
(2003) 12 OHC CK 0009
In the Orissa High Court
Case No : C.R.M.C. No. 5463 of 1999

Rajendra Kumar Nanda

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 12-12-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 228, 482
Penal Code, 1860 (IPC) — Section 109, 302

Citation : (2004) CLT 143 (Suppl CrI) : (2004) 27 OCR 193 : (2004) 1 OLR 27

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : D. Nayak, S. Swain, S.K. Dash and A.K. Mahakud, for the Appellant;
S. Pradhan, A.S.C., for the Respondent

Final Decision : Dismissed

Judgement

L. Mohapatra, J.

1.This application u/s 482, Cr.P.C. has been filed challenging the order dated 10.9.1999 passed by the learned Additional Sessions Judge, Sonepur in Sessions Case No. 41-S/10 of 1998-99 refusing the prayer to discharge the petitioner u/s 228 of the Code of Criminal Procedure and framing charge for commission of offences under Sections 302/109 of the Indian Penal Code against the petitioner.

2. The petitioner and one Smt. Snehalata Naik are the accused persons in the aforesaid case. The said Snehalata Naik had married the deceased Ranjan Naik, who was working as Inspector of Police. In the night of 8th April, 1998 while the informant along with some Constables were on patrol duty, at about 1.40 A.M. they saw huge smoke coming out from the Government quarter in which the deceased was staying. When the informant and others went near the house, they found accused Snehalata Naik shouting "fire, fire" and the daughter of the deceased was trembling out of fear. The informant under the impression that the deceased had been trapped in the fire tried to rescue him but ultimately they found him dead. The F.I.R. was lodged at Sonepur Police Station alleging therein

that the deceased was murdered by his wife Snehalata Naik being abetted by the present petitioner. From the case diary, it appears that accused Snehalata Naik was not pulling on well with her husband, the deceased, and she was also having illicit relationship with the present petitioner. The quarrel which was taking place between the deceased and the accused Snehalata Naik related to the relationship between Snehalata Naik and the present petitioner.

3. Shri Nayak, the learned counsel appearing for the petitioner challenged the impugned order on the ground that even if the prosecution story is accepted to the extent that accused Snehalata Naik had some kind of relationship with the present petitioner such material does not necessarily lead to the conclusion that murder of the deceased if at all had taken place had been abetted by the present petitioner. According to Shri Nayak, there is no material on record to show that at any point of time the petitioner had abetted commission of the alleged offence and in absence of any such material, the learned Additional Sessions Judge should have discharged the petitioner. The learned Addl. Standing Counsel, on the other hand, submitted that the materials available on record clearly indicate that not only the petitioner had illicit relationship with the accused Snehalata Naik but also on the date of occurrence he had come to Sonapur though he ordinarily resides at Sambalpur. There is also material on record to show that due to such relationship between the two accused persons, there used to be quarrel between accused Snehalata Naik and the deceased very often. These materials lead to suspicion that the petitioner had abetted commission of the offence.

4. Chapter XVIII of the Code of Criminal Procedure deals with trial before a Court of Session. u/s 226 when the accused appears or is brought before the Court in pursuance of commitment of the case u/s 209, the prosecutor shall open his case by describing the charge brought against the accused and stating by what evidence he proposes to prove the guilt of the accused. If, upon consideration of the record 3. of the case and the documents submitted therewith, and after hearing the submission of the accused and the prosecution in this behalf, the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing u/s 227 and in the event he is of the opinion that there is ground for presuming that the accused has committed an offence which is exclusively triable by the Court of Session, he shall frame charge in writing which shall be explained and read over to the accused u/s 228 of the Code and the accused shall be asked whether he pleads guilty of the offence charged or claim to be tried.

