

Shafidad Khan vs The State Of Madhya Pradesh on 23 November, 2020

Author: B. K. Shrivastava

Bench: B. K. Shrivastava

1

The High Court Of Madhya Pradesh

MCRC-39893-2020

((SHAFIDAD KHAN Vs THE STATE OF MADHYA PRADESH))

MCRC-29186-2020

(IRFAN KHAN @ TITU KHAN AND OTHERS Vs STATE OF MP.

MCRC-09429-2020

(RIJWAN Vs THE STATE OF MADHYA PRADESH)

MCRC-41533-2020

(RAFIQ @ PAPPU Vs THE STATE OF MADHYA PRADESH)

Jabalpur, Dated : 23-11-2020

Through Video Conferencing.

Shri Vishal Daniel, counsel for the

M.Cr.C.No.29186/2020 and M.Cr.C.No.41533/2020.

Shri A.S.Usmani, counsel for the applicant in M.Cr.C.No.9429

Shri Naeem Khan, counsel for the applicant in M.Cr.C.No.3989

Shri Arun Dixit, Panel Lawyer, for the respondent/State.

Heard on all 4 applications filed under section 439 of CrPC on 23.6.2020, 18.8.2020, 9.10.2020 and 19.10.2020.

M.Cr.C.No.9429/2020 has been filed on behalf of applicant Rijwan and Nasir Khan, who are confined in custody since 1.10.2019 and 23.9.2019. M.Cr.C.No.29186/2020 has been filed on behalf of applicants Irfan Khan alias Titu Khan, Irshad Khan, Shahid Khan and Iqbal Khan, who are confined in custody since 23.9.2019. M.Cr.C.No.39893/2020 has been filed on behalf of applicant Shafidad Khan, who is confined in custody since 23.9.2019. M.Cr.C.No.41533/2020 has been filed on behalf of applicant Rafiq alias Pappu, who is confined in custody since 23.9.2019.

All applicants have been arrested in connection with Crime No.282/2019, registered at Police Station Kaniwara, District Seoni, under sections 147, 148, 149, 294, 323, 307, 325 and 506/34 of IPC.

This is the second application on behalf of applicants Rijwan and Nasir Khan. Their first application was dismissed on merits by this Court on 4.2.2020. Other applicants have filed their first application.

It is submitted by the learned counsel Shri Usmani that photocopy of Signature SAN Not Verified challan along with the photocopy of challan submitted in the cross-case has 2 MCRC-39893-2020 been filed. The counsel read out the impugned order dated 25.11.2019 passed by the trial court upon the application filed by accused Rizwan and also pointed out the liability stated in the aforesaid order. The counsel also draws attention towards the medical report. It is submitted that there was some dispute since 2017. Civil suit was filed by the applicants. The complainant also admitted that the accused was having the possession of disputed land. All accused have been enlarged on bail in the cross-case. No any grievous injury has been caused in this case. The applicants are confined in custody since September, 2019 and having no any criminal background. Counsel also read out some statements recorded in the shape of dying declaration by the doctor.

Learned counsel Shri Naeen Khan submitted that as per prosecution case the present applicant caused the injury only to Hiralal. The counsel read out the dying declaration of Hiralal and it is also submitted that the name of present applicant is not mentioned in the aforesaid dying declaration. Only one injury has been caused upon the head of Hiralal. The counsel also submitted that the applicant has been falsely implicated in this case having no any criminal background, therefore, he should be enlarged on bail.

Learned counsel Shri Vishal Daniel submitted on behalf of his applicants that as per the prosecution case all applicants used the Lathi, not any dangerous weapon. Lathi is a common weapon in the village area. Cross-case was also registered and the challan has been filed under section 439 of IPC also. The complainant party burnt the motorcycle of the accused persons, therefore, the case under section 435 of IPC found proved. It is also submitted that no any victim sustained any fracture. Any victim was not admitted in the hospital for more than 2 days. Any fracture or grievous injury is also not found. The case has been wrongly registered under section 307 of IPC.

It is also submitted that after the detailed trial, the offence may come Signature SAN Not under section 308 of IPC (if proved) and the injury may come into purview of Verified 3 MCRC-39893-2020 section 324 or 325 of IPC. The common object cannot be proved by the prosecution evidence. Only omnibus type of allegations have been made and they may be vary from the statements, dying declaration and the statements recorded under section 161 of CrPC. Therefore, the applicants should be enlarged on bail.

