
(2015) 09 AHC CK 0084
In the Allahabad High Court
Case No : Criminal Revision No. 24 of 2014

Ambrish Kumar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 11-09-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, 239, 244, 245, 245(1)
Evidence Act, 1872 — Section 10
Penal Code, 1860 (IPC) — Section 107, 120-A, 306

Citation : (2015) 91 ALLCC 517

Hon'ble Judges : Pratyush Kumar, J.

Bench : Single Bench

Advocate : Girish Chandra Verma, for the Appellant; Pramod Kumar Shukla, for the Respondent

Judgement

Pratyush Kumar, J.—The instant revision has been filed by the accused/revisionist (hereinafter referred as "revisionist") challenging the legality of order dated 28.11.2013 passed by the Additional Sessions Judge, Court No. 1, Barabanki in S.T. No. 136 of 2013 whereby request of the present revisionist and his co-accused for discharge was rejected. In order to appreciate the grounds on which the present revision has been filed, it would be proper that a brief glimpse of the facts of the case be had.

2. Briefly stated on 9th December, 2012, at 2.35 p.m. at Police Station Masauli, District Barabanki, Atul Kumar Verma gave a written report stating therein that marriage of his only sister Pratibha Singh @ Sheelu was settled with Sunil Kumar Verma, s/o. Amrish Kumar Verma on dowry of Rs. 13 lacs. On 10th June, 2012, certain ceremonies including "tilak" were performed and 6th December, 2012 was fixed for marriage. Some of the amount and articles (amounting to Rs. 3,17,000/-) were given. At the time of settlement of marriage, Sunil Kumar was not employed. Subsequently, he was employed as Junior Engineer in Railway Department. Sunil Kumar, the present revisionist and other family members on this account increased the amount of dowry from Rs. 13 lacs to Rs. 18 lacs. They

started to criticize Pratibha Singh that she is short statured and less beautiful. Sunil Kumar also phoned his sister that due to her lesser height and lesser beauty even labour would not marry her. On mobile phone he started to harass her. When the present revisionist was approached, he also declined to interfere though all preparations of marriage were made. His sister due to harassment started to feel miserable and on the telephonic communication of Sunil Kumar saying that "SALI JAKAR KAH! MAR JAO AUR MERA PICH! CHUT JAI" his sister on the day scheduled for her "bidai" at 10.30 a.m. hanged herself.

3. Five persons were arrayed as accused but after investigation charge-sheet was submitted only against the present revisionist and his son Sunil Kumar. During investigation postmortem was conducted on the dead body of Pratibha Singh. During postmortem on her dead body, the doctor recorded three ante-mortem injuries all indicating death due to asphyxia as result of ante-mortem hanging.

4. The investigating officer after completion of the investigation, submitted the chargesheet. He had named 14 persons as witnesses, out of these, nine witnesses were witnesses of facts. Two witnesses were witnesses of inquest proceeding. One witness is a doctor and other two are police officers. Alongwith the revision, typed copies of the statements of Smt. Leelawati, mother of the deceased, Harish Chandra, middleman, who settled the marriage, Smt. Shashi Singh, sister-in-law of the deceased, Dr. Vinay Singh, Chandrashekhar, resident of the locality where the deceased resided alongwith the statement of first informant Atul Kumar Verma have been enclosed. They all are supportive of the version contained in the First Information Report.

5. The perusal of the impugned order reveals that after noticing the facts and arguments of the parties, the learned trial judge has opined that facts stated in the First Information Report are prima facie established at that stage, material is not to be minutely scrutinized only it is to be seen whether there is material to show involvement of the accused persons in the alleged crime.

6. Feeling aggrieved with this order, the present revision has been filed on the ground that the death of the deceased was a result of honour killing. There is no allegation in the First Information Report that the accused instigated the suicide of the deceased, the story narrated in the First Information Report stands falsified from the fact that "Tilak" and "Varichha" had taken place on 10.6.2012. Sunil Kumar was selected much earlier his selection was communicated by letter dated 14.11.2011 and by another letter dated 1st April, 2012.

7. The next argument is that no ingredient of abetment by the accused to commit suicide has been made out. No offence against the accused persons is made out. By no stretch of imagination it can be said that before her suicide, the deceased was instigated to do so by the accused persons.

8. On behalf of the opposite party No. 2, counter affidavit has been filed whereby averments made in the supporting affidavit filed with the revision have been denied and it has been stated that the impugned order has been passed after

due consideration of the material available on the record. Hence, it is perfectly legal and just order. It needs no interference.

