

HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE

Criminal Revision No.404 of 2017

Gyanchand Jain
Vs.
State of Madhya Pradesh

Shri S.K.Vyas, Sr. Advocate assisted by Shri L.S.Chandramani, Advocate for the petitioner.

Ms. Bharti Lakkad, Public Prosecutor for the respondent/State.

Whether approved for reporting: YES

(1) While framing charge, the trial Court in exercise of the power under section 228 Cr.P.C., has to form an opinion judicially for its *prima facie* satisfaction on the basis of the material available on record that there is a ground for *presuming* that the accused has committed an offence and is not expected to critically evaluate the material/evidence placed on record by the prosecution.

Besides, to constitute an offence of criminal conspiracy is the agreement between two or more persons to commit an offence. Mere proof of such an agreement is sufficient to establish criminal conspiracy

(2) To constitute an offence under section 307 IPC, it is not necessary that injury, capable of causing death, should have been inflicted, but the guilty intention or knowledge with which the act was done. The intention and the knowledge are the matters of inference from totality of circumstances available in a given case.

(3) Section 27 of the Act makes that part of the statement which is distinctly related to the discovery admissible as a whole, whether it be in the nature of confession or not.

(4) For the application of section 27 the statement must be split into its components and to separate the admissible portion and only those components or portions which were the immediate cause of the discovery would be legal evidence and not the rest which must be excluded and rejected.

(5) Section 27 permits the derivative use of custodial statements in the ordinary course of events. In Indian Law, there is no automatic presumption that the custodial statements have been extracted through compulsion.

Revision dismissed.

Reserved on: 14/05/2018

ORDER
(18/06/2018)

Rohit Arya, J.,

This revision petition under section 397 read with section 401 of Cr.P.C., by an accused is filed seeking quashment of charge framed for the offence punishable under section 307 read with section 120B IPC, on 08/02/2017 in sessions trial No.100/2016 by the Additional Sessions Judge, Neemuch.

2. The prosecution case, in brief, is that the complainant,

Rajendra Jaroli in an injured condition on 28/05/2016 at about 21.30 hours gave information at the Community Hospital, Neemuch to the effect that two unknown persons armed with pistol and an iron rod reached Jaroli complex where his shop was situated and inflicted injuries with an iron rod on the knee portion of both the legs as a result he fell down, however, caught hold the pipe due to which he sustained injury on the finger of his left hand and intentionally threatened to kill by extortion uttering filthy abuses. On hearing his scream, nearby people; Manish Napavaliya, Shailendra, Porwal, Manoj Napavaliya intervened to save him. On this, the miscreants fired bullet shots outside the shop in the air and fled away on a motorcycle. Accordingly, *dehati nalishi* was recorded at crime No.0/16. Thereafter, the injured was sent to the hospital for medical examination and treatment.

Based on the aforesaid information, FIR No.279/2016 at 23.52 hours was registered by the Police Station, Neemuch Cantt., Neemuch for the offence punishable under sections 323, 294, 506, 452, 336 and 34 IPC.

During investigation, the complainant and his witnesses have suspected that the attack was due to previous enmity over land dispute situated in Uday Vihar Colony between the complainant and Virendra pal and Maulana resident of Akhepur and his associates with an intention to kill the complainant.

After receiving secrete information during the course of investigation on 04/06/2016, Yusuf s/o Mohd. Firoz Khan resident of Neemuch was interrogated.

The accused Yusuf in his statement under section 27 of the Evidence Act (for short 'the Act') has stated to have had frequent conversation with Virendra Pal and Gyanchand Dosi (the applicant) on mobile phone. The mobile phone was seized. The CDR of Yusuf and CDR amongst Virendra Pal, Gyanchand Dosi, Karan Nema were also obtained through the Cyber Cell. Yusuf has stated that conspiracy was hatched by Virendra Pal and Gyanchand Dosi. Virendra Pal sent the shooters Rajat, Tinu alias Vajahat resident of Muzafarnagar, Pankaj Patwa resident of Pratapgarh and others. Accordingly, the accused persons were arrested.

On further investigation and information gathered from the aforesaid accused persons, the shooters, viz., Rajat son of

Manoharlal Chabada resident of Gandhi Nagar, Muzafarnagar, Uttar Pradesh, Tinu alias Vajahat Khan son of Mohd. Aslam Khan Rangrej, resident of Muzafarnagar, U.P., and their associates leader Bittu alias Gauravpal alias Bulldog son of Shaymveer Singh Gadariya, resident of Muzafarnagar, U.P., were arrested with the help of the local police of the State of U.P., on 10/06/2016.

The fire arm and the iron pipe used for commission of the offence were recovered from the house of Virendra Pal situated at Pratapgarh. A few more accused persons on being named by them have also been arrested.

On the statements of Karan Nema, a mobile of Nokia company No.7400572711, Rajat – one pistol & two live cartridges, Pankaj Patwa - red colour pulsar with registration No.RJ35 SK 6440, Hero Honda Passion with registration No.RJ12 SA 5363; Tinu alias Vajahat – one iron pipe were also recovered having direct bearing on the basis of the statements referable to the persons named therein as detailed in the final report.

As such, the prosecution on the basis of statements of the accused, the evidence of cyber call details, CCTV footage and other incriminating material as well as circumstantial evidence, the following accused persons have been arrested.

- (i) Yusuf on 04/06/2016
- (ii) Karan Nema on 04/06/2016
- (iii) Gyanchand Dosa on 05/06/2016
- (iv) Bittu alias Gauravpal alias Bulldog on 10/06/2016
- (v) Pankaj Patwa & Devendra on 14/06/2016
- (vi) Rajat on 11.06.2016
- (vii) Tinu alias Vajahat on 11/06/2016
- (viii) Devendra @ Dev on 14/06/2016

The accused Virendra Pal and Intakhab alias Maulana are absconding as per the final report.

