
(2006) 09 AHC CK 0044
In the Allahabad High Court

Tilak Singh Yadav and Others

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 14-09-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 173

Evidence Act, 1872 — Section 145

Penal Code, 1860 (IPC) — Section 147, 148, 302, 34

Citation : (2006) 09 AHC CK 0044

Hon'ble Judges : Amar Saran, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Amar Saran, J.—This criminal revision has been filed by the revisionists for challenging the order dated 25.5.2005 passed by the Additional Sessions Judge/ Special Judge, Dacoily Affected Area Act, Lalitpur, in ST. No. 32 of 2004 State v. Tilak Singh Yadav and Ors. under Sections 147, 148, 302/34 I.P.C., rejecting the applicants' prayer for discharge and passing an order dated 4.6.2005 framing charges against them.

2. Heard Sri A.N. Mishra, learned Counsel for the revisionists and the learned A.G.A for the State of "U.P.

3. An F.I.R. was lodged on 8.10.2002 at 10.30 a.m. at P.S. Jakhlaun. district Lalitpur, by informant Ratan Singh alleging that on (he same day at 9 a.m., his brothers Mahraj Singh and Kapoor Singh were murdered by the revisionists Tilak Yadav, Pushpendra Singh, Kaptan Singh, Mahendra Singh, Bharat Singh, Yangbir Singh, Satyanarain, Narendra Singh, Laklian Singh and Kalloo Singh in the field of the deceased, One accused armed with the lathi, two carrying knives and seven accused holding "chankhar" (stones) assaulted the deceased. The F.I.R. named four eyewitnesses, Ratan Singh, Raghuraj Singh, Kripal Singh and Lakhan Singh. It is further mentioned that after the murder of the two deceased, their dead bodies were thrown in a well by the aforementioned applicants. Alter

submission of the charge sheet, cognizance was taken in the case by the C.J.M., Lalitpur, on 26.11.2002.

4. At the stage of committal the revisionists Tilak Singh Yadav submitted an application (Ext. 184 Kha) for re-investigation stating that he was the District President of the Samajwadi Party, Lalitpur, and a Senior lawyer practicing on the commercial side and that he had been falsely implicated. The medical evidence was not properly evaluated. No investigation about the motorcycles and jeeps used in the incident was done, and that the four eyewitnesses were partisan. So far as the two other eyewitnesses were concerned, they were saying that they had deposed earlier because of political pressure, now with the change of Government, they had become free from fear. (Perhaps the reference here was to the Samajwadi Party having become the Ruling Party). That the revisionist-applicant used to reside with his family members in Lalitpur in his house at the time of incident and was not present at the time of incident. No order was passed by the Court on the application, but several dates were given.

5. It appears that in the meantime, the revisionist Tilak Singh Yadav submitted an application before the D.I.G., Jhansi range, on 28.10.2003. On the basis of said application, the S.P. Lalitpur, directed Jaiprakash Yadav, S.O., P.S. Jakhlaun to further investigate the case u/s 173(8) of the Code of Criminal Procedure (hereinafter the Code) after taking permission from the competent court. Thereafter, the J.O. sought permission for further investigation from the Court, An order was passed by the C.J.M. on 13.1.2004 permitting further investigation.

6. It appears that the complainant Ratan Singh moved Criminal Misc. Application No. 945 of 2004 before this Court and an order was initially passed staying the operation of the order for further investigation passed by the C.J.M., Lalitpur, and the I.O. was summoned before this Court. On 20.2.2004 the High Court passed an order disposing of the application in the light of the undertaking given by the Investigating Officer, that he would complete the investigation within 15 days, he would not conduct fresh investigation, but only conduct further investigation in the case and would not change the witnesses or the accused. In pursuance of the said order, the Investigating Officer submitted the case diary after completing the investigation before the C.J.M. The C.J.M., thereafter committed the case to the Court of Sessions on 7.5.2004.

7. It appears that another application 210 Kha was moved before the C.J.M., Lalitpur wherein it was requested that the Investigating Officer should complete the investigation and place his conclusions about the investigation on record and that the Investigating Officer had full powers of investigating the case in any manner as he chose and the undertaking given before the High Court dated 20.2.2004 was said to be in contravention of the provisions of Section 173(8) of the Code. However, this application was rejected on 7.5.2004.

