
(2009) 09 DEL CK 0197

In the Delhi High Court

Case No : Criminal Revision Petition No. 385 of 2009

Prashant Bhaskar

APPELLANT

Vs

State (Govt. of NCT of Delhi)

RESPONDENT

Date of Decision : 22-09-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167, 173, 216, 217, 218
Penal Code, 1860 (IPC) — Section 120B, 302, 34, 498A

Citation : (2009) 09 DEL CK 0197

Hon'ble Judges : Gita Mittal, J

Bench : Single Bench

Advocate : Ramesh Gupta, M. Begum and Bharat Sharma, for the Appellant;
Manoj Ohri, APP, for the Respondent

Final Decision : Allowed

Judgement

Gita Mittal, J.—By this petition, the petitioner assails the order dated 18th April, 2009 directing framing of charges as well as the charges framed against him u/s 302/34 of the Indian Penal Code in the case arising out of FIR No. 765/2006 registered by the police station Saraswati Vihar. On completion of investigation, the chargesheet was filed in the case titled State v. Prashant Bhaskar and Ors. pending before the trial court.

2. To the extent necessary, the case of the prosecution is briefly noticed hereafter. A complaint dated 10th July, 2006 was made by one Shri Pushkar Raj, father of the deceased Dayanand with regard to an incident which allegedly occurred three months prior on 5th April, 2006. It stated that on 5th April, 2006, Shri Pushkar Raj accompanied by his deceased son Dayanand; Vipin another son as well as a worker Ram Bura had gone to the residence of Mahesh Sharma at about 7.45 p.m. in connection with certain monies which were owed by him. The complainant was required to come again for the reason that Mahesh Sharma was not available. Consequently, these persons had again visited Mahesh Sharma's residence at about 8.30 p.m. but he was still not available whereupon they had

decided to wait for his return. On his return, Mahesh Sharma had refused to give the money. Instead he attacked Dayanand whereupon Vipin, the complainant's younger son tried to stop him. At this, Manish Sharma, brother of Mahesh Sharma accompanied by Prashant Bhaskar @ Rinku came downstairs and both these persons started beating Dayanand and Vipin. After that Mahesh Sharma involved the complainant in certain discussions while Manish Sharma and Rinku kept on beating Dayanand mercilessly with their legs and fists. The complainant and the others thereafter returned to their house and ten minutes later, Dayanand started saying that he was having a burning sensation in his chest. Dayanand was taken to the nearby Manna Clinic and Maternity Home. The doctor gave Dayanand an injection and three doses of medicines. One dose of the medicine was given to him immediately. Dayanand was left with his wife and he went to sleep immediately. The next morning, at about 8.30 a.m., when his wife went to check on him, she found that Dayanand was not responding and she immediately called the complainant. One Dr. Harish Bhatia was called who immediately opined that Dayanand was no more. Dr. Harish Bhatia intimated the police also about the death. In this complaint, the complainant sought legal action against Mahesh Sharma, Manish Sharma & Rinku Sharma who were alleged to have caused the death of his son Dayanand.

3. It has been urged that the order holding that a prima facie case had been made out against the petitioner fails to consider the documents placed by the prosecution on record. It has been urged that immediately after the occurrence on 5th April, 2006, the police had recorded statements of the complainant Pushkar Raj, who is the father of the deceased; Vipin Mittal, brother of the deceased as well as Deepika, widow of the deceased.

4. I have heard learned Counsel for the parties and have been carefully taken through the statements of these persons who also claim to be the eye witnesses to the incident. Their statements are in identical terms.

5. In his first statement recorded by the police on 6th April, 2006, Pushkar Raj stated that on the 5th of April, 2006 he had gone to take payment of committee money from Mahesh Chand and Kallu, who were the priests of the Rama Mandir. There was a trivial altercation and scuffle with one Mahesh and Kallu on the one hand and Dayanand on the other. When Pushkar Raj with his sons Vipin and Dayanand were returning from the spot, Dayanand had complained of some uneasiness. He was taken to Manna Clinic and Maternity Home and got treated by the doctor who gave him an injection and medicines. Dayanand was brought to his house at about 11.00 p.m. At about 9.00 a.m. of the next morning, he came to know that his son had died. In this statement to the police Pushkar Raj categorically stated that he did not suspect anybody.

6. Vipin Mittal, son of Pushkar Raj had also given a statement on 6th April, 2009 to the same effect. There is reference to some verbal altercation which took place over the issue of return of money between Dayanand on the one hand and Mahesh Sharma and Kalu on the other in the night of the 5th of April, 2006.

