

CASE NO.:
Appeal (crl.) 303 of 2006

PETITIONER:
Rajbir Singh

RESPONDENT:
State of U.P. & Anr

DATE OF JUDGMENT: 08/03/2006

BENCH:
Arun Kumar & G.P. Mathur

JUDGMENT:
J U D G M E N T
(Arising out of S.L.P.(Crl.) No.5896 of 2004)

G. P. MATHUR, J.

1. Leave granted.

2. This appeal, by special leave, has been preferred by the complainant (first informant) against the judgment and order dated 9.7.2004 of Allahabad High Court by which the charges framed against Akhilesh Chauhan (respondent No.2) were set aside.

3. The appellant, Rajbir Singh, lodged an FIR at 5.10 p.m. on 29.9.2003 at P.S. New Agra, alleging that a day before some brickbats were thrown in the compound of his brother's house from the house of his neighbour Ramraj Rathore. On account of this incident, exchange of hot words took place between his father Hoti Lal and accused Ramraj Rathore, but the matter was pacified due to intervention of some persons of the locality. At about 4.00 p.m. on 29.9.2003 Ramraj Rathore and his relations Geetendra Singh and Prem Narain who were armed with firearms came near the shop of the complainant where his father was standing and all of them exhorted that Hoti Lal should be killed. Ramraj Rathore started firing towards Hoti Lal who after receiving the injuries fell down. Pooja Kumari, a girl belonging to Scheduled Caste community, who had come to purchase some articles from the shop, also sustained firearm injuries and fell down. Both the injured were taken to the hospital but they died on the way. The accused continued to fire from their weapons and tried to kill the complainant and his family members as well. On account of the firing resorted to by the accused, a feeling of terror spread and people started running towards their houses. On the basis of the FIR lodged by the appellant a case was registered under Section 302 IPC and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (for short 'SC/ST Act') at the police station. The name of Akhilesh Chauhan (respondent no.2) was not mentioned in the FIR. During the course of investigation, the police recorded statement of some persons under Section 161 Cr.P.C., wherein his name appeared and the allegation made against him was that after the incident of firing, one of the accused handed over his rifle to him and then he ran away from the spot.

4. After the case had been committed to the Court of Sessions, the learned Special Judge (SC/ST Act) by his order dated 11.5.2004 framed charges under Section 302 read with Section 34 IPC and Section 3(2)(v) SC/ST Act against Akhilesh Chauhan (respondent no.2). Akhilesh Chauhan then filed a criminal revision under Section 397/401 Cr.P.C. before the High Court challenging the order by which

charges had been framed against him. The High Court by a very brief order set aside the order passed by the learned Special Judge and the relevant part of the order passed by the High Court is being reproduced below :

"It was argued by the applicants counsel that the deceased has received injuries by way of accident as the firing was aimed at the other persons and accidentally the deceased Pooja Balmiki was passing through that way and she was hit. The applicant neither intended to kill the deceased nor she was aimed out because of the reason that she was scheduled caste. The charges framed by the learned Special Judge (SC/ST Act), Agra is liable to be quashed as no offence under the said Act is made out against him.

In view of the aforesaid discussion this revision is allowed and the order impugned dated 11.5.04 is set aside."

Feeling aggrieved by the order passed by the High Court, the complainant has filed the present appeal by special leave.

5. We have heard learned counsel for the appellant (complainant), learned counsel for Akhilesh Chauhan (respondent no.2) and have perused records. The only reason given by the High Court for setting aside the order passed by the learned Special Judge framing charges against respondent no.2 is that the firing was not aimed at Pooja Balmiki but she accidentally received the injuries as she was passing through that way and was hit. The High Court completely ignored the provisions of Section 301 IPC which reads as under :

301. Culpable homicide by causing death of person other than person whose death was intended.--If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person, whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.

The aforesaid provision clearly shows that if the killing took place in the course of doing an act which a person intends or knows to be likely to cause death, it ought to be treated as if the real intention of the killer had been actually carried out.