8. The Revisionists preferred another criminal revision No. 2258 of 2004. In that case, the High Court only passed an order on 4.10.2004 calling for the further

report about the investigation in the case. However, no order staying proceedings before the trial court was granted in this criminal revision and even on subsequent dates stay was sought, but not granted. The learned Sessions Judge has observed in the order impugned in the present case, that as there was no stay in the criminal revision filed in the High Court, nor was there any evidence of any stay order being obtained in any other writ petition, and as the matter related to a murder case and it was only pending for framing of charges, hence the order framing charges could not be deferred.

9. Learned Counsel for the revisionists even urged before the Trial Court that there was no sufficient evidence to frame the charges. This was repelled by the Trial Court, which held that at the stage when it is to be considered whether a charge is to be framed or not, it has only to be seen whether there is prima facie material to proceed in the matter. The learned Sessions Judge was right in this conclusion. At this stage the evidence is not to be evaluated for recording a finding whether the case would end in conviction or about the sufficiency or reliability of the evidence qua each accused. The defence evidence or plea of alibi is also not to be considered at the stage of framing of charges. Hence the learned trial judge was right in not giving any importance to the defence of alibi of Tilak Singh set up by some district court lawyers that at the material time he was in a meeting of the Samajwadi Party. The accused could have an opportunity to produce his evidence in defence at the appropriate stage during trial. Even though the concerned court need not have considered the 161 Cr.P.C statements and material in the case diary recorded by both the investigating agencies at any depth, I find that the learned trial judge has seriously considered and discussed the statements of witnesses as recorded by the first investigating officer as well as the material recorded by the second investigating officer, in accordance with the decision of the Apex Court in *K. Chandrasekhar Vs. The State of Kerala and Others*, which was relied on by the High Court in *Anil Kumar v. State of U.P.* (49) 2004 ACC 237 for the proposition that there can be further investigation but no fresh investigation u/s 173(8) Cr.P.C and that the result of the further investigation is not to efface the material recorded during the earlier investigation, but the new material collected during the further investigation is to be considered along with the earlier material. This was precisely the approach followed by the trial judge in the impugned order, when it considered the matter on merits and observed that some witnesses have stated before the second I.O. that there were only three accused and not the rest. Some witnesses have disclosed that revisionist Tilak Singh and others were conducting a meeting of the Samajwadi Party in their home. The learned judge observes that a careful perusal of the case diary shows that the four eye witnesses, Ratan Singh, Raghuraj Singh, Kripal Singh and Lakshman Singh have stated that the murders of the two brothers were committed in their presence and the dead bodies were thrown in the well. The incident took place at 9 a.m. and the report was lodged at 10.30 p.m., wherein the accused were named. One deceased had 13 injuries while the other deceased had 10 injuries. Most of the injuries to deceased

Maharaj Singh were on his head and face, while the majority of the injuries to deceased Kapur Singh were incised wounds on his chest and abdomen. On the stones recovered from the place of incidence, human blood was found as per the medico-legal laboratory. In this view of the matter, there was sufficient prima facie material to proceed with the trial and to frame charges against the accused. As the medical and other material on record corroborated the eye witness account and even the report was lodged promptly wherein the accused were named, I see no illegality in the findings of the trial judge.

10. It was argued by the learned Counsel for the applicants that the order of the High Court dated 20.2.2004 was illegal, as the High Court could not have precluded the new Investigating Officer from investigating the case in any manner as he likes and could not have passed any order preventing the Investigating Officer from examining any new witnesses or changing the accused or including or excluding some of the accused. For this proposition he placed reliance in the case of Union Public Service Commission Vs. S. Papaiah and others,

11. It may be noted that in the present case the order of further investigation at the instance of the accused, who was President of the Samajwadi Party, was itself unwarranted.

12. In this connection, it has been held in the case of Central Bureau of Investigation and another Vs. Rajesh Gandhi and another, that an accused has no locus standi for seeking transfer of the investigation of the case by the Investigating agency of his own choice. This Court has noted on various occasions that transfers of investigation are obtained by accused by exercising political influence, which is highly and undesirable for upholding the Rule of Law.

13. Furthermore the order of the High Court dated 20.2.2004 was passed by the earlier bench after summoning the Investigating Officer, and on the basis of the undertaking given by him, that he would complete the investigation within 15 days and that he was not re-investigating the case and would not change the witnesses or accused in this case. If the revisionists were aggrieved by said order, they had a remedy of approaching the Apex Court. This was not done and the order became final. It is not open to him to again question the propriety, validity of the said order before this Court. Even otherwise there is no reason to suppose that the new Investigating Officer acted in an illegal manner in returning the case diary after completing the investigation. Moreover I find that in this case when the investigating officer returned the case diary after concluding the investigation, the Case diary contained the statements of several additional persons, which were in turn considered by the trial judge when he passed the impugned order refusing to discharge the applicants. Thus factually there was no breach of the observations of the apex Court in S. Pappiah's case (supra).