The counsel for State strongly opposed all applications. It is submitted by the counsel for State that grievous injuries have been caused in furtherance of common object of all accused persons. The land was purchased by the complainant through registered sale deed. The theft of crop was committed by the accused persons and they also committed the crime in furtherance of their common intention. 12 accused are involved in this case.

Therefore, looking to the serious nature of crime, the applicants should not be enlarged on bail.

It appears from the record that M.Cr.C.No.52093/2019 and 52130/2019 filed by applicants Rijwan and Nasir Khan were dismissed on merits on 4.2.2020. The detailed facts have been mentioned in the aforesaid order. Therefore, in reference to the aforesaid two accused, no any subsequent change

is found for taking a different view.

It is transpired from the case diary that the complainant Hari Prasad Singore lodged the report at Police Station Kaniwara on 22.09.2019 stated that the land situated at Village Khursipar area 75 decimal was purchased by the his nephew named Manish Singore from Hirday Yadav in the year 2017. Registry was executed in the name of Manish Singore. The accused Sharif Khan was claiming the possession over the land and created the dispute. In the year 2019 Manish Singore cultivated the crop of Corn (Makka) but the Sharif Khan and other cut the crop about 3 sacks of Corn (Makka) on 20.09.2019, therefore, the report was lodged.

Applicants' counsel draws attention towards copy of the civil suit filed by Shafidad Khan, but this document does not show any title of the accused party upon the disputed land. While on the other side the complainant party Signature SAN Not Verified 4 MCRC-39893-2020 was having a registered sale deed in the name of Manish Singore.

The present incident took place after lodging of the aforesaid report on 22.09.2019 at about 07:30 P.M. The accused persons Shafidad alias Baba Khan, Irshad Khan, Nasir Khan, Iqbal Khan, Rijwan Khan, Shahid Khan, Bhura Khan, Teetu Khan, Chotu Khan, Irfan Khan and Pappu Khan armed with lathi, rod and axe, reached infront of house of Hiralal Singore and used filthy language and said why he lodged the report regarding the theft of Makka. When the complainant party requested to keep silence all accused assaulted upon the complainant party.

It is stated in the FIR that Sharif Khan S/o Shafidad Khan caused injury to Rajesh Singore by axe and Pappu Khan by lathi, Arif Khan caused injury to Sunil Singore by iron rod, Shafidat Khan caused injury to Hiralal by iron rod, Pappu Khan and Shakir Khan caused injury by lathi to Arvind Singore, Irshad Khan, Nasir and Iqbal Khan caused injury to Vijay Singore by lathi, Ridwan Khan, Shahid Khan and Bhura Khan caused injury to Khem Chand Singore by lathi. Teetu Khan, Chotu Khan and Irfan Khan caused injury to Manish Singore by lathi, when Shahid Khan complainant tried to interrupt then Nasir caused injury to him with the help of lathi. Rajesh S/o Atarlal, Sunil S/o Hiralal, Khem Chand, Hiralal and Vijay sustained grievous injuries except Sunil, the dying declarations of other injured persons were recorded in the presence of doctor. Sunil S/o Hiralal was semi-conscious, therefore, as per the opinion of the doctor he was unable to give his statement. Various injured persons were medically examined and found that they have sustained various injuries.

The cross Crime No.284/2019 has been registered under Sections 147, 294, 323, 324, 506 and 435 of IPC.

It appears from the challan of the cross-case that both cases are not related to the same incident. Both incidents happened one after other. In the cross-case, no any grievous or fatal injury has been caused to anybody; while the position of this case is different. When any offence is committed in Signature SAN Not Verified 5 MCRC-39893-2020 furtherance of the common intention of various accused, then any accused cannot be escaped from his liability only by saying that the did not use any dangerous weapon or did not cause any fatal injury to anybody. All are equally liable for the act

committed by any of them.

Therefore, looking to the overall circumstances, the case of other accused is not different from accused Rijwan and Nasir Khan. The first applications of accused Rijwan and Nasir Khan have already been dismissed on merits. Hence, in view of this Court the applicants are not entitled to get the bail.

Accordingly, all four MCrCs are dismissed.

(B. K. SHRIVASTAVA) JUDGE TG /-

Signature

SAN Not
Verified