submits that the remaining material on record itself is sufficient to make out a prima facie case for the alleged offences against the accused persons and therefore, the charges may be framed. On the other hand, Ld. defence counsel appearing for accused Shivam Pandey urges to wait for the FSL Report as he says that the FSL report/CCTV footage shall reveal that the complainant who has been cited as an eye witness of offence was not present on the spot.

Both sides heard on the point of charge and the material on record also carefully perused.

The counsel for accused Sandeep @ Dishu has fairly conceded to the charge while the defence counsels for other accused vehemently opposed the charge by submitting that material on record is not sufficient to make out a charge for alleged offences against the other accused.

It is further argued on behalf of accused Shivam

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Pandey that as per the CCTV footage allegedly containing the recording of alleged incident, the presence of the complainant near the place of occurrence is nowhere visible which clearly shows that said witness has been planted as an eye witness by the police. It is further argued that even as per the scaled site plan filed with the charge sheet, the tent where the eye witness was allegedly hiding himself at the time of incident is shown to be at a considerable distance from the place of occurrence shown at point 'C'.

On behalf of accused Akash, it is contended that he was not named in the FIR nor his judicial TIP was conducted during the investigation and therefore, no case is made out against him. It is further argued that on the one hand, the complainant in his complaint which led to registration of present FIR, has stated about the presence of accused Sandeep @ Dishu, Shivam Pandey @ Kittu and three more unknown boys whom he claimed to be able to identify if shown to him, and on the other hand, in the later part of his complaint he alleged that Akash and his friends as well as Sandeep @ Dishu earlier also used to visit his house in his absence and also extended threat to his family members which clearly shows that the boy namely Akash was known to the complainant.

In this regard, the arguments have been rebutted by Ld. Addl. PP, who is assisted by the complainant, by stating that in the later part of the complaint dated 02.12.2016, complainant has referred to some other boy namely Akash S/o Ramesh

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Chander and not to the present accused Akash who was involved in the present case. It is further submitted that present accused Akash was identified by the complainant in the police station Hauz Khas, when he visited there for knowing the progress of investigation of the present case on 15.11.2016.

With regard to the accused Shivam Pandey, charge sheet reflects that he is named by the complainant in the FIR and a specific role has been attributed to him as it is alleged that on 10.11.2016 at about 3:40 pm when the deceased was standing on the road in front of shop no. A-137, Gautam Nagar, accused Sandeep @ Dishu, his friend Shivam Pandey @ Kittu and three more unknown boys surrounded the deceased and started beating him. Accused Sandeep @ Dishu took out a knife from one black polythene bag which he was carrying in his hand and started stabbing the deceased repeatedly and in the meanwhile, his other associates also helped him in inflicting injuries on the deceased and one of said three boys picked up a frying pan from the *rehri* standing nearby and hit the deceased on his head with the same. In the complaint, the complainant claimed that he had witnessed the entire incident but because of the barbarity, with which deceased was assaulted he got frightened and hid himself behind a nearby tent.

As per charge sheet, the DVR of CCTV camera system installed at shop no. A-137, Gautam Nagar, New Delhi which was in front of place of incident was seized by the police and in said CCTV camera, the alleged incident was recorded and same is

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confirming the presence of accused Sandeep, Shivam Pandey and Akash at the time of alleged incident. Alongwith the charge sheet, IO has also filed certain still captures/photographs from said recording showing the presence of said accused persons namely Shivam Pandey and Sandeep @ Dishu and Akash.

Ld. counsel for accused Shivam Pandey has argued that from the voice recording of the conversation in the mobile phone of accused Shivam Pandey which was seized from his personal search by the police after his arrest in the present case, the transcript of which is also on record clearly shows that accused Shivam Pandey was not even present at the time of alleged incident.

Before embarking upon the material on record and the submissions raised by both the sides, I deem it appropriate to refer to the relevant law relating to the scope of inquiry at the stage of framing of charge.

