

Reg No. 147/2019
SC No.9/21
State vs Babloo @ Mohd Kaushar
FIR No.1065/2018
PS BHD Nagar

16.02.2021

File received by way of transfer from the court of Mr. Sonu Agnihotri, ASJ-02, Dwarka, SW, New Delhi in terms of order No. 05/G-1/Gaz-1A/DHC/2021 dated 28.01.2021.

Present: Mr. Yogendra Adari, Ld. APP for the State.
Mr. Jai Singh Yadav, Counsel for both accused.
Accused Dilip @ Sumit on bail.
Accused Babloo @ Mohd. Kaushar produced from JC.
Mr. Nitish Yadav, Counsel for accused Babloo @ Mohd. Kaushar and Dilip @ Sumit

Submissions heard on the aspect of charge.

The Ld. APP has prayed that charge be framed against accused Babloo @ Mohd Kuashar and accused Dilip @ Sumit under section 302 and section 307 IPC read with section 34 IPC and be also framed separately against accused Babloo @ Mohd Kaushar under section 25/27 Arms Act.

The allegations reflected in the FIR relating to the incident dated 08.11.2018 registered at the instance of complainant Javed are that accused Babloo @ Mohd. Kaushar fired at one Azad and also at him using a pistol. Azad expired from the injury and Javed suffered a bullet injury to his waist.

The ld counsel for the two accused persons had focused his arguments on the role of accused Dilip @ Sumit and prayed for

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discharge on the submission that he was neither named in the FIR nor was any role ascribed to him by the other witnesses present at the spot who allegedly took the two injured persons to DDU hospital. These two witnesses were Shahnawaj and Naeem.

The counsel also agitated that the sole circumstance alleged against accused Dilip @ Sumit, arose from the statement of a witness namely Satbir Singh which was recorded much later on 20.05.2019. It was argued that although this witness had named Dilip @ Sumit and another person as escaping from the spot on a scooty, his statement is in material contradiction with the statement of Shahnawaj.

In response, the Ld. APP has submitted that the statement of Satbir names accused Dilip @Sumit and the allegations relating to arriving and leaving together from the vicinity of the place of incident are ample indication of a common intention qua the assault upon deceased Azad and injured Javed.

The court has considered this submission.

As noted earlier, the submissions of the Id defence counsel have been limited to the role of accused Dilip @ Sumit.

The role of the other accused ie. Babloo @ Mohd Kuashar is manifested by name and description in the FIR. Since the said accused is alleged to have fired from a pistol at deceased Azad and the pistol was recovered from him, charge is liable to be framed under section 302 IPC as well as section 27 Arms Act. Since sanction of the competent authority under section 39 Arms Act qua the offence punishable under section 25 Arms Act has not been received, charge cannot be framed with respect to the said offence at

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this stage.

The question for consideration, however, is for framing of charge against co-accused Dilip @Sumit.

At the stage of considering the framing of charge, the court is only required to consider the adequacy of incriminating material for presuming the commission of the offence by the accused persons. The relevance of evidence and the credibility of witnesses shall be a subject of trial. The associated aspect of delay in recording the statement of any particular witness or an *inter se* contradiction between their purported statements is therefore also a question to be considered when the evidence is appreciated. In this view, the circumstance of the later recording of the statement of witness Satbir Singh does not diminish its adequacy at this stage for purpose of charge. It is pertinent to note that Satbir Singh stated that accused Sumit and another person came on a scooty in the lane and after some time, the pillion rider came back running and left the spot with Dilip @ Sumit on the scooty. The said acts noted by witness Satbir were in close nexus to the incident of actual firing of the pistol upon deceased Azad and injured Javed. The act of coming and leaving together would sufficiently indicate the element of premeditation and previous meeting of minds of the two accused persons. Such premeditation is quite the common intention contemplated by section 34 IPC. The arguments advanced by the Id counsel do not in any measure lead to an indefeasible conclusion at this stage that the common intention can be ruled out.

Hence, accused Dilip @ Sumit is also liable to be tried for the offence under section 302 IPC with co-accused Babloo @

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Mohd Kaushar by application of section 34 IPC.

Since accused Dilip @ Sumit was declared a proclaimed offender upon his failure to join investigation, charge is also liable to be framed against him under section 174-A IPC.

Charge has been framed against accused Babloo @ Mohd Kaushar and accused Dilip @ Sumit under section 302/34 IPC to which both accused have pleaded not guilty.

Charge has been separately framed against accused Babloo @ Mohd Kaushar under section 27 Arms Act to which he has pleaded not guilty.

Charge has also been separately framed against accused Dilip @ Sumit under section 174-A IPC to which he has pleaded not guilty.

Put up for PE on 17.03.2021.

(Vishal Gogne)
ASJ-04(SW)/Dwarka Courts
16.02.2021