

Bhim Singh Vs. State

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Court : Delhi

Decided On : Jul-06-1992

Reported in : 48(1992)DLT402

Judge : Dalveer Bhandari, J.

Acts : Arms Act - Sections 27; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 161, 227, 228, 397 and 401; [Indian Penal Code \(IPC\), 1860](#) - Sections 307

Appeal No. : Criminal Appeal No. 42 of 1990

Appellant : Bhim Singh

Respondent : State

Advocate for Pet/Ap. : D.R. Sethi and; B.D. Batra, Advs

Judgement :

Dalveer Bhandari, J.

(1) The petitioner has filed a revision petition under Section 397/401 of the Code of Criminal Procedure, 1973 against the order dated 21.12.1989 of Shri P.K.Dham, Additional Sessions Judge, Delhi. directing the framing of charge under Section 307 of the Indian Penal Code and under Section 27 of the Arms Act.

(2) The learned Additional Sessions Judge framed the following charge:

'THAT on 12.7.88 at 10.20 P.M. near village Alipur, Delhi, caused such bodily injury with gun shot to Dharam Pal with such intention or knowledge or under such circumstances that if by that act death of Dharam Pal was caused you will be guilty of culpable homicide amounting to murder and thereby committed an offence punishable under Section 307 Indian Penal Code and within the cognizance of this Court. Secondly on the aforesaid day, time and place you were found in possession of a 12 bore double barrel gun which you used for unlawful purpose i.e. causing injuries to Dharam Pal and thereby committed an offence punishable under Section 27 Arms Act and within the cognizance of this Court.'

(3) The petitioner has filed this petition on the ground that the learned Additional Sessions Judge has erroneously framed charge under Section 307 of the Indian Penal Code read with Section 27 of the Arms Act, as it is contrary to the available material and documents of the case. The principal submission of the learned Counsel for the petitioner Shri D.R. Sethi has been that the report of the Central Forensic Science Laboratory completely demolishes the case of the prosecution and in view of the report of the Cfsi, no charge under Section 307 read with Section 27 of the Arms Act can be framed. The report of the Cfsi is dated 29.12.89. Since the entire controversy in this case revolves the Cfsi Report, therefore, it would be appropriate to recapitulate the relevant portion of the Cfsi Report. The results of, the examination are set out as under: The Result of Examination

(i) The 12-bore Dbbl Gun (Marked W/1) of Parcel No. 7 is not in working order in its present condition & products of combustion of cartridge powder could not be detected in the barrels of this gun (marked W/1) in question. (ii) The 12-bore cartridge case (marked C/1) of parcel No. 6 could not be linked with the 12-bore Dbbl Gun (Marked W/1) in question for want of sufficient characteristic marks on the fired case (marked C/1) and in the absence of proper tests from the gun (marked W/1). This cartridge case (marked C/1) is of the same make as that of the five 12-Bore cartridges (marked C/2 to C/6) of parcel No. 7. (iii) The five 12-bore cartridges (marked C/2 to C/6) of parcel No. 7 are live cartridges. (iv) No gun shot

/pallet hole could be found on the 'Kurta' & 'Pajama' of parcel No. 1.

There are two significant features of the report. One is that the 12- bore Dbbl gun which was seized from the accused was not in a working condition and product of combustion of cartridge powder could not be detected in the barrels of this gun. Another main feature of the C.F.S.L. Report is that no gun shot or pallet holes were found in kurta and pajama of the injured.

(4) According to Shri D.R. Sethi, learned Counsel for the petitioner, the Cfsi Report totally demolishes the case of the prosecution and by no stretch of imagination the petitioner could have inflicted gun shot/pallet injuries to Dharam Pal as alleged by the prosecution, therefore, gun shot pallet injuries could not have been caused by the gun in question. Shri Sethi further submitted that no pallets were recovered. This fact also runs counter to the prosecution version.

(5) Shri Sethi expressed his apprehensions, that admitted past enmity of the petitioner with the accused may have been the main cause of his false application in the instant case. The injured in his statement under Section 161 of the Code of Criminal Procedure had admitted that he had litigation and enmity with the petitioner Bhim Singh. He has referred to Legal Medical Toxicology by Gonzales, Wannece and Halpern against the prosecution case and they read as under :

'IF the gun is fired from a distance of several feet or more, the bullet perforation will be the only mark on the target caused by the charge. Occasionally the metal of the bullet fouls the edges of the perforation, especially a lead bullet which has passed through light coloured clothing. The distinguishing action of black powder on a surface, at close range is to produce severe flame marks considerable smoke stains and coarse tattooing from partly burned or unburned powder grains.'

