

(1985) 12 DEL CK 0030

In the Delhi High Court

Case No : Civil Revision Appeal No. 230 of 1985

Court on own Motion

APPELLANT

Vs

Yogesh Sharma

RESPONDENT

Date of Decision : 13-12-1985

Acts Referred:

Citation : (1986) RLR 348

Hon'ble Judges : Rajinder Sachar, J

Bench : Single Bench

Advocate : Sodhi Teja Singh and R.K. Saini, for the Appellant;

Judgement

Rajindar Sachar, J.

(1) I had in exercise of my powers u/s 482, Cr.P.C. directed that the various files of cases pending u/s IPC. 309 (attempt to commit suicide) in the trial Courts in Delhi, be summoned and placed before me for disposal. The files have been called by the Registry and placed before me. From the statement, I find that there are 120 cases pending in various trial Courts in Delhi, some pending since 1972.

(2) Mr. Saini, Advocate, is present in Court. I have asked him to assist me in these matters. He appears amicus curiae. Notice had been issued to the State. Sodhi Teja Singh, Standing Counsel for the State, also appears for Delhi Administration.

(3) A.D.B. of this Court in State v. Sanjay Kumar, 1985 Cri. L.J. 931 in dealing with a case u/s 309, Indian Penal Code . observed that the "continuance of Section 309 Indian Penal Code . is an anachronism unworthy of a humane society like ours." It also observed that there was no justification for a provision like Section 309 Indian Penal Code to be on the statute book. It seems paradoxical that a person who, if the prosecution is to be believed, is so unhappy that he makes an attempt to commit a suicide, should, if he fails in his attempt, instead of being attended to by the medical doctors and psychiatrists, be

arrested and roughed through by the police and face criminal courts for all these years which will coarsen him further. The Bench in that case found that the law u/s 167, Criminal Procedure Code . had been wrongly applied, but did not send the case for retrial because it felt that there was no justification to subject the accused to any further misery at the hands of the Courts and, Therefore, upheld the acquittal of the accused. That judgment was given on 29.3.85. It is true that Section 309, Indian Penal Code . still continues on the statute book and technically speaking, the offence continues to be there and if the police send up a charge sheet u/s 308 Ipc, the Courts cannot per se hold that a case has been sent up for an offence which is not a part of the statute. But I see no reason why the delay in repealing this provision which no longer finds place in almost all the civilised nations of the world should be applied so as to continue to add the backlogs to the already over worked courts. As it is there is enough of criminality in the society which keep the police, the prosecution and the courts busy for all the time and there is no reason to put more stress on these institutions than is absolutely necessary. I can only hope that this provision is removed from the statute book at the earliest. Personally speaking, I see no justification for the police to send up a case u/s 309 IPC. I would, in the circumstances, be inclined, as I do here intend, to quash all such cases pending in the lower courts u/s 309 Ipc, without reference to any individual facts of each case. The reason is that there is a broad common pattern in all these prosecutions, namely, an unhappy person has tried to take his own life, even if the prosecution case is accepted in toto. I consider it perverse that such an unhappy person should be further dragged in courts and that his trauma should be lengthened. I am, however, mentioning facts of a few cases to show as to how there is not even a semblance of a justification for prosecution u/s 309 Indian Penal Code and yet the proceedings are dragging on for years just because neither the police nor, unfortunately, the trial courts seem to look at this matter with a humane eye.

(4) One of the usual ways in which prosecution are launched u/s. 309 Indian Penal Code is that whenever a person and almost invariably a person belonging to the poorer section of the society or a woman is admitted in a hospital in a critical condition and it is suspected that he has taken some article, it is assumed that such a person has deliberately taken poison to commit suicide. The constable attached to the hospital would send up a report to the police station indicating that a person had been admitted in a condition of having taken some poison and thereupon a case u/s 309 Ipc is registered against him. A number of cases before me relate to an ordinary labourer who is engaged in earning his daily living by working as a helper in white washing work wherein it is alleged that he had taken copper sulphate, which as it is known, is a common ingredient and is mixed up with lime for purposes of white washing. In almost all these cases the accused denies his guilt and takes the plea that it was by inadvertence that that copper sulphate was taken by him. Not only that, the prosecution witness, right from the first deposes total ignorance and does not implicate the accused. Yet the public prosecutor does not accept his statement but obtains

permission, which the court gives very routinely and if I may say so, quite mechanically to cross-examine the witnesses and yet nothing comes out of it. The court nevertheless proceeds on to continue with the prosecution. Adjournments are given for months. Many a time the prosecution witnesses are absent or the presiding officer is on leave or there is not time enough for the prosecution to cross-examine the witnesses. The poor victim is naturally under a compulsion to attend courts on every hearing. If he has a lawyer, he has to incur expenses and in any case, being poor he has to forego his daily earnings. Years roll by but the courts and the prosecution donot even spend a few minutes to consider calmly whether it is in anybody's interest to prosecute such socially maladjusted victims. I would have thought that there was enough of strong crime in the society which needed to be looked after by the police, the prosecution and the courts rather than such like cases. But no attention is paid to this aspect and things continue in ttte same unsatisfactory manner.

