

Smt. Farida Dar Vs. State

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SooperKanoon Citation : sooperkanoon.com/689229

Court : Delhi

Decided On : Mar-28-2000

Reported in : 2001IVAD(Delhi)494; 91(2001)DLT531; 2001(59)DRJ94

Judge : Mr. R.C. Chopra, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 173, 397, 401 and 482; [Indian Penal Code \(IPC\), 1860](#) - Sections 120-B, 124-A, 212, 227, 302, 307, 323 and 436; [Explosive Substances Act, 1908](#) - Sections 3, 4 and 5

Appeal No. : Crl. R.No. 611/2000 & Crl.M.No. 2077/2000

Appellant : Smt. Farida Dar

Respondent : State

Advocate for Def. : Mr. M.S. Butalia, Adv.

Advocate for Pet/Ap. : Mr. Aman Lekhi and; Mr. Ajay Jain, Advs

Judgement :

ORDER

R.C. Chopra, J:

1. This Revision Petition under Section 397, 401 read with Section 482 of the Code of Criminal Procedure is directed against an order dated 20th November, 2000 passed by learned Additional Sessions Judge, New Delhi for framing charges

against the petitioner under Section 120B read with Section 436 124A IPC and Sections 4 and 5 of the Explosive Substances Act. The petition arises out of a case commonly known as 'Lajpat Nagar Bomb Blast Case'.

2. The facts relevant for the disposal of this petition briefly stated are that on 21.5.1996 at about 6.45 p.m., there was a bomb blast in Central Market, Lajpat Nagar, New Delhi resulting in the death of 14 persons and injuries to 38 besides extensive damage to immovable and movable property. An FIR was lodged and investigations were taken up.

3. The first lead for the investigators came from the phone calls received by the media on 21.5.1996 purportedly from Jammu Kashmir Islamic Front, taking responsibility for the bomb blast. The calls were traced to Anantnag, Kashmir and were emanating from Telephone No.22135. The Jammu & Kashmir Police was contacted which arrested accused Farooq Ahmer Khan and the petitioner. It was discovered that Farooq Ahmed Khan, claiming to be the Chief Spokesman of Jammu Kashmir Islamic Front, had made phone calls to several news agencies immediately after the bomb blast and informed them that his Organisation was responsible for the bomb explosion. In the course of investigations, it was further found that from the telephone of Farooq Ahmed Khan on 21.5.1996 itself, calls were made to Press Trust of India, N D Tonight, Zee TV and to the petitioner on phone No.32221 which was installed at her residence. On 22.5.1996 also, similar calls were made out of which 14 calls were made to the petitioner on her aforesaid phone. On 2.6.1996, some of the co-accused were arrested at Ahmedabad, Gujrat and their interrogations revealed that the conspiracy was hatched at Rawalpindi, Pakistan in the first week of March, 1996 and large consignments of RDX, Remote Control Devices, Time Pencils, Walkie-Talkies etc. were sent to India. Initially, the plan was to cause bomb explosions on 17th and 18th May, 1996 in Delhi but on account of certain intervening factors, the plan could not succeed.

4. On 7.6.1996 on the basis of a disclosure statement of the petitioner, her house in Sri Nagar was raided and on her pointing out, RDX, Timers etc. were recovered. From the house of co-accused Farooq Ahmed Khan, also arms and ammunition

was recovered and some incriminating documents were also recovered including a booklet, in which the petitioner was eugolized as Khutun-e-Kashmir who was talking leading part in the so called liberation of Kashmir. Further, investigations led to the arrest of a number of accused, and seizure of arms, ammunitions and other articles used for causing bomb explosions at Lajpat Nagar. A challan, therefore, under Section 173 Code of Criminal Procedure was filed against the petitioner and her co-accused under Section 120B, 302 307, 323, 212, 124A IPC, Section 3, 4 and 5 of Explosive Substances Act and Arms Act. The learned Trial Judge vide impugned orders dated 20.11.2000 held that a charge under Section 120B for causing murder, attempt to murder and under Section 436 IPC, 124A IPC and 4 and 5 of the Explosive Substances Act was made out against her.

5. I have heard learned counsel for the petitioner Mr. Aman Lekhi and learned counsel for the State Mr. M.S. Rutalia. I have gone through the records of the case.

6. Learned counsel for the petitioner has vehemently argued that there is not even an iota of evidence with the prosecution to warrant a charge under Section 120B of the IPC against the petitioner for connecting her with Lajpat Nagar bomb blast and putting her to trial for the offences referred to above. He submits that her mere association with those who were fighting for a cause in Kashmir, relationship with any conspirator and recovery of RDX after the incident do not suggest that she was a party to conspiracy for the bomb blast in question. He also submits that even if she had knowledge about any conspiracy for this bomb blast or had sympathy with those who were responsible for this bomb blast, that would not be a ground for presuming the she was in conspiracy for the commission of the said offence. Relying upon the judgments reported in : (1981)83BOMLR553 and : 1999 CriLJ3124 , learned counsel for the petitioner has argued that a charge for conspiracy under Section 120B IPC was not at all warranted against the petitioner and she ought to have been discharged under Section 227 of the Code.