Accordingly, final report has been submitted against the accused persons for the offence punishable under sections 323, 294, 506, 336, 384, 452, 325, 201, 120-B & 307 IPC and 25, 27 of the Arms Act.

3. The relevant for the purpose of this revision petition is the statement of Yusuf having conversation on mobile phone with

Virendra Pal and Gyanchand Dosi hatching conspiracy, organizing shooters and commission of the offence based whereupon the mobile phone was seized as well as the CDR of Yusuf and CDR amongst Virendra Pal, Gyanchand Dosi, Karan Nema were also obtained through the Cyber Cell.

4. Learned senior counsel for the petitioner submits that the injuries sustained by the victim, Rajendra are simple in nature and caused by hard and blunt object. None of the injury sustained by him was dangerous to his life or grievous by nature. The Doctor has not opined that the injuries sustained by the injured were sufficient to cause his death in the ordinary course of nature. Even on taking into consideration the face value of the charge sheet including the nature of the injuries sustained by Rajendra and the medical evidence as accepted in its entirety, the charge of Section 307 read with section 120B IPC is not made out against the present petitioner. The very basis for implicating the present petitioner is the memorandum of Yusuf under section 27 of the Evidence Act (for short 'the Act') which is not admissible for connecting the petitioner with the alleged offence. There was no intention of the petitioner to kill the victim, Rajendra. In such circumstances, it cannot be deemed that the petitioner or any of the other accused have committed the offence punishable under Section 307 read with section 120B IPC, to this extent the charge is not sustainable and prayed to discharge the petitioner from the charge under Section 307 read with section 120B IPC., by allowing this revision petition.

5. In response, learned Public Prosecutor while justifying the impugned order has contended that the charges framed by the Trial Court are in consonance with the material placed on record with the charge-sheet. She fairly submitted that although the doctor has not given the clear opinion that the the injuries sustained by Rajendra were sufficient to cause his death in the ordinary course of nature but, careful perusal of the statement of the injured complainant wherein he has categorically stated that such an assault and *marpeet* with pistol was carried out by the accused persons with intention to cause his death, the impugned charge under Section 307 read with section 120B IPC does not

require for any interference at this stage and prayed for dismissal of this revision.

6. Heard.

7. While framing charge, the trial Court in exercise of the power under section 228 Cr.P.C., has to form an opinion judicially for its *prima facie* satisfaction on the basis of the material available on record that there is a ground for *presuming* that the accused has committed an offence and is not expected to critically evaluate the material/evidence placed on record by the prosecution.

Besides, to constitute an offence of criminal conspiracy is the agreement between two or more persons to commit an offence. Mere proof of such an agreement is sufficient to establish criminal conspiracy; **Sushil Suri Vs. Central Bureau of Investigation, (2011) 5 SCC 480**. Nevertheless, the same is to be proved by direct or circumstantial evidence or by both.

Likewise, to constitute an offence under section 307 IPC, it is not necessary that injury, capable of causing death, should have been inflicted, but the guilty intention or knowledge with which the act was done. The intention and the knowledge are the matters of inference from totality of circumstances available in a given case.

8. The contention advanced against admissibility of the statement of Yusuf under section 27 of the Act to implicate the petitioner since is found to be based on misconception and ignorance of the scope of section 27 of the Act; settled law reiterated by the Hon'ble Supreme Court in series of decisions, it is considered apposite to reiterate the same related to the provision under section 27 of the Act, in that behalf.

9. Section 27 of the Act reads as under:

“27. How much of information received from accused may be proved.

Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates

distinctly to the fact thereby discovered, may be proved.”

(Emphasis supplied)

10. Section 27 of the Act makes that part of the statement which is distinctly related to the discovery admissible as a whole, whether it be in the nature of confession or not (**K.Chinnaswamy Reddy Vs. State of Andhra Pradesh and another, AIR 1962 SC 1788**, relied on).

For the application of section 27 the statement must be split into its components and to separate the admissible portion and only those components or portions which were the immediate cause of the discovery would be legal evidence and not the rest which must be excluded and rejected. (**see: Mohd. Inayatullah Vs. State of Maharashtra, AIR 1976 SC 483**).

Section 27 permits the derivative use of custodial statements in the ordinary course of events. In Indian Law, there is no automatic presumption that the custodial statements have been extracted through compulsion (**see: Smt. Selvi Vs. State of Karnataka, AIR 2010 SC 1974**).

11. In the instant case, the statement of Yusuf of having had conversation related to conspiracy details with the accused Virendra Pal (since absconding) and Gyanchand Dosi led to discovery of mobile call details through Cyber cell (amongst Yusuf, Virendra Pal and Gyanchand Dosi) is a statement which prima facie admissible within the meaning of section 27 of the Act albeit, still the prosecution has to show that the recoveries made are connected with the crime during the course of the trial.

12. Accordingly, this Court sees no reason to interfere with the order dated 08/02/2017 framing charge against the petitioner in sessions trial No.100/2016 by the Additional Sessions Judge, Neemuch for the offence punishable under section 307 read with section 120B IPC.

13. Consequently, this revision petition fails and is hereby dismissed.

14. Before parting with the case, it is considered apposite to observe that any observations made in this order touching the merits of the case are only for the reason that the learned senior counsel insisted before this Court to address on merits of the charges but, nevertheless, the same are for the purpose of deciding the instant revision petition.

(Rohit Arya)
Judge
18/06/2018

b/-