9. Learned Counsel for the revisionist has argued at length in support of the grounds taken in the memo of revision, as indicated above. His arguments are threefolds; genesis of the incident as narrated in the First Information Report is untrue, last conversation of the son of the revisionist with the deceased was before 16th October, 2012 even according to the prosecution witnesses. Consequently soon before her suicide on 7.12.2012, no instigation was made by any accused person even if the prosecution story is taken to be true and in the last, he has argued that in the light of the facts of the present case, no case of abetment of suicide, on the admitted facts is made out. In support of his argument he has placed reliance on the following cases:--

1. M. Mohan Vs. The State represented by The Deputy Superintendent of Police, --During the argument, learned Counsel has placed reliance on paras 17, 18, 19 and 20 and 28 and further in reference to scope of inherent jurisdiction of this Court under section 482 , he has placed reliance on subsequent paras.

2. Sohan Raj Sharma Vs. State of Haryana, . He has placed reliance on paras 11 to 14 in reference to ingredients of abetment.

3. Gangula Mohan Reddy Vs. State of Andhra Pradesh, . This case has been referred in support of his arguments that for constituting offence of abetment to commit suicide mens rea is essential ingredient.

4. Madan Mohan Singh Vs. State of Gujarat and Another, --Reliance has been placed on paras 6, 7, 8 and 11. This case has been referred in reference to ingredients of abetment to commit suicide.

5. Bhagivan Das v. Kartar Singh and others 2007 (3) SCC 1073. Paras 15 and 16 of the report have been referred in reference to ingredient of abetment to commit suicide.

10. On behalf of the opposite party No. 2, arguments have been replied and in reference to scope of section 727, wherein the present revisionist and his son sought their discharge has been referred the case of State of Tamilnadu v. N. Suresh Ranjan and others 2014 (134) AIC 1 (SC) : 2014 (84) ACC 656.

11. Before proceeding to discuss the respective merits of the arguments of both the parties, I would like to indicate the predicament I am facing while deciding the present revision for the reason that joint application for discharge, annexure 12 to the supporting affidavit, was moved on behalf of both the accused, who happen to be father and son. The present revision has been preferred by Amrish Kumar, one accused. Neither his son Sunil Kumar, other co-accused has joined in the revision as co-revisionist nor he is arrayed as opposite party. The facts as indicated herein before would show that main allegations are against Sunil Kumar. The role of the present revisionist is merely secondary. The question before me is this that grounds raised in the present revision also relates to the

facts whereby Sunil Kumar would either be benefited or adversely effected even though he is not a party to the revision.

12. The pendency of the revision has delayed the progress of the trial for more than one and a half years. Instead of issuing notice to Sunil Kumar, I feel that ends of justice would be served if the arguments advanced on behalf of the revisionist are considered with this clarification that any observation made in this revision would have no bearing so far as the case of Sunil Kumar is concerned.

13. I have been prompted to take resort of this course on the strength of the observation of the Supreme Court that at the stage of discharge, scope of judicial scrutiny is very limited. In the case of *State of Tamilnadu v. N. Suresh Ranjan and others* (supra), the Supreme Court in paras 20 and 21 has made very detailed observations which led me to infer that whatever examination is made at the stage of 227 Cr.P.C., that is based only on the prima facie reading of the material collected during the investigation and pleas taken by the accused. It would be better, for me to quote the observations made by the Supreme Court in paras 20 and 21 in the case of *State of Tamilnadu* (supra).

"20. We have bestowed our consideration to the rival submissions and the submissions made by Mr. Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the Court cannot act as a mouthpiece of the prosecution or act as a post-office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the Court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the Court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the Court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the Court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage. Reference in this connection can be made to a recent decision of this Court in the case of *Sheoraj Singh Ahlawat and Others Vs. State of U.P. and Another*, , in which, after analyzing various decisions on the point, this Court endorsed the following view taken in *Onkar Nath Mishra and Others Vs. State (NCT of Delhi) and Another*, .

"(11). 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 there from, taken at their face value, disclosed the existence of

all the ingredients constituting the alleged offence. At that stage, the Court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence."