5. Referring to the materials available on record, Shri Nayak submitted that in order to bring home the charge u/s 109 of the Penal Code the prosecution must prove the mens rea/knowledge/intention and active complicity is necessary. Mere presence at the time of commission of offence would not amount to offence u/s 109 of the Penal Code. In this connection, reliance was placed by the learned counsel on two decisions of this Court in the case of Bisu Gopuda and Ors. v. Niladri Gouda reported in (1990) 3 OCR 587 and Benupani Behera v. State*

reported in (1992) 5 OCR 311. According to Shri Nayak, mere, presence of the petitioner on the date of occurrence at Sonapur is not sufficient to hold that there was active complicity for commission of the offence.

6. Now coming to the question, on what basis a charge can be framed, I would like to refer to some decisions of the Apex Court. In the case of Union of India (UOI) Vs. Prafulla Kumar Samal and Another, the Apex Court held as follows :

"The Judge while considering the question of framing the charges u/s 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

In exercising his jurisdiction u/s 227 the Judge which under the present Code is a senior and experienced Court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

In the case of Supdt. and Remembrancer of Legal Affairs, West Bengal Vs. Anil Kumar Bhunja and Others, the Apex Court held as follows :

"At the stage of framing charges, the prosecution evidence does not commence. The Magistrate has therefore, to consider the question as to framing of charge on a general consideration of the materials placed before him by the investigating Police Officer. The standard test, proof and judgment which is to be applied finally before finding the accused guilty or otherwise is not exactly to be applied at the stage of Section 227 or 228. At this stage, even a very strong suspicion founded upon materials before the Magistrate, which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged, may justify the framing of charge against the accused in respect of the commission of that offence."

7. The above principles laid down by the Apex Court have been followed till date and no contrary decision has been cited by the learned counsel for the petitioner. Keeping in mind -the aforesaid principles, I proceed to examine the materials

available on record. One Gananath Thanapati examined during investigation has stated that he and the deceased were staying in a room adjacent to the office and they were getting meals from outside. Accused Snehalata Naik used to come to Sonapur in the first week of every month and took away the entire salary of the deceased leaving only Rs. 300/- to Rs. 400/- and she was also abusing saying that after death of the deceased, she would manage the house with pension as widow of the deceased. This witness has also stated that he heard from the deceased that accused Snehalata Naik was having physical relationship with the present petitioner for the last 10 years and he could have divorced accused Snehalata Naik but because of the children, he was not doing so. This witness has also stated about demands made by accused Snehalata Naik at different times including the demand for obtaining a loan of Rs. 50,000/- (Rupees fifty thousand) for daughter's marriage. The statement of one Balabhadra Rana indicates that on 8.4.98 i.e. the date of occurrence at about 6.30 P.M. accused Snehalata Naik had gone to a medicine shop and purchased 20 Phenargon 25 mg. Tablets. The brother of the deceased Bijan Kumar Naik has specifically stated that accused Snehalata Naik was having physical relationship with the petitioner. The most important witness who has been examined during investigation was Sankar Narayan Patnaik. He has stated that on the date of occurrence he had seen the deceased and both the accused persons talking amongst themselves. Such materials as indicated above, clearly show that the petitioner was having physical relationship with the other accused Snehalata Naik for a considerable length of time and accused Snehalata was not staying with the deceased at Sonapur. Prima facie it also appears that accused Snehalata Naik used to come to Sonapur in the first week of every month and forcibly took away the salary of the deceased leaving Rs.300/- to Rs.400/- only. It also prima facie appears that the petitioner was present at Sonapur and was found along with the accused Snehalata Naik on the date of occurrence even though the petitioner ordinarily resides at Sambalpur. These facts taken together create a strong suspicion about the conduct of the petitioner and in absence of any explanation from the side of the petitioner, as to why he was present at Sonapur on that day suspicion has become expounded.

8. In view of the above discussions, I do not find any illegality in the order passed by the learned Additional Sessions Judge, Sonapur and accordingly, the C.R.M.C. is dismissed as devoid of any merit.

The interim order passed by this Court on 6.12.1999 in Misc. Case No. 2098 of 1999 stands vacated.