

(1995) 04 J&K CK 0014
In the Jammu And Kashmir High Court
Case No : Criminal App. No. 80 of 1994

Hussain and Others

APPELLANT

Vs

State of J. and K.

RESPONDENT

Date of Decision : 13-04-1995

Acts Referred:

Jammu and Kashmir Criminal Procedure Code, 1989 — Section 161, 173, 302, 325, 34
Ranbir Penal Code, 1989 — Section 302, 304, 304A, 34

Citation : (1996) CriLJ 1145

Hon'ble Judges : R.C. Gandhi, J

Bench : Single Bench

Advocate : G.N. Goni and H.L. Bhagotra, for the Appellant; Seema Shekhar, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

R.C. Gandhi, J.—Petitioners are seeking the relief, by means of this petition u/s 561-A of the Code of Criminal Procedure, for quashing all

the proceedings including charge framed by the trial Court on 11-7-1994 against the accused under Sections 302/34, 341, Cr. PC after

appreciating the evidence and the documents produced before the Court u/s 173 Cr. P.C. The trial Court has relied upon the FIR and the

statements of the eye witnesses, namely, Tek Ali, Makhan Din, Faqir Hussain, Mohd, Bashir and Ghulam Nabi.

2. The contention of the learned counsel for the petitioners is that the prosecution has roped in and falsely implicated the accused in FIR No. 40 of

1994. The alleged assault on the deceased is the alleged act of Saifu and none of other accused were armed with the weapon of offence, a stone,

handy on the spot. There is no evidence that except the accused Saifu other accused participated in the assault on the deceased and the FIR being

the first version of the alleged incident, rules out common intention to kill, falsely sought to be attributed to the accused. The statements of the eye

witnesses u/s 161 Cr. P.C. is a fabricated evidence and improvements have been introduced on the version narrated in the FIR. On the basis of

the evidence on record collected by the prosecution, the accused cannot be made to face trial and the liberty of the petitioners cannot be minimised

at this stage. The petitioners have stated that the fact that the deceased having died after six days and infliction of injuries with the stone by the

accused Saifu rules out intention to kill and the offence against the said accused even in the extreme view could not be higher than punishable u/s

304-A RPC and the offence against the other accused u/s 325/34, Cr. PC and not punishable u/s 302/34 RPC.

3. I have heard the learned counsel for the parties and perused the record carefully.

4. The trial court has elaborately discussed the evidence and the documents produced by the prosecution. The occurrence took place at 1.30

P.M. on 9-1-1994 near Sher Kotla, Tehsil Kathua, while the deceased alongwith eye witnesses reached in a Maruti car on the place of

occurrence. The accused four in numbers had blocked the road by placing motorcycle No. 8378-JKP in the middle of road, gheraoed the

complainant party and did not allow them to proceed further. The accused Saif Ali, forcibly dragged out Bagh Hussain from inside the car and

inflicted stone blows on the head of Bagh Hussain deceased, while the other accused kept holding tightly facilitating for the accused Saif Ali to

inflict stone injuries. After the commission of the offence, all the four accused fled away from the scene of occurrence on the said motor-cycle. The

FIR contains the version that the accused blocked the way of the deceased party, blocking the road by placing motor-cycle in the middle of the

road and Saif Ali inflicted stone injuries. The statements recorded u/s 161 Cr. P.C. by the prosecution of eye witnesses Ghulam Nabi, Makhan

Din, Mohd. Bashir and Bashir Din also reveal that all the accused were present on spot. The deceased was dragged out from the Maruti car by

Saif Ali, who inflicted injuries on the head of the deceased with stone and the other accused kept him holding and the act of the accused was with

intention to kill the deceased.

5. The learned counsel for the petitioner has argued that the other accused except Saif Ali was unarmed and they have not participated in the commission of the offence and this version is supported by the FIR, but the statements u/s 161 Cr. P.C. involving the other accused is an improvement made by the prosecution to falsely implicate the accused. He has relied upon the Judgment of the Supreme Court reported in *State of Karnataka Vs. L. Muniswamy and Others*, (Respondents), wherein their Lordships of the Apex Court have held that in the instant case, there was no material on the record on the basis of which any tribunal could reasonably come to the conclusion that the accused were in any manner connected with the incident leading to the prosecution. The High Court was, therefore, justified in holding that for meeting the ends of justice the proceedings against the rest of the accused sought to be quashed. He has further relied upon the judgment reported in *Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandrojirao Angre and Others*, while dealing a case for quashment of the proceedings u/s 406, 467 Cr. P.C., as held that the legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features, which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue.