21. Now reverting to the decisions of this Court in the case Sajjan Kumar (supra) and Dilawar Balu Kurane (supra), relied on by the respondents, we are of the opinion that they do not advance their case. The aforesaid decisions consider the provision of section 227 of the Code and make it clear that at the stage of discharge the Court can not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if it was conducting a trial. It is worth mentioning that the Code contemplates discharge of the accused by the Court of Sessions under section 227 in a case triable by it; cases instituted upon a police report are covered by section 239 and cases instituted otherwise than on a police report are dealt with in section 245 . From a reading of the aforesaid sections it is evident that they contain somewhat different provisions with regard to discharge of an accused. Under section 227 of the Code, the trial Court is required to discharge the accused if it "considers that there is not sufficient ground for proceeding against the accused". However, discharge under section 239 can be ordered when "the Magistrate considers the charge against the accused to be groundless". The power to discharge is exercisable under section 245(1) when, "the Magistrate considers, for reasons to be recorded that no case against the accused has been made out which, if not repudiated, would warrant his conviction". Section 227 and 239 provide for discharge before the recording of evidence on the basis of the police report, the documents sent along with it and examination of the accused after giving an opportunity to the parties to be heard. However, the stage of discharge under section 245 , on the other hand, is reached only after the evidence referred in section 244 has been taken. Thus, there is difference in the language employed in these provisions. But, in our opinion, notwithstanding these differences, and whichever provision may be applicable, the Court is required at this stage to see that there is a prima facie case for proceeding against the accused. Reference in this connection can be made to a judgment of this Court in the case of R.S. Nayak Vs. A.R. Antulay and Another, . The same reads as follows:

"43.....Notwithstanding this difference in the position there is no scope for doubt that the stage at which the Magistrate is required to consider the question of framing of charge under section 245(1) is a preliminary one and the test of "prima facie" case has to be applied. In spite of the difference in the language of the three sections, the legal position is that if the Trial Court is satisfied that a prima facie case is made out, charge has to be framed."

14. Thus, I feel relieved that any observation made by me would not cause any prejudice to Sunil Kumar and even to Ambrish Kumar at the time of the conclusion of trial.

15. The first argument advanced on behalf of the revisionist that before marriage was settled Sunil Kumar was selected and he had joined the training in pursuance of letter dated 1st April, 2012 (para 34 of the paper book). The learned Counsel for the revisionist while referring letter dated 14th October, 2011 (page 33 of the paperbook), has stated that Sunil Kumar was selected for the post of J.E.-II in the Railway Department. This argument does not impress me. I have gone through the First Information Report and the statements of the witnesses, whose typed copies have been annexed with the supporting affidavit and referred herein before. The argument advanced on behalf of the revisionist is based on fallacy. He wants me to believe that marriage was settled when ceremonies of "Varichha" and "Tilak" were held on 10th June 2012. It is common knowledge that any ceremony formally held indicating settlement of marriage is always preceded by the discussion held between the respective families and after their agreement is arrived at only thereafter any ceremony is held. According to the statement of Harish Chandra on 27th April, 2012, ring ceremony was held. Therefore, settlement of marriage must have proceeded before that. Therefore, inconsistency of the timing of the events indicated by the learned Counsel for the revisionist is not established, hence, his argument that the genesis of the incident as mentioned in the First Information Report is untrue cannot be accepted.

16. His next argument that the deceased allegedly committed suicide on 7th December, 2012 and according to prosecution witnesses, Sunil Kumar and the deceased held last conversation before 16th October, 2012, which according to him rules out any possibility of instigation by Sunil Kumar soon before commission of the alleged suicide. This argument is also not substantiated from the record. The argument is based on call details of mobile phones mentioned in the First Information Report. This argument is misconceived. At some places in the first information in reference to telephonic conversation, the first informant has used the word "mobile" and while referring to the last conversation quoted herein before, word "mobile" was not been used. After Navratri, according to the revisionist, no conversation was held between the parties. But with the counter affidavit photocopies of the marriage card and other deposits have been filed to show that preparations of marriage continued. Even in the statements of witnesses examined by the investigating officer, there are references which indicate that conversation between Sunil Kumar and the deceased went on. At this stage, critical examination of the evidence collected by the investigating officer is not to be made. Prima facie whatever evidence has been collected reveals that between the two families, dialogues were continued. Thus, I find second argument, advanced on behalf of the revisionist, also unacceptable.

17. The other argument is that from the material available on record, no

instigation on the part of the revisionist or Sunil Kumar is made out. To discuss and appreciate this argument, it would be gainful to refer the case law cited by the learned Counsel for the revisionist.

18. In Sohan Raj Sharma's case (supra), the Supreme Court has observed that to constitute abetment there should either be investigation or engagement in any conspiracy or intentionally aiding of doing of the offence. Thereafter the word "instigate" has been discussed, which means to provoke, incite, urge on or to bring about by persuasion to do anything.