Some light scuffle is stated to have also taken place. He along with his father Shri Pushkar Raj and Dayanand are stated to have returned to his house thereafter. Dayanand complained of uneasiness whereupon the doctor from the Manna Clinic and Maternity Home was called who after checking gave him an injection and also some tablets. On his request, Dayanand was laid on the floor and then they returned to their room. At about 9.00 O' clock of the next morning, he learnt that his brother Dayanand had expired. He also stated that there was no suspicion or doubt on any person.

7. The police also recorded a statement of Deepika, wife of the deceased Dayanand which was to the same effect.

8. DD No. 30 dated 6th April, 2006 was recorded by the investigating officer with regard to the receipt of the information of the death and the statement of the relatives, all of whom had stated that they had no suspicion on any person.

9. The investigating officer recorded D.D. No. 24 on 7th April, 2006 with regard to the steps taken by him. The record shows that a postmortem was also conducted on the body of the deceased on 7th April, 2006 by Dr. Anil Sandilya. Injuries on his body were found to be simple in nature. The viscera and pieces of his organs were preserved for obtaining a report of the chemical analysis and a histopathological study for a final opinion on the cause of death.

10. The Forensic Science Laboratory reports with regard to the viscera examination of the deceased were received on 26th June, 2006. On 10th of July, 2006, after examining these reports, Dr. Anil Sandilya gave an opinion as to the cause of death. According to him, the death occurred because of asphyxia consequent to smothering by the other party which was sufficient to cause death in ordinary course of nature. The record shows that thereafter supplementary statements of Pushkar Raj and Vipin Mittal were recorded on the 10th of July, 2006 which was to the afore-noticed effect based whereupon an FIR No. 765/2006 was also registered on the same day.

11. The SHO of police station Saraswati Vihar was of the view that the facts and circumstances in which the deceased sustained injuries during the scuffle did not match with the cause of death as given by Dr. Anil Sandilya. Therefore, a request for the constitution of a Medical Board was made on 12th of July, 2006 in order to obtain a final opinion on the MLC and the opinion given initially by Dr. Anil Sandilya. A medical Board was consequently appointed which considered the inquest papers, photographs, postmortem & FSL reports and the histopathology reports. The Medical Board gave an opinion on 30th April, 2007 that the death occurred due to head injury consequent upon blunt force.

12. Mr. Ramesh Gupta, learned senior counsel appearing for the petitioner has urged that there is no material at all to connect the petitioner with the alleged incident. It is urged that in the first statements made by the complainant and his son as eye witnesses, the name of the petitioner does not feature at all and his name has been added more than three months later in the supplementary

statements which were recorded on 10th July, 2006 which by itself would completely discredit the allegations made in these supplementary statements. It is contended that consequently no prima facie case is made out against the petitioner with regard to his involvement in the alleged incident or commission of the alleged offence.

13. Learned senior counsel has also urged that the order of the learned trial court fails to take into consideration the fact that a medical board was constituted only pursuant to the request for the same made on 12th July, 2006 and its report has been received only on 30th April, 2007 whereas the postmortem report and the medical report thereon did not support the case of the prosecution. It is contended that the prosecution had failed to make out a prima facie case for commission of an alleged offence by the petitioner. The material relied upon was contradictory and did not make out suspicion, let alone any element of grave suspicion against the petitioner.

14. Reliance has been placed on the pronouncements of the Apex Court reported at (2009) 1 SCC Cri. 51 Yogesh @ Sachin Jagdish Joshi v. State of Maharashtra & Niranjana Singh Karam Singh Punjabi and Others Vs. Jitendra Bhimraj Bijja and others, . Learned senior counsel has also relied on the pronouncements of this Court reported at 2007 (2) JCC 1415 Sunil Bansal v. The State of Delhi; 2002 (1) JCC 127 Bhagwanti Devi v. State & Majhar @ Papoo and Others Vs. State, . In support of the submission that the delay in lodging the complaint with the police would by itself cause grave suspicion on the case of the prosecution, reliance has been placed on the pronouncement of this Court reported at 22 (1982) DLT 5 Satpal v. State.

Learned senior counsel has urged that in the instant case, the order of the trial court also fails to consider the well settled principles of law laid down by this Court in the pronouncements reported at 2007 2 JCC 1489 Ashok Kumar Nayar v. State and 2009 (2) JCC 1004 Vinita Dhaka v. State.

