

(2010) 06 CAL CK 0099
In the Calcutta High Court
Case No : C.R. R. No. 276 of 1994

Balak Nath Mondal and Another

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 29-06-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 228, 397, 401, 482
Penal Code, 1860 (IPC) — Section 307, 34

Citation : (2010) CriLJ 4799 : (2011) 7 RCR(Criminal) 1689

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : Priyabrata Ghosh and Madhusudan Roy, for the Appellant; Swapan Kumar Mullick, for the Respondent

Final Decision : Dismissed

Judgement

Prasenjit Mandal, J.—This application under Sections 397/401/482 of the Code of Criminal Procedure, 1973 is at the instance of the accused persons and is directed against the order No. 13 dated 22.09.1993 passed by the learned Additional Sessions Judge, Birbhum in Sessions Case No. 83 of 1992.

2. The fact of the case in short is that the petitioner No. 1 owns a sand quarry at Patharchal, under P.S. Md. Bazar, District - Birbhum and the petitioner No. 2 is his friend. One Rustam Sheikh, night guard of the quarry of the petitioner No. 1, lodged an FIR with the Md. Bazar P.S. to the effect that on 24.06.1990 at 10.30 p.m. while he along with other persons and some 10/12 female labourers were also returning from the "Rathmela" of Ganpur under P.S. Md. Bazar, three unknown persons attacked him and he sustained severe injuries on his face just beside his left eye and on the belly. On that day at night while they were moving in the "Rathmela" he noticed the petitioner No. 1, his friend, petitioner No. 2 and other 2 persons were moving in the "Rathmela" in the drunken condition and then the petitioner No. 1 asked him to leave four girls with them for their enjoyment. He could not agree to that proposal. Then while they were returning

through Ganpur forest, 3 unknown persons attacked him and he also realised in the dark that the petitioner No. 2 was present there and he ordered the three unknown persons to assault him. Police investigated the case on getting such ejahar. After completion of investigation, chargesheet was submitted.

3. Then the case was pending before the learned Additional Sessions Judge, Suri. By the order impugned, the learned Additional Sessions Judge framed charge u/s 307/34 of the I.P.C. Being aggrieved by the said order of framing charge, the petitioners have come up with the application for quashing the criminal proceedings against them.

4. Mr. Ghosh, learned Advocate for the petitioners, submits that actually as per ejahar three unknown persons attacked victim, Rustam Sheikh. He did not mention the name of the petitioners as the assailants. Moreover, by the order impugned, the learned Additional Sessions Judge has framed charge observing that there are many cases which are started on suspicion, but suspicion takes the shape of conviction when trial begins. The learned Trial Judge also observed that he should give a chance to the prosecution to elucidate the truth. The learned Trial Judge also observed that there are some ingredients u/s 307 read with Section 34 of the I.P.C. and so the charge has been framed by the learned Judge. The observations as noted by the learned Additional Sessions Judge are not sufficient to frame charge. So the framing of charge has not been properly done in the spirit of the Cr. P.C., 1973.

5. In support of his contention Mr. Ghosh has referred to three decisions (2001) 3 SCC 690, (2001) 3 SCC 707 and (1980) Cr. L.J. 254. Referring to these decisions, Mr. Ghosh has submitted that the provision of Section 34 can be invoked to catch non-participating accused when there is an element of some overt act and participation in the crime in furtherance of common intention. There must be an element of criminal sharing overt or covert, by active persons or by distant direction, making out a certain measure of jointness in the commission of the Act is the essence of Section 34. There being no such element in the case diary, he contends that framing of charge in the manner as done by the learned Trial Judge, cannot be supported. So the proceedings should be quashed.

6. On the other hand, Mr. Mullick, learned Advocate for the State has supported the framing of charge by pointing out that there are sufficient materials for framing of charge against the petitioners.

7. So, the point for decision in this revisional application is whether the learned Trial Judge was justified in framing the charge against the petitioners.

8. Having considered the submission of the learned Advocate of both the sides and on perusing the materials on record, I find that the ejahar lodged by Rustam Sheikh, a night guard of the quarry of the petitioner No. 1, has clearly stated that he had seen his employer, petitioner No. 1 and his friend, petitioner No. 2 along with other two persons moving in the "Rathmela" at night after taking

drinks. They asked him to leave four girls with whom along with others the de-facto complainant was moving in the "Rathmeala". But he did not agree. Thereafter, at the time of attack in the ganpur forest three persons attacked him and one of them utter "shall you did not keep the words". Then they attacked him. Abhas Roy, friend of the petitioner No. 1 was standing there. Therefore, such statements of the FIR maker is sufficient to come to a prima facie finding that the petitioners participated in the commission of crime and there were overt acts on their part by demanding four girls and uttering vulgar words afterwards. On careful perusal of the statement of the witnesses u/s 161 of the Cr. P.C., I find that there are sufficient ingredients to frame charge against the accused persons. The principle to be governed in the matter of framing charge has been clearly laid down in Section 228 of the Cr. P.C. to the effect that if the statements are not rebutted, it is sufficient to presume that the accused persons have committed offence. Then and then, the learned Trial Judge is empowered to frame charge against the accused persons. So, upon consideration of the materials available in the CD, I am of the view that there are sufficient materials to presume that the accused persons have committed offence u/s 307/34 of I.P.C., and so framing of charge against the petitioners is justified.

9. The learned Trial Judge did not record the findings as is expected at the time of framing of charge. Whatever the reasons may be, I find that there are elements to frame charge against the accused persons u/s 307/34 of the I.P.C. So, the learned Trial Judge is justified in framing of the charge. Therefore, there is nothing to interfere with the impugned order. The application is devoid of merits. It is, therefore, dismissed.

10. Return the CD at once.

11. Interim order is hereby vacated.

12. The learned Trial Judge is directed to dispose of the sessions case within six months from the date of communication of this order. He shall not grant any unnecessary adjournment except where the situation is beyond the control of the parties.

13. Considering the circumstances, there will be no order as to costs.

14. It is hereby recorded that my observations are for the purpose of disposal of this revisional application and the learned Trial Judge will not be swayed away by the aforesaid observation in coming to his own independent conclusion.

15. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.