19. In Madan Mohan Singh's case (supra) suicide note was found inadequate to constitute abetment.

20. In Bhagivan Das's case (supra), in a matter of matrimonial discords, the Supreme Court has treated the use of words "to go and die" inadequate to constitute abetment for the reason that between the husband and wife in a moment of anger such words may be uttered to uttering of these words may not be accompanied with necessary mens rea.

21. In Gangula Mohan Reddy's case (supra) in para 21 the Supreme Court has observed that for convicting a person under section 306 I.P.C., there should be a clear mens rea to commit the offence. To establish that there must be an active act or direct act which led the deceased to commit suicide.

22. In the last I would like to refer the case of M. Mohan v. State (supra). In para 38 of the report, the Supreme Court quoted the provision contained in section 107 I.P.C. which read as under:--

107. Abetment of a thing--A person abets the doing of a thing, who--

First--Instigates any person to do that thing; or

Secondly--Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes places in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly--Intentionally aides, by any act or illegal omission, the doing of that thing.

Explanation 2--Which has been inserted along with section 107 reads as under:

Explanation 2--Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act."

23. In para 40 the Supreme Court has explained the meaning of investigation. In para 44, the Supreme Court expressed the same opinion as recorded in Bhagwan Das's case (supra).

24. Before this Court, father of Sunil Kumar has challenged the legality of the impugned order. The main role has been assigned to Sunil Kumar when facts of the case, as culled out hereinabove are looked into they indicate that consistently

Sunil Kumar had run down the deceased. Thereafter he started to harass her, when the present revisionist was approached, he declined to interfere. The matter did not end there and in the F.I.R., it has been clearly mentioned that Sunil Kumar after calling her name, asked her to go and die so that he may be rid of her.

25. There arises two questions. First, whether this conduct was accompanied with necessary mens rea that the deceased should commit suicide and it was sufficient to persuade her to commit suicide. When conduct of Sunil Kumar as narrated in the First Information Report and the statements of witnesses are taken into consideration alongwith last communication made by him to the deceased prima facie necessary mens rea appears to exist. The conduct discussed above, adequately constitutes the instigation on the part of Sunil Kumar. The date of commission of suicide is indicative of the fact that such instigation led her to end her life.

26. In the light of the legal position, discussed above, against Sunil Kumar, offence of abetment to commit suicide is prima facie made. So far as the case of the present revisionist is concerned, his role in the offence cannot be said to fall in the category of instigation. Rather his case is covered under Clause 2 of section 107 of Indian Penal Code that he had conspired with Sunil Kumar in commission of offence alleged against him. For searching the meaning of conspiracy, one need not go very far, because section 120-A , I.P.C. defines the words "criminal conspiracy". Necessary ingredient of the criminal conspiracy are agreement between two or more persons to do illegal act. Illegal act i.e. abetment to commit suicide is made out from the facts mentioned in the First Information Report. The other ingredient agreement between Sunil Kumar and the present revisionist is concerned that has to be gathered from the surrounding circumstances because rarely direct evidence of criminal conspiracy is available. After settlement of marriage, and performance of certain ceremonies, refusal by the present revisionist to honour his words on the pretext of the wish of his son is an evidence that both were in agreement that anyhow they should get rid of the deceased. Thus, prima facie under Clause 2 of section 107 I.P.C. case of the present revisionist is also covered.

27. When this conclusion is reached by virtue of the provisions contained in section 10 of the Evidence Act, any act done or word spoken by Sunil Kumar in this regard will make the present revisionist liable for them section 10 of the Evidence Act is a rule of evidence creating constructive liability for things said or acts done by conspirator, on other conspirator. To elucidate I would like to quote section 10 of the Evidence Act which reads as under:--

"10. Things said or done by conspirator in reference to common design--Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a

relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it."

28. In this way, grounds taken in the revision to assail the validity and legality of the impugned order are without substance.

29. The trial has already been delayed. Delay in trial has two dimensions effecting the process of administration of justice to wit, either the first informant's side would delay the trial to harass the accused parties and put them into inconvenience, the other dimension is that sometimes accused party would delay the trial so that examination of witnesses be postponed and by using pressure tactics they could be won over. These two dimensions pollute the flowing of stream of administration of justice. In order to ensure that the stream of administration of justice flows cleanly, I think in this case a direction should be issued to the trial judge to conclude the trial within six months from the date of production of the certified copy of this order. Any dilatory tactics adopted by other parties should be discouraged. Revision lacks merit and deserves to be dismissed.

With these observations, the revision is dismissed.