

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

New Case no. 449/2021
State Vs Tejpal Singh @ Baba and another
FIR no.33/2021
PS:Paschim Vihar(East)

03.03.2022

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 Manjeet Singh @ Sunny has vehemently argued that accused is falsely implicated in this case without legally admissible evidence. It is also argued that present FIR is registered on GD no. 44A recorded on the basis of information of mother of deceased who visited the PS alongwith deceased Harish with stab injury but the said GD does not bear the name of any eye witness nor the mother of deceased named any accused in the information. It is also argued that the only eye witness relied by the prosecution is PW Rinku. Perusal of statement of PW Rinku shows that he is not the eye witness of the crime and is a planted witness. It is also argued that in the statement of mother of the deceased there is no incriminating fact mentioned against the accused. It is also argued that prosecution has filed the challan u/s. 302 IPC but

from the evidence relied by the prosecution no offence u/s. 302 IPC is prima facie is made out as there is no intention or knowledge transpired from the statement of PW Rinku. It is also argued that for the offence u/s. 302 IPC there must be intention to kill but in the present case from the statement of PW Rinku there was no intention to kill. It is also argued that only one knife stab injury caused to the deceased which shows that assailant was not having any intention to kill. Hence, it is prayed that accused may be discharged.

3. On behalf of accused Tejpal Singh @ Baba Jamnu, Ld. LAC has adopted the above arguments and has further argued that accused is falsely implicated as he has not caused any stab injury with the knife as alleged by PW Rinku. Ld. LAC has also argued that accused who is present in the court is not having thumb of his right hand and as such he cannot hold the knife as alleged. It is also argued that accused has not destroyed the alleged knife used in the crime. Hence, it is prayed that accused may be discharged.
4. Per contra, Ld Addl. PP for State has fairly conceded to the argument advanced on behalf of accused persons that from the evidence available on record, offence u/s. 304 Part (I) IPC prima facie made out as there was no intention to kill. Ld. State Counsel has further argued that the argument of Ld. Defence Counsel to the extent that injured himself has asked to cause injury with a view to self inflicting injury to save himself from the counter complaint lodged by the other party but accused while causing the injury with the knife willfully stabbed the deceased in stomach and due to said injury deceased scummed to the death. It is also argued that after the incident accused persons burnt the said knife (used in

the commission of offence) with a view to destroy the evidence. It is also argued that so far as argument of Ld. Defence Counsel on the statement of PW Rinku is concerned, the said statement can only be tested during trial and not at this stage. It is also argued that at the stage of charge only prima facie case is to be seen. Hence, it is prayed that from the material on record prima facie offence u/s. 304(I)/201/34 IPC is made out against both the accused persons.

5. 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 the accused persons have been charged with.
6. 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.”

7. This court is in agreement with the submissions made by Ld. State Counsel that at the stage of charge only prima facie case is to be seen. This court has minutely perused the statement u/s. 161 Cr.PC of PW Rinku, who is cited as an eye witness of the incident. From the perusal of entire statement the basic ingredient of section 302 IPC i.e. intention to kill is missing as assailant were having intention only to cause “simple injury”. Hence, present case does not fall under the category of section 302 IPC.

8. In view of the above reason and settled preposition as mentioned above, having considered the report u/s. 173 Cr.PC, coupled with complaint and statement of the PW Rinku u/s. 161 Cr.PC, prima facie offence u/s. 304(I)/201/34 IPC is made out against both the accused persons. Hence, separate charges be drawn accordingly.

(Pooran Chand)
ASJ-02/West/Delhi
03.03.2022