He further submitted that whenever there is a bullet injury, the flame marks, the smoke stains, tattooing of the skin and the clothes worn by the injured are bound to be there which are totally absent in this case. This factor also demolishes the case of the prosecution. Shri Sethi pointed out another significant conclusion of the C.F.S.L. Report where it is mentioned that no hole was found on the kurta or pajama of the injured. In case of a gun shot injury it is inconceivable that the

injured receives an injury without there being a hole in his kurta and pajama.

(6) According to Shri Sethi credibility of the prosecution version is completely shaken, when no bullet or pellets were recovered. All these facts and circumstances put together have taken away the entire substratum of the prosecution case and the learned Additional Sessions Judge was not justified in framing of the charge under Section 307 Indian Penal Code . and under Section 27 of the Arms Act in the instant case. The order of the Addl. Sessions Judge is totally erroneous, manifestly unjust and has led to a serious miscarriage of justice.

(7) Learned Counsel appearing for the petitioner has cited the celebrated judgment of the Supreme Court Union of India v. Prafulla Kumar Samal and Another, : 1979 CriLJ154 in support of his submission. In this case, the Court has held that the Judge while considering the question of framing of charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. In para 10 of the Judgment, the Court further observed :

'(1)That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima fade case against the accused has been made out; (2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial. (3) The test to determine a prima fade case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused. (4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced Court cannot act merely as a Post-Office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the

documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.'

(8) Shri Sethi, has also drawn attention of this Court to Judgment of the Supreme Court *Century Spinning and . v. The State of Maharashtra*, : 1972 CriLJ329 . In this case, the Court has arrived at the conclusion that it cannot be said that the Court at the stage of framing the charges has not to apply its judicial mind for considering whether or not there is a ground for presuming the commission of the offence by the accused. The order framing the charges does substantially affect the person's liberty and it cannot be said that the Court must automatically frame the charge merely because the prosecuting authorities by relying on the documents referred to in Section 173 consider it proper to institute the case. The responsibility of framing the charges is that of the Court and it has to judicially consider the question of doing so. Without fully advertent to the material on the record it must not blindly adopt the decision of the prosecution.

(9) The Supreme Court in this case has held that the trial Court rightly came to the conclusion that the prosecution for the offence charged was groundless. Order of discharge made by him was eminently just and fair order.

(10) The learned Counsel for the petitioner has cited a few leading judgments of the Supreme Court and of this Court to demonstrate the consequence of inconsistency between medical evidence and that of ballistic expert. Learned Counsel has also drawn attention of this Court to *Ram Narain and Others'* .*The State of Punjab*, : 1975 CriLJ1500 . The Court observed in this case that, where the evidence of the witnesses for the prosecution is totally inconsistent with the medical evidence or the evidence of the ballistic expert, this is a most fundamental defect in the prosecution case and unless reasonably explained it is sufficient to discredit the entire case. In this case, the Court has referred the earlier Judgment of the Supreme Court *Mohinder Singh v. The State*, : [1950]1SCR821 . In the said case, the Court observed,

'IN a case where death is due to injuries or wounds caused by a lethal weapon, it has always been considered to be the duty of the prosecution to prove by expert evidence that it was likely or at least possible for the injuries to have been caused with the weapon with which and in the manner in which they are alleged to have been caused. It is elementary that where the prosecution has a definite or positive case, it is doubtful whether the injuries which are attributed to the appellant were caused by a gun or by a rifle.'

(11) Learned Counsel has invited the attention of this Court to a Division Bench Judgment of the Calcutta High Court Sati Kanta Guha and Another v. The State of West Bengal 1977 Cr.L.J. 1644. In this case, the Court has held that, for the purpose of framing charge under Section 228, Cr.P.C., the Judge is to consider judicially whether on consideration of the materials on record, it can be said that the accused has been reasonably connected with the offence alleged to have been committed and that on the basis of the said material there is a reasonable probability or chance of the accused being found guilty of the offence alleged. If the answer is in the affirmative the Judge will be at liberty to presume 'that the accused has committed an offence' as mentioned in Section 228 of the Code for the purpose of framing charge. On the contrary, if the answer is in the negative for want of sufficient material, the Judge shall discharge the accused, as no charge can be framed. The Court in this case has further observed that Section 227 read with Section 228 of the Cr.P.C. is a precious safeguard so to express, a pre-battle protection conferred by Parliament in its wisdom upon accused persons charge sheeted by the Police for trial in a Court of Sessions without collecting and collating materials sufficient to warrant a fullfledged trial. This provision in law is calculated to eliminate further harassment to the accused persons when the evidence and materials gathered after a prolonged and thorough investigation of the occurrence fall short of minimum legal requirement. thereforee, this provision of law cannot be reduced into a dead letter and accused persons made to undergo the rigour of a futile trial, where such a trial on material available is palpably not warranted against them. The learned Counsel has also cited State v. Hanuman Dass 1988 CCC 266 Chawla, J. of this Court in this case observed that,

'FOR the purpose of determining whether there is a sufficient ground for proceeding against an accused, the Court possesses comparatively wider discretion in the exercise of which it can determine the question whether the material on record is such on the basis of which a conviction can be said reasonably to be possible. However, the Court is entitled to sift and weigh the evidence which has come on record as to whether or not a prima fade case against the accused persons has been made out. The Court is not expected to frame the charge mechanically but has to exercise its judicial mind to the given facts of the case.'

