

Vikram Malik Vs. the State

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Court : Delhi

Decided On : Feb-10-2005

Reported in : 119(2005)DLT663

Judge : Manju Goel, J.

Acts : Indian Penal Code (IPC) - Sections 34, 307 and 452

Appeal No. : Criminal Revision Petition No. 539 of 2004

Appellant : Vikram Malik

Respondent : The State

Advocate for Def. : Richa Kapoor, Adv.

Advocate for Pet/Ap. : Amit Bajaj, Adv

Disposition : Petition allowed

Judgement :

Manju Goel, J.

1. The revision petition is directed against the order framing charges and the charges framed by the Additional Sessions Judge under Sections 452/34 and 307/34 of Indian Penal Code.

2. The petitioner, Vikram Malik, is the son of the principal accused Sandeep Malik. He pleads that no charge could be framed against him by using Section 34 of IPC. As per the allegations against him he did nothing except having accompanied the principal accused to the premises of the complainant. The gist of the FIR, which was recorded at the instance of the complainant Dinesh Gogna, is that Rs.56 lakhs were due from Sandeep Malik in respect of which Sandeep Malik had given him a note; that on the fateful day Sandeep Malik and his son Vikram Malik entered his shop and Sandeep Malik threatened the complainant and demanded the hand-written note for Rs.56 lakhs at that very moment which the complainant refused and that thereon Sandeep Malik suddenly attacked him with a knife which he had brought concealed in the shawl. Further it is alleged in the complaint that as Rakesh Kumar, also present at the spot, came to save him. Rakesh Kumar fell on the ground and Sandeep Malik hit Rakesh with intention to kill him and as the complainant raised an alarm and people gathered there, Sandeep Malik and Vikram Malik were overpowered.

3. It is clear that the allegations against Vikram Malik is simply that he had accompanied Sandeep Malik to the shop of the complainant. There is no specific allegation that Vikram Malik participated in the crime, namely, attacking the complainant with a knife or injuring Rakesh Kumar with intention to kill. There is no allegation that Vikram Malik helped in the commission of the offence in any way. There is no allegation that he knew that the principal accused Sandeep Malik was carrying a knife under his shawl. The question is whether in this situation, he can be charged for the same offences for which Sandeep Malik was charged by use of Section 34 of IPC.

4. It is contended on behalf of the State that Sandeep Malik was a known criminal and the petitioner being his son must have known that Sandeep Malik was going to the shop with intention to commit a crime. This kind of inference, however, cannot be drawn from whatever is available in the complaint made to the police. There is no overt or covert act alleged against the petitioner in this case. Nor is there any allegation that the petitioner in any way had conspired with the principal accused.

5. The learned counsel for the petitioner has referred to several judgments but I think it will suffice to mention the judgment of the Supreme Court in the case of Suresh and Anr. v. State of U.P. reported as : 2001 CriLJ1462 . In this case the appellant before the Supreme Court was the wife of the principal accused and she was seen standing on the road while the others were committing the offence inside the house. It was observed by the Supreme Court that she could have reached the spot hearing the sound of commotion or she would have merely followed her husband and brother out of curiosity since they were going armed with axe and choppers during wee hours of the night. It was held that she could not be charged or convicted for the offence simply on account of her presence. Two postulates which are indispensable to attract Section 34 IPC have been given in this judgment as (i) the criminal act should have been done not by one person but by more than one person; and (ii) doing of every such individual act cumulatively resulted in the commission of crime which should have been in furtherance of common intention of all such persons.

6. The court further observed that looking at the first postulate stated above the accused cannot be fastened with the liability on the strength of Section 34 IPC as she had not done any act which had nexus with the offence. The presence of the appellant near the spot it was held, did not have any nexus with the offences and, therefore, Section 34 was not attracted. In the case before the Supreme Court the appellant was more likely to know of the offence to be committed because the offence was committed in the wee hours and the offenders, her relatives, were armed with axe and choppers and were entering the house of the victims . Probably she followed her husband and other members of the family up to the road outside the house in which the offence was committed. In the present case the inference of knowledge is further bleak because the offence was committed in the shop which can be visited by anyone in the normal course of its work. Further the ostensible purpose of the visit was to recover the note and not to injure.

7. In view of whatever is alleged against the petitioner no nexus between the petitioner and the offence can be seen. In view of the above, I allow the revision petition and set aside the charges framed against the petitioner by the learned A.S.J. The petitioner is discharged.

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