

id-mohd. Vs. State

id-mohd. Vs. State

SooperKanoon Citation : sooperkanoon.com/687437

Court : Delhi

Decided On : Mar-13-2002

Reported in : 2002IVAD(Delhi)100; 2002CriLJ4171; 97(2002)DLT776; 2002(62)DRJ338

Judge : B.A. Khan and; V.S. Aggarwal, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 389; Arms Act - Sections 27, 34 and 302; Indian Penal Code (IPC), 1807 - Sections 302

Appeal No. : Crl. M. No. 541/2001 in Crl. A. No. 167/2001

Appellant : id-mohd.

Respondent : State

Advocate for Def. : Ravinder Chadha, Adv.

Advocate for Pet/Ap. : Alamgir, Adv

Judgement :

V.S. Aggarwal, J.

1. Appellant seeks suspension of the sentence invoking Section 389 of the Code of Criminal Procedure. Needless to state that learned Additional Sessions Judge held the appellant guilty for offences punishable under Section 302/34 and 27 of the

ArmsAct.

2. The facts of the prosecution case in brief as alleged are that on 21st November, 1997 an information was received from public telephone at 9.40 am that the dead body of the young man is lying at Tuglakabad Extension opposite gali No. 13-B. This set the law into motion. The police found that a young man of about 25/26 years was lying in a pool of blood. A blood stained blade of khukhri was lying at a distance. There were no eye witness available at the spot. From the possession of the deceased one chit of Mangolia factory was recovered. On basis of that chit the owner of Mangolia factory Mr. Amet Mohd. and Master Abdul Sattar were interrogated. The said owner informed the police that three tailors namely Mohd. Islam, Raju and Mohd. Irsad used to work collectively on a single tailoring card in the factory. The card had been issued in the name of Mohd. Islam. All the three were not coming to the factory from 18-11-97 onwards. Mohd. Islam had been arrested at the identification of Master Abdul Sattar. A disclosure statement purported to have been made regarding the alleged participation of the applicant. Mohd. Irsad even got recovered a khukhri with blood stained from Tuglakabad fort. The applicant was arrested at the instance of Mohd. Irsad.

3. On the basis of disclosure statement of the applicant handle of the knife was got recovered which was alleged to have blood stained. The same had been taken into possession. The blade of the knife purported to had been recovered at the instance of Mohd. Irsad and the handle recovered at the instance of the applicant had been sent to CFSL for forensic examination. The police alleged that blood group present on the blade of khukhri and handle and also on the clothes alleged to have been recovered at the instance of Mohd. Irsad and which included the clothes of Id. Mohd. applicant tallied with the blood group of the deceased.

4. The learned trial court had believed the prosecution version and concluded that the evidence on the record establishes beyond all reasonable doubts the involvement of the appellant/applicant and passed the impugned order also referred to above.

5. Learned counsel for the applicant submitted that it was simply a recovery purported to have been effected at the instance of the applicant and that would not

be sufficient by itself to hold the applicant guilty of the offence punishable under Section 302 of the Indian Penal Code. In support of his arguments he refers to the decisions of the Supreme Court in the case of State of Maharashtra v. Madhukar Govind Pakhare : AIR 1998 SC2978 and case of Prem Prakash Mundra, etc. v. State of Rajasthan and Anr., etc. : 1998 CriLJ1620 . Besides the earlier decision of the Supreme Court in Prabhoo v. State of Uttar Pradesh : [1963]2SCR881 .

6. On the contrary the learned State counsel drew our attention to the decisions of the Supreme Court in the Gulab Chand v. State of M.P. : [1995]3SCR27 .

7. In the case of Gulab Chand a presumption was drawn where murder and robbery forming integral parts of the same transaction. Ornaments of the deceased were recovered from the possession of the accused and he was dealing with the ornaments after the occurrence. Accused was not affluent enough to possess the said ornaments. There was no lawful Explanation regarding possession of the ornaments. A presumption was made that accused committed both the offences. It is patent that the cited case is distinguishable from the facts of the present case.

8. At this stage having stock of the totality of the fact and certain infirmities that were pointed out we suspend the sentence of the appellant during the pendency of the appeal on his executing a personal bond of Rs. 15,000/- with two sureties in the like amount to the satisfaction of the trial court.

9. We make it clear by way of abundant caution that nothing said herein be taken as any expression of opinion on merits of the matter.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com