6. Perusal of the statements of the eye witnesses and the FIR reveals that all the four accused had come on the motor-cycle, they blocked the way and did not allow the deceased party to proceed. All the accused were present on spot, while accused Saif Ali inflicted injuries, the other accused kept holding the deceased facilitating accused Saif Ali for inflicting injuries and the accused also fled away from the place of occurrence on the same motor-cycle. The view of the place of occurrence and the circumstances and the manner in which the offence has been committed reveals that the act of the other accused that they participated in the commission of the offence for furtherance of the commission of the offence and have shared the intention of accused Saif Ali for the commission of offence. The inherent powers of the High Court u/s 561-A, Cr. P.C. to quash the

proceedings can be exercised in such a case where the allegations in the FIR or the complaint even if they are taken at their face value and

accepted in their entirety do not constitute an offence alleged or where there is either no legal evidence adduced in support of the case or the

evidence adduced clearly and manifestly fail to prove the charge. The prosecution has collected the evidence, i.e., the statement of the witnesses,

postmortem report, medical evidence and three head injury certificates, seizure memo, of two stones as weapons of offence, which connect the

accused with the commission of the offence. There is a legal evidence on the file and do constitute an offence for which the accused have been

charge-sheeted by the trial court.

7. Learned counsel for the petitioners have also specifically stated in para 7 (v) of his petition that the fact of a chance encounter and infliction of

injuries with the stone by Saifu could be a case in the extreme view of the matter not higher than one punishable u/s 304-II RPC and the offence

against the other could only be one u/s 325/34, Cr.PC.

8. The learned counsel appearing for the respondent has placed reliance upon judgment of the Hon'ble Supreme Court reported in State of Bihar

Vs. Raj Narain Singh, wherein it is held that the evidence of the prosecution has yet to be taken and the aspects, which have been relied upon by

the High Court could well be clarified by evidence, when the prosecution has its opportunity of placing the cases through their witnesses in the

Court. The interference by the High Court without affording reasonable opportunity to the prosecution to substantiate its allegations amounts to an

interference at preliminary stage. The Apex Court set aside the judgment of the High Court on the ground that the High Court was not justified to

interfere with the prosecution at the preliminary stage.'

9. In the present case also the prosecution has not led any evidence and there is a legal evidence against the accused, which do constitute an

alleged offence and prima facie evidence is worthy of making out a case. Therefore, I decline to exercise the inherent power to quash the

proceedings at this stage. The next relief sought by the petitioners is u/s 439 Cr. P.C. for challenging the charge and u/s 498 Cr. P.C. for enlarging

the accused on bail. The learned counsel for the petitioners has cited Rambilas Singh and Others Vs. State of Bihar, , Rambilas Singh and Others

Vs. State of Bihar, State of U.P. Vs. Ram Kishan and Another, , Sheo Mahadeo Singh Vs. The State of Bihar, . Dajya Moshya Bhil and Others

Vs. State of Maharashtra, ; Kashmira Singh Vs. State of Punjab, .

10. All these judgments are the out-come of the appreciation of the evidence led by both the parties. The principle laid down cannot be applied to

the facts of the present case as the evidence in this case is yet to be led by the prosecution.

11. The respondent has relied upon the judgment reported in Mohd. Akbar Dar and Others Vs. State of Jammu and Kashmir and Others, ,

wherein their Lordships have held that the Court need not enter into meticulous consideration of evidence and material at the stage of framing of

charge and no robbing enquiry or weighing of evidence is required at this stage. The court has to see at the time of framing of the charge only as to

whether there is legal evidence worthy of making out a prima face case and there is ground for presuming that the accused has committed the

offence.

12. For the reasons and observations made, the conclusion arrived is that there exist an evidence against the accused. I do not see any illegality in

the order of the trial court and the charge framed against the accused is justified. The petitioners are not entitled to the relief of grant of bail also at

this stage. The application is rejected accordingly.