15. On the other hand, Mr. Manoj Ohri, learned APP for the State has placed reliance on the pronouncement of the Apex Court reported at Smt. Om Wati and Another Vs. State, through Delhi Admn. and Others, and State of Maharashtra Vs. Salman Salim Khan and Another, to contend that it is not open to this Court to examine the truthfulness and veracity of the case of the prosecution and that the statements made by the witnesses taken at face value, clearly indicate the presence and involvement of an accused in the incident and the commission of the offences. Learned APP for the State has strongly supported the impugned order passed by the learned trial Judge.

16. Before a consideration of these submissions, it becomes necessary to set down the well settled parameters within which the court's consideration of the prosecution's case at the stage of framing of charge has to be confined. The principles with regard to the scope and jurisdiction of the court u/s 216 to 219 of the Cr.P.C. which deals with the power of the court in this behalf, have been

clearly enunciated in several binding judicial pronouncements of the Apex Court.

17. It needs no elaboration that at the stage of framing of charge, the court is required to evaluate the materials and documents which have been placed on record by the prosecution and taken at the face value, whether existence of the ingredients Constituting the alleged offence or offences are disclosed. It is for this limited purpose alone that the court is permitted to sift the evidence. In para 7 of the judgment in Niranjana Singh Karam Singh Punjabi and Others Vs. Jitendra Bhimraj Bijja and others, the Apex Court defined the parameters of the scope and consideration thus:

7. The next question is what is the scope and ambit of the "consideration" by the trial court at that stage. Can he marshal the evidence found on the record of the case and in the documents placed before him as he would do on the conclusion of the evidence adduced by the prosecution after the charge is framed? It is obvious that since he is at the stage of deciding whether or not there exist sufficient grounds for framing the charge, his enquiry must necessarily be limited to deciding if the facts emerging from the record and documents constitute the offence with which the accused is charged. At that stage he may sift the evidence for that limited purpose but he is not required to marshal the evidence with a view to separating the grain from the chaff. All that he is called upon to consider is whether there is sufficient ground to frame the charge and for this limited purpose he must weigh the material on record as well as the documents relied on by the prosecution. In the State of Bihar Vs. Ramesh Singh, this Court observed that at the initial stage of the framing of a charge, if there is a strong suspicion-evidence which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. If the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. In Union of India (UOI) Vs. Prafulla Kumar Samal and Another, , this Court after considering the scope of Section 227 observed that the words "no sufficient ground for proceeding against the accused" clearly show that the Judge is not merely a post-office to frame charge at the behest of the prosecution but he has to exercise his judicial mind to the facts of the case in order to determine that a case for trial has been made out by the prosecution. In assessing this fact it is not necessary for the court to enter into the pros and cons of the matter or into weighing and balancing of evidence and probabilities but he may evaluate the material to find out if the facts emerging therefrom taken at their face-value establish the ingredients Constituting the said offence. After considering the case law on the subject, this Court deduced as under:

(1) That the Judge while considering the question of framing the charges u/s 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) 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 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 adduced 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 u/s 227 of the Code of judge which under the present Code is a senior and experienced judge 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.

x x x x From the above discussion it seems well settled that at the Sections 227 to 228 stage the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging there from taken at their face value disclose the existence of all the ingredients Constituting the alleged offence. The court may for this limited purpose sift the evidence as it cannot be expected even at the initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(Emphasis supplied)

18. The pronouncement of the Apex Court reported at Chitresh Kumar Chopra Vs. State (Govt. of NCT of Delhi), on this very issue can also be usefully adverted to and reads thus:

It is trite that at the stage of framing of charge, the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclose the existence of all the ingredients Constituting the alleged offence or offences. For this limited purpose, the court may sift the evidence as it cannot be expected even at the initial stage to accept as gospel truth all that the prosecution states. At this stage, the court has to consider the material only with a view to find out if there is ground for "presuming" that the accused has committed an offence and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction.

(Underlining supplied)

19. In a subsequent judgment reported at State of Maharashtra, Etc. Etc. Vs. Som Nath Thapa, Etc. Etc., , a three-Judge Bench of the Supreme Court explained the meaning of the word "presume". Referring to dictionary meanings of the said word, the Court observed thus:

....If on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage.

20. So far as the test for scrutinising the material laid by the prosecution on record for the purposes of framing of charge is concerned, the principles in this behalf were laid down in the pronouncement of the Apex Court reported at State of M.P. Vs. S.B. Johari and Others, when the court stated as follows:

4. ... It is settled law that at the stage of framing the charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. If the court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed. The charge can be quashed if the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross examination or rebutted by defence evidence, if any, cannot show that accused committed the particular offence. In such case, there would be no sufficient ground for proceeding with the trial.