The ratio of this case is also that charge ought not to be mechanically prepared but there has to be proper application of mind.

(12) Shri B.D. Batra, learned Counsel for the State, has submitted that the learned Additional Sessions Judge was justified in framing the charge because at this stage, there cannot be meticulous scrutiny of the material. The revision petition filed by the petitioner is totally devoid of any merit and deserves to be dismissed.

(13) therefore, the ratio which is derived from these judgments is that the stage of framing of charges is an important stage in the criminal trial and the Judge concerned has to carefully evaluate and consider the entire available material on record and he must judiciously apply his mind regarding framing of charges erroneously would mean futile criminal prosecution for several years. The responsibility of the Judge concerned is particularly far greater in our country because of long delay in criminal trials and final disposal of criminal cases. Long prosecution invariably leads to the tremendous harassment, mental agony and immense distress. therefore, there has to be proper judicial scrutiny before framing of charges and rigour of futile criminal prosecution and trials should be avoided. Similarly, if the accused is guilty of a serious offence and if there is no proper scrutiny or application of mind and proper charge is not framed, then a person guilty of a very serious offence may ultimately go totally unpunished because of the lapse of the prosecution and/or the Court, therefore, the stage of framing of charge is a very vital stage and proper application of mind at the stage of framing of charges can avoid injustice in large number of cases.

(14) When principles laid down by various judgments are applied to the facts of this case, then the conclusion is irresistible. The petitioner was charged under Section 307 of the Indian Penal Code and under Section 27 of the Arms Act on the ground that the petitioner has used fire arms and caused the injuries.

(15) Charges were framed on 29th January, 1989 and the report of the Cfsi was made available to the Court after framing of the charge. Cfsi report is extremely significant in this case. In the instant case, credibility of the prosecution case has been profoundly shaken because of the Cfsi report. In the result of examination, the senior scientific officer who wrote the report has taken away entire substratum of the prosecution version. In a case of this nature the Court in all probability ought to have framed charges after receiving Cfsi Report.

(16) The question now arises that when the gun itself could not be fired then how can the accused be blamed for causing gun shot pallet injuries. It has been further mentioned that the 12-bore cartridge case (marked C/1) of parcel No. 6 could not be linked with the 12-bore Dbbl gun (marked W/1) in question for want of sufficient characteristic marks on the fired case (marked C/1) and in the absence of proper tests from the gun (marked W/1). This cartridge case (marked C/1) is of the same make as that of the five 12-bore cartridges (marked C/2 to C/6) of Parcel No. 7.

(17) Concluding portion of the C.F.S.L. report is extremely important in which a categorical finding has been given, that no gun shot/pallet hole could be found on the kurta and pajama of parcel No. I. There is no basis whatsoever for entertaining any doubt regarding truthfulness of the C.F.S.L. report and when the report is accepted, then the entire prosecution version stands nullified. From this report, two things are quite clear that gun in question has not been fired and that when no gun shot/pallet holes could be found on the kurta and pajama of parcel No. I, then it is difficult to connect the accused with the crime.

(18) The question which arises for consideration is that when the accused cannot prima fade be connected with the crime on the available documents and material on record, then why should the accused be compelled to undergo the rigmarole of a criminal trial for several years. Non interference by this Court at this juncture would lead to serious and grave consequences leading to manifest injustice. The

accused shall have to face criminal prosecution of a futile trial for several years for prima facie committing no offence. A careful analysis of the C.F.S.L. Report leads to the conclusion that the petitioner cannot be connected with the charge under Section 307, Indian Penal Code and Section 27 of the Arms Act.

(19) The Supreme Court has observed that a very vital right of the individual is affected when he has to undergo a trial. therefore, the Courts have to be extremely careful at this stage because it is really a question of the individual's very important right which is curtailed or abridged to a large extent when he has to undergo the criminal prosecution of a futile trial.

(20) It may be relevant to mention that at the stage of framing of the charge, the learned Judge does not have to record the evidence, and evaluate the case from this angle whether the available material and evidence would lead to conviction of the petitioner/accused? But at the same time, if it can be established beyond any doubt that evidence on which prosecution is proceeding

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