
(2010) 10 AHC CK 0407
In the Allahabad High Court
Case No : Criminal Revision No. 2671 of 2008

Shyam Singh and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 12-10-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 227
Penal Code, 1860 (IPC) — Section 120B, 201, 302, 304A, 34

Citation : (2011) 3 ACR 3147

Hon'ble Judges : Ashok Srivastava, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ashok Srivastava, J.—This revision has been directed against the order dated 29.8.2008, passed by the learned Additional Sessions Judge, Court No. 3. Meerut.

2. An application u/s 227. Cr. P.C. was moved before learned lower court by the revisionists who were accused before him in S.T. No. 394 of 2008 under Sections 364A, 302, 201 and 120B, I.P.C. After hearing both the parties the learned Additional Sessions Judge rejected the application and ordered that charges under Sections 302 and 120B, I.P.C. should be framed against revisionist Nos. 1 and 3 and a charge u/s 201. I.P.C. should also be framed against all the three revisionists.

3. The brief facts of this case are that on 28.9.2007 a gumshudgi report was lodged with the police of P.S. Partapur, Meerut by opposite party No. 2 Charani. As per report the grandson of opposite party No. 2 Akash aged about 8 years was missing since the evening of 27.9.2007 and till the morning of 28.9.2007 he was not traceable. On 28.9.2007 some time in the day the dead body of Akash was found in the premises of one Kiran Singh. The post-mortem was conducted and it was found that the poor child was strangled to death and before that he was badly assaulted. An F.I.R. u/s 302, I.P.C. was registered against unknown persons. During the course of investigation it was found that Sumit son of

revisionist Nos. 1 and 3, who was having a bad character, had abducted Akash with the aid and advice of his paternal uncle Sensar Pal. It was also detected that the child was abducted for ransom. A telephonic call was made to the family members of opposite party No. 2 to pay a certain amount to abductee. However, the ransom was not paid and it appears that thereafter the child was done to death by Sensar Pal and Sumit in the residential house of the revisionists. During the course of investigation it also came to light that all the revisionists were involved in concealing and disposing of the dead body of Akash and a few witnesses had seen the incident of disposal of the dead body. After completing the investigation, Investigating Officer of the case submitted a charge-sheet in the Court of learned Magistrate. All the revisionists were charge-sheeted under Sections 304A, 302 and 201, I.P.C. The case was committed to the Court of Sessions.

4. When the matter reached the stage of charge an application u/s 227, Cr. P.C. was moved before the learned Additional Sessions Judge by the revisionists which was rejected as mentioned above in this order.

5. It has been argued before this Court by the Learned Counsel for the revisionists that the order passed by the learned lower court is illegal and arbitrary, that the application u/s 227, Cr. P.C. has been rejected without going through the records of the case. It has further been submitted that there is absolutely no material in the case diary on the basis of which a charge under Sections 302 and 120B, I.P.C. can be framed against the revisionists 1 and 3 and a charge u/s 201, I.P.C. against revisionist Nos. 1, 2 and 3. It has further been submitted that the revisionists have been implicated in this case only because they are family members of co-accused Sumit and Sensar Pal.

6. During the course of argument Learned Counsel for the revisionists quoted before this Court the statements of all the witnesses of facts as contained in the case diary and has contended that there is nothing on record which may indicate the involvement of the revisionists in any manner whatsoever.

7. The revision has been vehemently opposed by the Learned Counsel for opposite party No. 2 and the learned A.G.A.

8. Learned Counsel for opposite party No. 2 stated that Sumit is the main accused in the case and he is the son of revisionist Nos. 1 and 3 and grandson of revisionist No. 2. Another accused Sensar Pal is real brother of revisionist No. 1. It has further been submitted that by no stretch of imagination it can be presumed that the revisionists, who are the family members of co-accused Sumit and Sensar Pal did not conspire in the incident of murder and disposal of the dead body of the deceased. It has also been submitted that there is positive evidence against all the revisionists as far as Section 201, I.P.C. is concerned. Various rulings of Apex Court have been filed in this case.

9. I have gone through the entire case diary. It should be mentioned here that from the side of the State a true photostat copy of the entire case diary has been

produced for perusal of the Court. From perusal of the case diary and statements of the witnesses of facts as recorded u/s 161, Cr. P.C. it is evident that there is nothing in the case diary which may indicate the existence of any conspiracy to murder Akash in which any of the revisionists was involved. There is absolutely no evidence which may indicate that there has been a conspiracy between the co-accused Sumit and Sensar Pal on one part and the revisionists on the other. Therefore, the finding of the learned lower court whereby it has held that a charge under Sections 302 and 120B, I.P.C. should be framed against revisionist Nos. 1 and 3 is not based on evidence and to a certain extent it is perverse. As far as the case of revisionist No. 2 Smt. Vimla is concerned she is the grandmother of the main accused Sumit and is an aged lady. There is nothing on record which may indicate that she was involved in concealing the evidence of murder or destroying the same or she is in any way involved with the disposal of dead body of the deceased. Therefore, no charge u/s 201, I.P.C. can be framed against her and she is entitled to be discharged u/s 227, Cr. P.C. of all the charges mentioned in the charge-sheet.

10. I have examined the case law in *Dilawar Babu Kurane v. State of Maharashtra* XLIV 2002 ACC 447 : 2002 (1) ACR 534. In this case the Apex Court has held that :

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, by and large 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 justified to discharge the accused, and in exercising jurisdiction u/s 227 of the Code of Criminal Procedure, the Judge 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 but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

11. In the instant case there are some positive evidence against the revisionists Shyam Singh and his wife Geeta alias Vimla as far as an offence u/s 201, I.P.C. is concerned. It is a case which discloses grave suspicion against them and therefore keeping in view *Dilawar Babu Kurane's* case (supra) a charge u/s 201/34, I.P.C. should be framed against them.

12. On the basis of the above discussions, I am of the view that the revision should be partly allowed.

13. The revision is partly allowed. As far as revisionist No. 2, Smt. Vimla w/o Gokul is concerned, she stands discharged u/s 227, Cr. P.C. of all the charges mentioned in the charge-sheet. Charges only u/s 201/34, I.P.C. should be framed against Shyam Singh, revisionist No. 1 and Smt. Geeta @ Vimla, w/o Shyam Singh revisionist No. 2 and no charge under Sections 302/120B or

302/34, I.P.C. shall be framed against them.