14. In such circumstances, no importance can be attached to the contention of the learned Counsel for the applicant that no fresh report containing findings

about the names of accused and other particulars as required in the form suggested by Section 173(2) of Cr. P. C. was submitted after further investigation was concluded u/s 173(8) Cr. P. C. The learned Counsel has also not placed any authority before me indicating that if the subsequent Investigating Officer, who conducts the further investigation closes or completes the investigation and returns the case diary and thereby affirms or differs with some of the conclusions of the earlier Investigating Officer, it is mandatory for him to submit a report only in the form mentioned in Section 173(2) of the Code of Criminal Procedure. In my view this requirement is only directory and in the absence of any prejudice to the accused, no particular advantage can accrue to the accused simply because the report of further investigation was not submitted in the form prescribed in Section 173(2) of the Code. It is well settled that the Court concerned is not bound by the opinion of the investigating officer about the names or complicity of the accused. On perusal of the 161 Cr. P. C. statements of the witnesses present in the case diary the Court is free to reach its own conclusions, about whether the accused appear to be involved in the offence or not. Therefore whether the report is in the form of a final report or charge sheet, the Court concerned is not bound by the conclusions of the investigating officer but is free to consider the statements of witnesses and other material in the case diary for deciding to take cognizance against accused or for framing charges etc. Therefore it is not material that the report of further investigation is in a particular format, or according to the provisions of Section 173(2) of the Code. This is precisely what the Court has done in the present case and as I have shown above the Court has elaborately considered the statements of witnesses recorded in the case diary by the second Investigating Officer. It has even noticed that some witnesses have deposed that some of the accused have participated and the other accused were engaged in some meeting of the Samajwadi Party along with others. However in spite of this material on record the trial court has seen no reason to differ from the opinion in the earlier charge sheet about the particulars and names of the accused who are involved in this crime. The trial Court has found that the medical evidence substantially corroborates the eyewitnesses account. I do not see any illegality in the said opinion of the trial court.

15. As the Court had elaborately considered the material the mere filing of another Criminal Revision No. 2258 of 2004 challenging the order dated 7.5.04 passed by the CJM wherein an order had only been passed by this Court on 4.10.04 seeking the report of further investigation, but no stay of proceedings before the Court below had been granted, constituted no reason for the trial court to have deferred the framing of charges, or to have allowed the application seeking discharge or the applicants. It may be noted that as pointed out by the trial judge in the impugned order the further investigation had if fact been concluded.

16. Even otherwise the mere progress of further investigation does not imply that the Court which has taken cognizance after the charge sheet was earlier submitted before it, must necessarily stay the trial of the case. Whether the trial

ought to be stayed or not, is a decision entirely for the discretion of the court concerned, because there may be circumstances where the trials are sought to be unduly stalled by the ploy of further investigations which can be made to extend ad nauseum by the wiles and machinations of an uncanny or politically influential accused. It has become common now for investigations being transferred due to political pressures at the instance of accused who as held in *CBI v. Rajesh Gandhi* (supra) have no locus standi, and thereby trials remained are wrongly stalled for long periods of time. Moreover, the result of the further investigations is only the re-examination of some earlier witnesses by the investigating officer or examination of other persons. The statements of witnesses u/s 161 Cr.P.C, recorded earlier or after the new investigation do not constitute substantial evidence and their only purpose is to contradict the evidence of witnesses who are produced in the trial, in accordance with Section 145 of the Evidence Act. Hence simply because further investigation is being done, criminal courts must resist passing orders in each case staying the trial.

17. In this view of the matter, I find no illegality in the order dated 25.5.2005 discharging the revisionists and or the order dated 4.6.2005 framing the charge. The revision is devoid of force and it is dismissed.

18. As the proceedings have remained stayed for some length in view of the repeated attempts by the Revisionists to approach different police authorities and by filing different petitions before this Court, although the revisionists are engaged in a case of murder, the Trial Court is now directed to proceed with the all expedition.

19. Office is directed to communicate this order to the Court below within three weeks for compliance. Office is also directed to place a. copy of this judgment on the record of Criminal Revision No. 2258 of 2004 which is still pending before this Court.