6. The contents and scope of Section 301 IPC were examined in Shankarlal Kacharabhai & Ors. v. The State of Gujarat AIR 1965 SC 1260 and the same were explained as under :

"..... It embodies what the English authors describe as the doctrine of transfer of malice or the transmigration of motive. Under the section if A intends to kill B, but kills C whose death he neither intends nor knows himself to be likely to cause, the intention to kill C is by law attributed to him. If A aims his shot at B, but it misses B either because B moves out of the range of the shot or because the shot misses the mark and hits some other person C, whether within sight or out of sight, under S.301, A is deemed to have hit C with the intention to kill him. What is to be noticed is that to invoke S.301 of the Indian Penal Code A shall not have any intention to cause the death or the knowledge that he is likely to cause the death of C."

The fact that there was no intention to cause injury to Pooja Balmiki and she was accidentally hit can make no difference as according to the version of the prosecution, the accused intended to cause injuries by firearm to Hoti Lal and in attempting to carry out the

same, also caused injuries to her. The reasons given by the High Court for quashing the charges are, therefore, wholly erroneous in law and cannot be sustained.

7. The FIR of the case shows that the three accused named therein came on the spot armed with firearms and after giving an exhortation to kill Hoti Lal and others resorted to firing. During the course of investigation, the name of Akhilesh Chauhan (respondent no.2) also appeared and some witnesses stated that one of the accused handed over his rifle to Akhilesh Chauhan who ran away from the spot. Chapter XVIII of Code of Criminal Procedure (for short 'Cr.P.C.') gives the procedure of trial before a Court of Session. Section 227 Cr.P.C. says that if, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing. Section 228(1)(b) says that if, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which is exclusively triable by the Court, he shall frame in writing a charge against the accused. The scope of these provisions have been considered in a catena of decisions of this Court. In *State of Bihar v. Ramesh Singh* AIR 1977 SC 2018, it was held :

"Reading Ss. 227 and 228 together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under S. 227 or S. 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction.

Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion 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 in 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."

8. In *Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia & Anr.* (1989) 1 SCC 715, the Court while examining the scope of Section 227 held as under :

"Section 227 itself contains enough guidelines as to the scope of inquiry for the purpose of discharging an accused. It provides that 'the judge shall discharge when he considers that there is no sufficient ground for proceeding against the accused'. The 'ground' in the context is not a ground for

conviction, but a ground for putting the accused on trial. It is in the trial, the guilt or the innocence of the accused will be determined and not at the time of framing of charge. The court, therefore, need not undertake an elaborate inquiry in sifting and weighing the materials. Nor is it necessary to delve deep into various aspects. All that the court has to consider is whether the evidentiary material on record, if generally accepted, would reasonably connect the accused with the crime."

The High Court did not at all apply the relevant test, namely, whether there is sufficient ground for proceeding against the accused or whether there is ground for presuming that the accused has committed an offence. If the answer is in affirmative an order of discharge cannot be passed and the accused has to face the trial. The High Court after merely observing that "as the firing was aimed at the other persons and accidentally the deceased Pooja Balmiki was passing through that way and she was hit" and further observing that "the applicant neither intended to kill the deceased nor she was aimed out because of the reason that she was scheduled caste" set aside the order by which the charges had been framed against respondent no.2. There can be no manner of doubt that the provisions of Section 301 IPC have been completely ignored and the relevant criteria for judging the validity of the order passed by the learned Special Judge directing framing of charges have not been applied. The impugned order is, therefore, clearly erroneous in law and is liable to be set aside.

10. The prosecution case that one of the accused handed over his rifle to Akhilesh Chauhan (respondent no.2) and thereafter he ran away from the scene of occurrence prima facie shows commission of an offence under Section 201 IPC. Since two persons have been killed there should be separate and distinct charge for each murder besides the charge under Section 3(2)(v) SC/ST Act. The charges framed against the accused who are alleged to have resorted to firing should be amended accordingly.

11. In the result, the appeal is allowed and the impugned order dated 9.7.2004 of the High Court is set aside. The learned Special Judge (SC/ST Act), Agra, before whom the trial of the other co-accused of the case is pending, is directed to proceed against respondent no.2 after framing appropriate charges and try him in accordance with law. It is made clear that any observation made in this order is only for the limited purpose of deciding the appeal and shall not be construed as an expression of opinion on the merits of the case. The learned Special Judge shall decide the case strictly on the basis of evidence adduced by the parties and in accordance with law.