(5) As I said before, it is not necessary to detail facts in each case. I am taking a few instances just as an illustration to show how mindless this prosecution is. Thus, in CrI R. 253/85 the accused, a young boy of 17 years, was charged on 24.3.83 for having attempted to commit a suicide by taking some poisonous substances. Public Witness 1, Dr. Vipin Arora, of J.P.N. Hospital, was examined on 9.9.83. He stated in his cross-exam, that he could not say whether the accused could have died as it is not known as to how much the accused has consumed cop er sulphate. Public Witness 3 Sanjay stated that he did not know anything about the case. Similar was evidence of Public Witness 4, Vinod Kumar who also stated that he did not know anything about the case. The prosecution instead of asking the court so acquit the accused in the present case stubbornly proceeded with it so much so that on 9.9.83 the case was adjourned to 25.11.83. On that date, no witness was present in Court and the Court without applying its mind adjourned the matter to 9.5.84. Again the court took time to record evidence and the case was adjourned to 19.9.84. On that day, Public Witness 4 was examined, who stated that he did not know anything about the case. Now the matter has been adjourned to 7.1.86.

(6) Another instance of gross indifference shown by everyone to this unfortunate lot is shown in CrI. R. 255 of 1985. In this case, it appears that the accused was doing a job of whitewashing and in course of that job possibly took some "neela thotha". He was admitted to the hospital and the constable posted there sent report to the police station that since a person has been admitted in a delicate condition and it was not known what he has taken, a case u/s 309, Indian Penal Code has arisen and that is how the challan has been filed. A total indifference is thus shown. On 18.2.84 the respondent is charged with having taken copper sulphate to commit suicide. Public Witness 3, Bal K-ishan, was examined on 26.2.85 who state that the accused complained of pain and he asked him to take some medicine and by mistake he took copper sulphate. One should have thought that that would have been the end of matter. But no, the A.P.P again wants to cross examine him as if getting conviction of a helpless victim was to br

the crowning success of his career. After 26.2.1985, the court record shows that nothing has been done. The matter was adjourned to 22.3.85 when the court was absent. Then it was adjourned to 14.10.85 and now it has been adjourned to 20.1.86. If some one wants to turn people against courts, such like indifference will surely do that. We cannot certainly permit that. To allow such proceedings to continue is a disservice to the majesty of law. It is a matter of regret that Presiding Officers should act mechanically and not even look into the evidence which was recorded before them where the prosecution evidence is not supporting the charge at all. It is more serious because the charge is u/s 309 IPC and the biggest victim, if any, is the person concerned.

(7) In Cri. R. 261 of 1985 the father of the accused is present in court and has stated that the accused is under treatment in a TB hospital even now and sometimes gets lit. The accused is present in court and looks to me in bad shape and needs urgent medical attention rather than being pushed through the criminal courts.

(8) Another peculiar case is Cr R. 265 of 1985. Here also Public Witness 1 was declared hostile because he said that he saw nothing. The accused in his own statement has stated that he was arrested in a false case, beaten by the police and falsely implicated. Is it not incongruous that in such a case the accused was being prosecuted u/s 309 IPC.

(9) In Cri. R. 272 of 1985, the accused Radhey Shyam appeared in Court on 24.12.82 for an incident of July, 1982. Again none of the prosecution witnesses supported the prosecution. But the case is going on merrily, being adjourned without any evidence having been recorded. The first witness was examined on 19.1.84 PWs 2, 3 and 4 were also examined on the said date and the case was adjourned to 3.12.1984. On 3.12.1984 it was adjourned to 15.1.1985 when statement of Public Witness 5 was recorded and the case adjourned to 3.6.1985 and on that date Public Witness 6 was recorded and matter adjourned to 27.9.85 and on 27.9.85 the matter was adjourned to 14.1.86. What purpose the prosecution wants to achieve is beyond me to understand.

(10) CR. R. No 235 of 1985 has strange facts. Evidence is given by the police to say that on 3.5.1983 Bhagat Singh and Jatpal Singh, constables were going on the road when latter saw the accused and told his colleague that he was a cylinder thief. The accused is then stated to have been taken to I.O. room for interrogation when the accused stated that he wants to go to latrine and was allowed and after sometime on hearing some noise they saw blood oozing out from the neck of the accused. The weapon of offence was not recovered. To say the least, the matter would have looked suspicious for the police because the accused is said to have cut his throat when in police custody. However, strange are the ways of police because instead of facing enquiry a case u/s 309 Indian Penal Code is started. I can only express my amazement that both the prosecution and the courts should permit such a matter to continue. The first witness was examined on 25.4.85. The next date was 19.9.85 and thereafter it

has been adjourned with total indifference to 14 3.86. The case is pending with the court almost three years. How pitiable is the state of affairs.

(11) From a brief resume of these cases, it is quite clear that there is a total non-application of mind when starting prosecution u/s. 309 IPC. A mindless mechanical procedure is continued in which neither the prosecution nor unfortunately, the trial courts, seem to apply their minds. To allow such prosecution to drag on for years when the victim has had enough of misery and when the accused also belong to the poorer sections of the society is to add further insult to the injury and that too at the hands of the courts. In my view, the continuation of these prosecutions u/s. 309 Indian Penal Code will only result in bringing the image of courts into disrepute. No person who believes in rule of law and the role of courts as a vital instrument of social change as I do, can permit such a situation to continue. Even though S. 309 Indian Penal Code may be on the statute book, I feel it is time when courts must refuse to prosecute these victims of social circumstances. The backlog and the arrears in courts are already so much that the courts do not have to further get clogged up with such useless and unjustified prosecutions u/s. 309 IPC.

(12) I would in the circumstances, in exercise of my inherent powers u/s. 482 of Cr. P.C. and to secure the ends of justice, quash the pending prosecution in all these cases and direct acquittal of the accused with immediate effect in the said cases. The bail bonds given by them and also the surety bonds will stand discharged.