

Upinder Singh Vs. State and ors.

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Court : Delhi

Decided On : Nov-23-2006

Reported in : 2007(93)DRJ478

Judge : Badar Durrez Ahmed, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 308, 341 and 506; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 227

Appeal No. : Crl. Rev. P. 199/2004

Appellant : Upinder Singh

Respondent : State and ors.

Advocate for Def. : Richa Kapoor,; R.K. Singh, Advs. for Respondent No. 2,; Nee

Advocate for Pet/Ap. : Vikas Arora, Adv

Judgement :

Badar Durrez Ahmed, J.

1. This revision petition is directed against the order dated 20.12.2003 whereby the respondent Nos. 2 and 3 have been discharged of the alleged offences under Sections 308/506/341/34 IPC. The facts in brief as stated in the impugned order itself are as under:

1. On the statement of complainant, recorded on 2.4.2002, FIR in the present case was registered against Tanu Kapoor and Wazid Khan. Police after investigation, has submitted a challan against both the accused persons under Sections 308, 506, 341 read with 34 IPC. Objections has been raised against framing of charge.

2. Allegations as made out in the complaint/rukka are that on 2.4.2002 at about 8.30 p.m., complainant was present at Gurudwara Bangla Sahib alongwith his office peon, Sachin. At about 9.05 p.m., when he sat in his Santro car to leave from the Gurudwara; accused Tanu Kapoor, knocked out at the window of the driver seat where the complainant was sitting. When the complainant lowered the window, he caught hold of him by his collar and asked him whether he would come to terms or he shall have to be killed. Complainant got out of the car and in the process, his turban got untied. He asked Tanu Kapoor as to what was the matter but in the meantime, four boys who had come with him, two of them carrying sticks and two of them carrying iron rods, started beating the complainant and gave blows on his head. Complainant could recognize Wazid Khan to be one of them. He did not know the names of the others but could identify them. They all threatened to kill him and left the spot by boarding a Maruti-800 car. The registration number was not noticed by the complainant. Complainant became unconscious and was taken by his office peon Sachin to the hospital.

3. The MLC of the complainant was recorded at the Ram Manohar Lohia Hospital, New Delhi, wherein his arrival is recorded on 2.4.2002 at 9.30 p.m. On medico-legal examination, a CLW on left parietal area has been recorded. Injury No. 2 can be read as 'blood present.' In the column for history, it has been recorded that patient was conscious, oriented and stable. In the left margin of the MLG, it has been mentioned that patient was unfit for statement. In the second note, it has been mentioned that the patient was fit to make statement at 7.30 a.m. on 3.4.2002. MLC also records the injury to be simple by a blunt weapon. The rukka is stated to have been recorded at 7.30 a.m. on 3.4.2002.

2. These points have been urged by the learned Counsel for the petitioner, who was the complainant in this case. The first point is that the impugned order has completely brushed aside the eye witness (Sachin) on surmises and conjectures

that there were no police or public witnesses when the place of occurrence is frequented by the public as well as by police officers. The second point urged by the counsel for the petitioner is that the MLC has also been brushed aside on the ground that the Doctor could not have given a certificate of fitness when initially the history recorded indicated the injured to be conscious, oriented and stable. Thirdly, the learned Counsel for the petitioner submits that the complainant is also an eye witness as well as an injured and he has not been discussed at all in the impugned order. The only reference to the complainant in the impugned order is with regard to his alleged enmity with the respondent No. 3's daughter.

3. The learned Counsel for the respondents submitted, on the strength of the judgment of the Supreme Court in the case of Union of India v. Prafulla Kumar Samal and Anr. : (1979) 3 SCC 4, that the respondents have been correctly discharged by the court in proper exercise of its jurisdiction under Section 227 of the Code of Criminal Procedure, 1973. The learned Counsel for the respondents laid stress on the principles set out in the decision of the Supreme Court in paragraph 10 thereof which reads as under:

10. Thus, on a consideration of the authorities mentioned above, the following principle emerge:

(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 facie case against the accused has been made out.

(2) Whether 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 of charge and proceeding with the trial.

(3) The test to determine a prima facie 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 mouthpiece 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.

