

IN THE COURT OF MS. VRINDA KUMARI,
ADDITIONAL SESSIONS JUDGE-02, SOUTH
DISTRICT, SAKET COURTS, NEW DELHI

CNR NO. DLST01-009098-2021

SC NO. 403 OF 2021

FIR NO. 363/2018

PS FATEHPUR BERI

IN THE MATTER OF

State

Versus

- (i) Neeraj Kumar**
S/o Late Sh. Omparkash,
R/o House No. 08, Gali No. 01,
Behind Petrol Pump Dera Mod,
Fatehpur Beri, New Delhi.
- (ii) Amit**
S/o Sh. Jai Bhagwan
R/o House No. 08, Gali No. 01,
Behind Petrol Pump Dera Mod,
Fatehpur Beri, New Delhi.
- (iii) Vinay @ Rinku**
S/o Late Sh. Omparkash,
R/o House No. 08, Gali No. 01,
Behind Petrol Pump Dera Mod,
Fatehpur Beri, New Delhi.
- (iv) Lokesh**
S/o Late Sh. Omparkash,
R/o House No. 08, Gali No. 01,

**Behind Petrol Pump Dera Mod,
Fatehpur Beri, New Delhi.**

..... Accused Persons.

ORDER ON CHARGE

1. Vide this Order, I shall decide the point of charge in the present case.
2. I have heard detailed arguments on point of charge and have perused the records carefully.
3. The contention of Ld. Counsel for the accused persons is that the MLCs of the injured persons are manipulated ones. The age of injured Om Prakash has been incorrectly mentioned as 24 years whereas he was 60 years old at that time and his photograph also is not affixed on the MLC. It is also submitted that the photograph of injured Smt. Dhandevi/Dhandei is also not affixed on the MLC. It is submitted that the MLCs have been signed by JR Doctors and cannot be relied upon. Further, injured Om Prakash was not even present at the spot at the time of incident. It is further submitted that the other injured persons have received only simple injuries. It is submitted that the statement of Smt. Dhandevi/Dhandei is an afterthought. It is submitted that incident in question took place on 14.06.2018 and the FIR was lodged only on 28.08.2018 as talks of settlements in the cross FIR registered by the present accused party against the complainant party had failed. It is submitted that

the accused persons have been falsely implicated by the complainant party. A cross case bearing SC No. 406/2019 FIR No. 326/2018 PS Fatehpur Beri titled as State Vs. Deepak Sharma & Ors. relating to the same incident filed by the present accused party against the present complainant party is also pending trial in this Court.

4. Ld. Addl. PP for State has submitted that there is sufficient material on record to frame charge against the accused persons.

5. I have considered the rival contentions.

6. The chargesheet discloses that on 14.06.2018 at 9:30 PM, complainant Neeraj Sharma S/o Jitender Sharma was standing outside his house because of power cut. At that time, his neighbour/accused Vinay @ Rinku and his (complainant's) *chacha* Brahm Dutt Sharma also came there. There was a verbal altercation between accused Vinay @ Rinku and Brahm Dutt Sharma. Matter was sorted out owing to intervention of people present there. After some time, everyone returned to their houses but the complainant remained present outside his house. At that time, his neighbours, namely, accused Vinay @ Rinku, accused Neeraj, accused Sagar, accused Lokesh and accused Amit came there armed with iron rods and *lathis*. Accused Vinay @ Rinku hit the complainant on his head with an iron rod. Accused Neeraj @ Sagar and accused Lokesh pushed the complainant on the ground and accused Vinay and

accused Amit assaulted him with iron rod and *lathi* and hit him on his head.

7. The complainant somehow freed himself from the clutches of the accused persons and cried out for help. Upon hearing his cries, his family members i.e. Deepak Sharma, Brahm Dutt Sharma, Smt. Dhandei /Dhandevi and Dayawati came out to save him. Upon this, accused Vinay @Rinku, accused Neeraj @ Sagar and accused Lokesh held Deepak Sharma and Brahm Dutt Sharma and accused Amit assaulted them with *lathi* and rod. Kick blows and fist blows were given to Smt. Dhandevi/Dhandei all over her body. Her hand was grabbed and she was pushed to ground. Accused Vinay @ Rinku continuously gave kick blows and fist blows on the chest of Smt. Dhandevi/Dhandei. When Smt. Dayawati tried to save her, accused Vinay and Amit caught her, pulled her by her hair, slapped her on her chest with bad intention (*buri neeyat*) because of which she fell unconscious. The accused persons used abusive words (*gandi-gandi gaaliyan*) for the complainant party. They also tried to enter the house of the complainant with intention of committing some crime. PCR was called which took the injured persons to hospital.