To the same effect are the principles laid down by the Apex Court in State of Madhya Pradesh Vs. Mohanlal Soni, .

21. So far as the instant case is concerned, learned senior counsel has pointed out that the court is required to consider the record of the case which includes, the documents submitted with the police report and after hearing the accused and the prosecution, the court was required to decide whether there is "sufficient ground" to proceed against the accused and as a consequence thereof, either to discharge the accused or to proceed to frame a charge against him in view of Sections 224 and 228 of the Code of Criminal Procedure so far as the case before the sessions court is concerned.

22. The expression "not sufficient ground for proceeding against the accused" was considered by the Apex Court in the pronouncement reported at (2009) 1 SCC Cri. 51 Yogesh @ Sachin Jagdish Joshi v. State of Maharashtra. The Apex Court held that Section 227 of the Cr.P.C. postulates "exercise of judicial mind" on the part of the Judge to the facts of the case in order to determine whether a

case for trial has been made out by the prosecution. For this purpose, it was held as follows:

The test to determine a prima facie case depends upon the facts of each case and in this regard it is neither feasible nor desirable 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 gives rise to the suspicion only as distinguished from grave suspicion, he will be fully within his right to discharge the accused. At this stage, he is not to see as to whether the trial will end in conviction or not. The broad test to be applied is whether the materials on record, if unrebutted, make a conviction reasonably possible.

In so concluding, the Apex Court relied on its earlier pronouncement reported at State of Bihar Vs. Ramesh Singh, and Union of India (UOI) Vs. Prafulla Kumar Samal and Another, .

23. Mr. Manoj Ohri, learned APP for the State has submitted at length that these judgments would not apply for the reason that the same were concerned with the case involving a charge u/s 120B of the Indian Penal Code.

This submission has to be noted only for the purpose of rejection inasmuch as principles laid down by the Apex Court are not confined to consideration of the framing of charge u/s 120B of the Indian Penal Code alone. These principles would apply to consideration of all materials which are placed before the sessions court at the stage of framing of charge. The Apex Court has emphasized that the charge to face a criminal trial cannot be based on mere suspicion and that the material which is placed before the trial court must give rise to grave suspicion of implication and commission of the offence under the Indian Penal Code.

24. It now becomes necessary to consider the material which was laid by the prosecution before the learned trial court. Two contradictory statements recorded by the investigating officer of the complainant as well as his son both of whom claim to be eye witnesses, which were separated by a period of three months, have been placed on recorder The first statement recorded on the very next date after the incident, has named only two persons i.e. Shri Mahesh Sharma and his brother Manish Sharma @ Kallu and is categorical that no other person is involved in the incident. A second statement recorded several months after the incident on 10th July, 2006 has sought to rope in the present petitioner. A graphic description of the alleged incident containing improvements in all material particulars is laid out in which even a role has been attributed to the petitioner. Scrutiny of the record which has been placed before this Court would also show that there is no other material on the record at all placed along with the charge sheet u/s 173 of the Cr.P.C. before the trial court to show the presence of the petitioner or to connect him with the crime.

25. These statements/supplementary statements of the witnesses recorded by the investigating officer make no mention about the earlier statement recorded on 6th April, 2006. Neither of these statements even attempts to explain the

circumstances in which the second statement was being made or the reason thereof.

The very gap of three months between the incident and the statements by itself renders the same suspect and unsafe for reliance

26. In similar circumstances, this Court in the judgment pronounced at 2007 (2) JCC 1415 *Sunil Bansal v. State of Delhi* held that while undertaking the permissible and necessary exercise of sifting of the materials and particularly keeping in mind the existence of two contradictory statements, a charge cannot be framed based thereon. The court observed that the subsequent statements were not only contradictory but unsafe as well and that the court cannot be expected to accept one version over another. It was held that the court would be justified in concluding that the version supporting the discharge of the petitioner is to be preferred.

In the present case as well, the previous statement has completely ruled out any complicity of the accused person.