In *Niranjan Singh Karam Singh Punjabi, Advocate v. Jitendra Bhimraj Bijjaya and Ors.* (1990) 4 Supreme Court Cases 76, it has been held that:-

"At the time of framing of charge, the court has to sift evidence on record and other documents only for the limited purpose of ascertaining whether prima facie case is made out against the accused. If so, it should frame charges under Section 228, and if not, discharge the accused under Section 227."

In *State of Maharashtra v. Priya Sharan Mahan & Ors.* AIR 1997 SC 2041, it has been held that:-

"At the stage of sections of 227 and 228 the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging

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therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The court may, 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 of the case. Therefore, at the stage of framing of the charge of the court has to consider the material with a view to find out if there is ground for presuming that the accused has committed the offence or that there is no sufficient ground for proceeding against him and not for the purpose of arriving at the conclusion that it is likely to be lead to a conviction."

In Supdt. And Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja and Ors. (1979) 4 Supreme Court Cases 274, it has been held that:-

"Where a case is at the stage of framing charges and the prosecution evidence has not yet commenced, the Magistrate has to consider the question of sufficiency of ground for proceeding against the accused on a general consideration of materials placed before him by the investigating police officer. The truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. The standard of test, proof and judgment which is to be applied finally before finding the accused guilty or otherwise, is not exactly to be applied at the stage of Section 227 or 228 of the Code of Criminal Procedure, 1973. At this stage, even a very strong suspicion founded upon materials before the Magistrate, which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged, may justify the framing of charge against the accused in respect of the commission of that offence."

As per chargesheet, the case of the prosecution is based on the testimony of an eye witness who is the brother of the deceased and his version is corroborated even by the CCTV footage wherein the alleged incident was recorded. The question of veracity of testimony of eye witness or the genuineness of

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recording of CCTV footage of the alleged incident cannot be gone into at this stage especially in the light of judgments mentioned above. The conversation which allegedly took place between accused Shivam Pandey and Ashwani @ Lovely on their mobile phones, relates to the time after the alleged incident and hence, the same even otherwise cannot be preferred over the testimony of an eye witness, who has specifically alleged about the presence of accused Shivam Pandey and also attributed him the role that he alongwith other co-accused surrounded the deceased, started beating him and also helped accused Sandeep in inflicting injuries with knife to the deceased.

As per complainant's version, it was accused Sandeep @ Dishu who stabbed the deceased with the knife which he was carrying in his hand in a polythene bag and therefore, in my considered view the offence of Section 201 IPC for causing the evidence to disappear for screening from legal punishment is made out only against accused Sandeep @ Dishu. Whereas, from the material on record, a prima facie case for the offences punishable u/s 302/34 IPC is made out against accused Sandeep Shivam Pandey and Akash. In view of statement of witness Nitin Gautam recorded u/s 161 Cr.P.C. on 15.11.2016, a prima facie case for the offence u/s 120-B IPC is also made out against said three accused persons. Accused Akash was identified by the complainant later on when he visited the police station on 15.11.2016. Merely because, no judicial TIP was conducted for identification of said accused shall not be a ground for his

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discharge specially when he was duly identified by the complainant in the police station.

As per prosecution case, after the incident accused Sandeep @ Dishu ran away from the spot and reached the shop of accused Ajay @ Appu who gave him lift on his scooty from Central Park, Gautam Nagar to drop him at some safe place. During investigation, CCTV footage of said shop where accused Sandeep reached after the incident and was given lift on scooty was also seized and even said scooty bearing no.DL-12SD-3524 on which accused Sandeep was allegedly given lift was also seized and some blood was also detected and lifted by the crime team from said scooty and the same has already been sent for its biological examination. As per charge sheet, said CCTV footage has the recordings of said incident of accused Sandeep running away on said scooty with accused Ajay @ Appu.

Considering above material on record, I am of the view that a prima facie case for the offence punishable u/s 212 IPC is also made out against accused Ajay @ Appu.

In terms of above order, the charge is separately framed against the accused persons to which they pleaded not guilty and claimed trial.

Put up for PE on **11.10.2017.**

(Sunena Sharma)
Additional Sessions Judge-03 (South)
Saket Courts, New Delhi/17.08.2017