8. It has been explained by the complainant that because of ill health and pain and also because of the talks of settlement that were going on between the parties, no formal complaint was lodged by the complainant party. It was only when the accused persons

threatened the complainant party with false implication in some criminal case that the present FIR was got lodged.

9. During investigation, statements u/s 164 Cr.P.C. of victims Smt. Dhandevi/Dhandei, aged about 65 years and Smt. Dayawati aged about 62 years were recorded on 29.08.2018. Apart from reiterating the allegations of the complainant, Smt. Dhandevi/Dhandei has specifically stated that accused Vinay gave fist blow on her chest and also dragged her by pulling her hair. Smt. Dayawati has also stated that accused Amit hit her on her chest and her clothes also got torn. It is noted that the torn clothes of Smt. Dayawati were not seized during investigation.

10. In a statement u/s 161 Cr.P.C. dated 01.12.2019, witness Om Prakash Sharma has stated that they all (complainant party) suffered injuries in the incident. MLC of Om Prakash Sharma is on record.

11. The MLC and discharge note of Smt. Dhandevi/Dhandei shows that *musculoskeletal injury* was suspected and she received *soft tissue injury*. There is no final opinion on the nature of her injury.

12. MLC of injured Smt. Dayawati shows that she suffered (i) *multiple abrasions over front of right side of chest*, (ii) *multiple abrasions over left forearm*. Her injuries were opined to be *simple*

blunt.

13. MLC of injured Deepak Sharma shows that he suffered *laceration over scalp at right temporal region measuring 1 cm X 0.5 cm*. His injury was opined to be *simple blunt*.

14. MLC of injured Om Prakash Sharma shows that he suffered *laceration over left side of forehead 0.5 cm X 4 cm*. His injury was opined to be *simple blunt*.

15. MLC of injured Neeraj Sharma shows that he suffered *laceration over the occipital region of scalp*. His injury was opined to be *simple blunt*.

16. MLCs of all the injured persons are dated 14.06.2018 i.e. the date of incident in question. Whether mentioning of age of injured Om Prakash Sharma as 24 years in the MLC was a typographical error or not is a matter of trial. There being no photograph of this injured on the MLC also can be explained only during trial by the doctors.

17. Three of the injured persons have received injuries on their head or forehead attracting section 308 IPC. There are also specific allegations of outraging of modesty of two lady senior citizens i.e. Smt. Dhandevi/Dhandei and Smt. Dayawati by accused Vinay @ Rinku and Amit and uttering of abusive words (*gandi-*

gandi gaaliyan) within their hearing by the accused persons.

18. All the contentions of Ld. Counsel for the accused persons are a matter of trial. At this stage, only a *prima facie* case giving rise to grave suspicion against the accused persons is to be seen.

19. In ***Sajjan Kumar Vs. CBI (2010) 9 SCC 368***, Hon'ble Supreme Court of India has held as follows:

“17) Exercise of jurisdiction under Sections 227 & 228 of Cr.P.C.

On consideration of the authorities about the scope of Section 227 and 228 of the Code, the following principles emerge:-

(i) The Judge while considering the question of framing the charges under Section 227 of the Cr.P.C. has the undoubted power to sift 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. The test to determine prima facie case would depend upon the facts of each case.

(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 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 etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. 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.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

20. In view of the above discussion, ***prima-facie*** there is **sufficient material on record to frame charge against the accused persons as follows:**

- (1) All accused: offence punishable u/s (i) 308/34 IPC (in respect of injured Om Prakash Sharma, Deepak Sharma and Neeraj Sharma); (ii) 323/34 IPC (in respect of injured Dhandevi/Dhandei and Dayawati); (iii) 354/34 IPC (in respect of prosecutrix Dhandevi/Dhandei and Dayawati) & (iv) 509/34 IPC (in respect of prosecutrix Dhandevi/ Dhandei and Dayawati).***
- (2) Accused Vinay @ Rinku : offence punishable u/s (i) 308 IPC (in respect of***

*injured Neeraj Sharma) and
(ii) 354 IPC (in respect of
prosecutrix
Dhandevi/Dhandei and
Dayawati).*

*(3) Accused Amit: offence punishable u/s 308 IPC (in
respect of injured Neeraj Sharma and
Deepak Sharma) and (ii) 354 IPC (in
respect of prosecutrix Dayawati).*

**PRONOUNCED IN OPEN COURT ON THIS 15th DAY OF
APRIL 2023**

**(Vrinda Kumari)
ASJ-02, South District
Saket Courts, New Delhi.**