7. On the other hand, learned counsel for the State has argued that a grave suspicion exists to presume that the petitioner was also a con-conspirator in the matter of the bomb blast in question and as such, the charge has been rightly

framed. According to him, the phone calls made to her on her telephone by the very person who was claiming responsibility for the bomb blast, recovery of RDX etc, from her house and the recovery of a booklet to show that she was taking a leading part in the terrorist activities, were sufficient for framing a charge against her.

8. While examining an order on charge, the Revisional Court must keep in mind that it should not substitute its own view in place of the view taken by the Trial Court unless it is patently perverse or without any legal basis whatsoever. Meticulous examination of the material is not to be undertaken at this stage. Their Lordships of the Supreme Court of India in 'Stree Atyachar Virodhi Parishad Vs . Dilip Nathumal Chordia & Anr.' : [1989]1SCR560 gave a note of caution to the Revisional Courts in this regard.

9. In Som Nath Thapa's case reported in 1996 Criminal Law Journal 2448, the Apex Court laid down the principles, governing the framing of the charge in the following words:

'The aforesaid shows that if on the basis of materials on record, a Court could come to the conclusion that commission of the offence is a probable charge exists. To put it differently, in the Court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of charge, probative value of the material on record cannot be gone into; the material brought on record by the prosecution has to be accepted as true at that stage.'

10. In 'Datatraya Narayan Samant & Ors. Versus State of Maharashtra' reported in 1982 Criminal Law Journal 1025, their Lordships held that the most important ingredient of the offence of conspiracy is the agreement between the two or more persons to do an illegal act and it has to be proved by positive evidence. It was held that an exhortation to violence in general is not the same thing as an agreement to commit an offence. In 'Kehar Singh & Ors. Versus State' : 1989 CriLJ1 their Lordships again considered the question of inferring a conspiracy and held that there must be evidence to indicate that the accused was in agreement

with the other accused to do an act which was the ultimate object of the conspiracy. In 'State Versus Nalini' : 1999 CriLJ3124 , the Apex Court examined in detail the evidence required for proving conspiracy and laid down some broad principles in para 583 thereof. It was clearly held that acts subsequent to the achieving of the object of conspiracy may tend to prove that a particular accused was party to the conspiracy. It was also held by their Lordships that the conspiracy is hatched in privacy and secrecy and as such, it is rarely possible to establish a conspiracy by direct evidence. It was observed that usually both the existence of the conspiracy and its object have to be inferred from the circumstances and conduct of the accused. It was held that it was not necessary that all the conspirators should agree to the common purpose at the same time and they may join with others at any time before the consummation of the intended object. It is the unlawful agreement, and not its accomplishment which is the gist or essence of the crime of conspiracy which need not be formal or expressed but may be inherent in and inferred from the circumstances, especially declarations, acts and conduct of the conspirators.

11. The judgments relied upon by learned counsel for the petitioner to contend that there were no grounds at all for framing a charge under Section 120B of the IPC propound the basic principle that for establishing a criminal conspiracy, the prosecution must place on record some connecting link or connecting evidence in regard to the meeting of minds of the conspirators for achieving the board object. Motive may not be an important factor for proving an offence where ocular evidence is available but in case of conspiracy, motive provides the basis for the joining of hands by the conspirators. The law relating to the proof of conspiracy came up for in-depth consideration and examination in Kehar Singh's case as well as Nalini's case referred to above and the principles discussed therein must engage the attention of the Courts while examining the allegations of conspiracy. At the stage of charge even a grave suspicion can be a basis for framing of charge if facts and circumstances placed on record, considered in totally, are suggestive of one' being in conspiracy.

12. In the present case the petitioner was not present at Delhi at the time of the Bomb explosion in question and there is no direct evidence with the prosecution to

show that she was present in any meeting with the conspirators when the conspiracy was hatched. However, there are certain circumstances which raise a strong suspicion regarding her involvement in the conspiracy for bomb explosion and these are that the person who telephoned the media soon after the bomb blast was making repeated calls to her also as many as 14 calls were made by him to her. The calls made by him to the media owning responsibility for the bomb blast amounted to extra judicial confession of the offence and his connection with the petitioner coupled with recovery of RDX and other material from the house of the petitioner raise a strong suspicion that she was also a party to the conspiracy for the bomb blast in question. The motive is also clearly established on the basis of a booklet recovered by the prosecution in which the petitioner was for her role in the cause of the Kashmir. In a case of conspiracy usually the investigators are not in a position to collect direct evidence of the conspiracy but if there is some material to raise an inference of conspiracy, the Court would be justified to presume the existence of conspiracy and put all those on trial who seem to be involved therein.

13. In the result, this Court is of the considered view that the prosecution has placed sufficient material on record for raising a strong suspicion against the petitioner about her complicity in the matter of bomb blast in question and for prima facie believing that she was also one of the conspirators. The charges, therefore, as framed against her call for no interference.

14. The petition, thus, stands dismissed.

15. Nothing stated herein shall be taken as an expression of opinion on the merits of the case pending before the Trial Court.