

**IN THE COURT OF SHRI POORAN CHAND
ADDITIONAL SESSIONS JUDGE-02 (WEST), DELHI**

New Case no.380/2020

State Vs. Shyam Bihari

FIR no.783/2019

PS :Paschim Vihar (East)

16.12.2021

ORDER ON CHARGE

1. I have heard arguments on charge from both sides and have perused the record and the evidence relied by the prosecution.
2. Ld. Counsel for accused Shyam Bihari has vehemently argued that it was sudden fight under provocation caused by deceased. Hence, there was no mens-
era on the part of the accused. It is also argued that for charging the accused for the offence u/s. 302 IPC there must be intention or knowledge coupled with mens-
era. It is further argued that during the scuffle deceased fallen on the ground by push off the accused and his head hit on the bricks. Therefore, no offence u/s. 302 IPC is made out against the accused. Even no offence u/s. 304 IPC is made out against the accused. At the most offence u/s. 304A IPC can be made out against the accused for negligence of accused. Hence, it is argued that since accused has been falsely implicated in this case, he may be discharged.
3. Per contra, it is vehemently argued on behalf of State by Ld Addl. PP that at the stage of charge only prima facie case is to be seen. It is further argued that there

are statements on record u/s. 161 Cr.PC of eye witnesses who had categorically stated in their statement that accused hit the deceased from the bricks on his head. Hence, arguments of Ld. Counsel for accused does not hold any substance in view of the statement of prosecution witnesses at this stage. It is further argued that since accused had hit the deceased by bricks, the element of mens-
era, knowledge and intention are there, hence, prima facie offence u/s. 302 IPC is made out against the accused.

4. At the stage of charge, the Court is not required to enter into the realm of evidence bit by bit but has to form a prima-facie opinion regarding the commission of offence for which accused Manish has been charged with.
5. The Hon'ble Apex Court in Soma Chakravarty Vs. Stated through CBI (2007) 5 SCC 403 has beautifully summed up the position as under :

“The settled legal position is that if on the basis of 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. At the time of framing of the charges the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution has to be accepted as true. 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. Whether, in fact, the accused committed the offence, can only be decided in the trial. Charge may although be directed to be framed when there exists a strong suspicion but it is not also trite that the Court must come to a prima facie finding that there exist some materials therefor. Suspicion alone, without anything more, cannot form the basis therefor or held to be sufficient for framing charge.”

6. I have perused the statement of above named prosecution witnesses and other documents and scientific evidence and in view of the facts and circumstances of the case, prima facie offence u/s. 302 IPC is made out against accused Shyam Bihari. Hence, order accordingly. Separate charge be drawn accordingly.

(Pooran Chand)
ASJ-02/West/Delhi
16.12.2021