In particular, the learned Counsel for the respondents submitted that the present case fell under the fourth principle mentioned above. He submitted that the court had considered the probabilities of the case, the total effect of the evidence and the documents produced before it and had also recognised the basic infirmities appearing in the case and its entirely improbable nature before coming to the conclusion that the respondents, were entitled to be discharged. It was further submitted that, while doing so, the court did not make a roving inquiry into the pros and cons of the matter and did not weigh the evidence as if he was conducting a trial. The court has undoubted power to sift and weigh the evidence but, for the limited purpose of finding out whether or not a prima facie case against the accused has been made out and this is exactly what the court has done. Therefore, according to the learned Counsel for the respondents, the impugned order does not call for any interference inasmuch as the respondents have been discharged in accordance with law.

4. Taking up the first point raised by the learned Counsel for the petitioner, it would be interesting to note the comments and findings of the learned Additional Sessions Judge in the impugned order. The same read as under:

Let us examine the evidence on record and study if the same is sufficient for conviction of the accused persons. Admittedly, the occurrence has taken place at Gurudwara Bangla Sahib at about 9.00 p.m. in the month of April. A judicial notice can be taken of the fact that Gurudwara Bangla Sahib is a highly frequented and thickly crowded place almost throughout the day and even during late: hours. The

only eye witness to the occurrence cited by the prosecution is One Sachih, office peon of the complainant. P.S. Parliament Street is at a distance of 3-4 kms from the spot and the Gurudwara is also guarded at throughout the year. Presence of police almost round the clock is noticeable around the Gurudwara. No public persons has been cited as a witness and even no police official is stated to have reached the spot. In such circumstances, the evidence of Sachin, who is admittedly an employee of the complainant shall not be sufficient to call for conviction of the accused persons.

Reading the above extract, it is more than clear that Sachin, although cited as an eye witness, has been discarded even prior to his examination and cross examination. He has been brushed aside on the ground that no public person or police official has been cited as a witness when the Gurudwara is nearby and is frequented by members of public and police officers. In my view, the evidence of Sachin could not be discarded in this manner at all. If there is an alleged eye witness then his testimony is to be tested on the basis of what he states in court and how he fares in cross examination. Coupled with this, are the circumstances under which the witness is alleged to have seen the events. In the extract noted above, there is no finding that Sachin was not present at the scene. He is discarded merely because other persons, namely, members of the public or police officials were not cited as witnesses. The evidence of Sachin was also brushed aside on the ground that he was an employee of the complainant. That is a matter of trial and only after trial can it be ascertained as to whether a particular witness is credible or that his testimony lacks credence.

5. As regards the second point urged by the learned Counsel for the petitioner, I am in agreement with his submission that the MLC could not be lightly brushed aside at the stage of consideration of framing of charges. There is no doubt that there is a recording in the history that the patient when brought was conscious, oriented and stable and that there was also a noting in the left margin of the MLC, that the patient was unfit for statement. And that, in the second note, it has been mentioned that the patient was fit to make a statement at 7.30 a.m. on 3.4.2002. At this stage, it cannot be known what are the circumstances for the said certificate of the doctor unless the doctor is produced as a witness and is

permitted to be cross examined. The authenticity and veracity of the statement cannot be prejudged.

6. Thirdly, the complainant's evidence has also not been examined merely on the ground that there was an enmity between him and the respondent No's 3 daughter and that, therefore, his evidence is tainted inasmuch as he was an interested person. Time and again the Courts have held that such evidence cannot be thrown aside if it is otherwise credible and unshaken. The worth of the evidence of the complainant can be judged only after he is examined and cross examined in court and the attendant circumstances are seen.

7. I am of the view that the impugned order is contrary to the settled principles which have to be kept in mind at the time of framing of charges. Although the learned Counsel for the respondents has cited the Supreme Court decision in the case of Union of India v. Prafulla Kumar Samal (supra), I am not in agreement with his submission that the present case falls within one of the principles cited therein. In the light of this discussion, the impugned order is liable to be set aside. The same is set aside. The matter is remitted to the court of the learned Additional Sessions Judge for consideration afresh on the question of framing of charges. It is made clear that the parties shall be entitled to raise all issues before the court and that the learned Additional Sessions Judge shall pass an order in accordance with law.

8. For the purposes of this consideration, the matter be placed before the learned Additional Sessions Judge, in the first instance, on 13.12.2006. Since the matter has been pending for some time, it is directed that the learned Additional Sessions Judge shall deal with this matter expeditiously.

The trial court record be sent back immediately.