27. In yet another pronouncement of this Court reported at 2002 (1) JCC 127 *Bhagwanti Devi v. State*, no allegations regarding demand of dowry or cruelty against the petitioner were made by the parents and brother of the deceased wife in the statements before the SDM conducting the inquest proceedings which was in quite detail. In subsequent statements recorded by the police u/s 167 of the Cr.P.C., vague allegations regarding demand of dowry from the deceased by the petitioner's mother-in-law were made. The court held that the subsequent statement may give rise to suspicion but not to grave suspicion and consequently, no charge should be framed against the petitioner based on these statements. It was observed that appreciation of the evidence which is required to be done at the final stage is not permissible at the time of framing of charge and that at this stage, only the broad probability of the case and total effect of the evidence and documents produced before the court and any basic infirmity appear in the case can be considered.

28. In *Majhar @ Papoo and Others Vs. State*, , the court considered the petition seeking quashing of the proceedings arising out of a complaint registered by the police u/s 498-A against the petitioners. It was observed that no prima facie case was made out from the allegations in the complaint on which the FIR was registered. The complainant had made allegations in the supplementary statement recorded by the police. This Court held that the statement could be considered when some allegations were made in the original complaint against the petitioners and not otherwise. In this behalf, reliance was placed by the court on the category 1 & 3 of cases which were set out by the Apex Court in the judgment reported at *State of Haryana and others Vs. Ch. Bhajan Lal and others*, .

29. In the instant case, the court is faced with two completely contradictory statements. The first statement which is immediately after the occurrence does

not even remotely mention the petitioner as even present at the time of the incident whereas the second statement makes serious allegations against the petitioner. The first statement was categorical with regard to the involvement of only two persons. Even against these two persons, the complainant and his son had sought to absolve them with regard to commission of any offence under the Indian Penal Code. Three months later, a supplementary/second statement is given by these very persons making improvements in all material particulars and implicating the petitioner in addition to the two persons who had been named earlier.

30. The material which has been laid on record by the prosecution and is part of the chargesheet filed u/s 173 of the Criminal Procedure Code, thus presents a completely contradictory picture. Inasmuch as the deceased was the son of the complainant and brother of the other witness, these persons were certainly interested persons being close relatives of the deceased.

31. In 2002 SCC Cri. 310 Dilwar Balu Khurana v. State of Maharashtra, the Apex Court had clearly enunciated the principle that if two versions or two inferences can be reasonably drawn, the version favourable to the accused has to be accepted by the court so long as it is a reasonable one.

32. There can be no retraction from the basic and essential test that at the stage of framing of charge, the court has to form a reasonable opinion about the existence of grave suspicion regarding commission of offences for which purpose, the material placed by the prosecution on record alone has to be sifted.

33. In similar circumstances, noticing that no statement had been made implicating the accused persons or contradictory statements had been given on record and were relied upon by the prosecution, this Court has held that the same would show that it could not be held that there were grave suspicions of the commission of the offence by the accused persons. (Ref : 2007 (2) JCC 1489 Ashok Kumar Nayyar v. The State and 2009 (2) JCC 1004 Vinita Dhaka v. State).

34. So far as the judicial pronouncements relied upon by Mr. Ohri, learned APP are concerned, it is to be noted that the same do not lay down any different proposition. In Smt. Om Wati and Another Vs. State, through Delhi Admn. and Others, , the court only reiterated the principle that at the stage of framing of charge, the court is not required to meticulously judge the truth, veracity and effect of the evidence. Even in this pronouncement, the court had reiterated the principle that there has to be strong suspicion which leads the court to think that there is a ground for presuming that the accused has committed the offence. This strong suspicion is to be founded on material laid before the court on which the court can form a presumptive opinion regarding the existence of factual ingredients Constituting the offence alleged, only then the court be justified in framing the charges against the accused persons.

35. In State of Maharashtra Vs. Salman Salim Khan and Another, also these very principles were reiterated.

36. It is to be noted that neither of the aforementioned judicial pronouncements relates to a case where the accused person was not even named in the initial statement which was recorded by the police.

37. There was also no issue relating to the time gap between the recording of the two completely contradictory statements. These aspects cannot be certainly overlooked. Other than these two contradictory statements, there is not even whisper of an allegation involving the petitioner in the commission of the offence in any of the other relevant documents including the initial MLC and the postmortem report.

38. Following the principles laid down in *Dilawar Balu Khurana v. State of Maharashtra* (Supra), the first version of the prosecution has to be accepted. It, therefore, has to be held that the prosecution has failed to make out a case raising strong suspicion of the involvement of the petitioner in the commission of the offence.

In view of the above, the order dated 18th April, 2009 passed by the learned Additional Judge, Rohini, directing and framing charge against the petitioner is hereby set aside and quashed.

This petition is allowed in the above terms.