

Kalawati Vs. State

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Court : Delhi

Decided On : Oct-01-1996

Reported in : 1997(40)DRJ101

Judge : S.K. Mahajan, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 227; [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Criminal Review Appeal No. 195 of 1996

Appellant : Kalawati

Respondent : State

Advocate for Pet/Ap. : Dinesh Mathur,; Neelam Grover and; R.D. Jolly, Advs

Judgement :

S.K. Mahajan, J.

(1) By this order, I propose to dispose of the revision against the order dated 22nd March, 1996 whereby the learned Additional Sessions Judge had framed charges against the petitioner under Sections 302/201/120B Indian Penal Code Some of the facts relevant for deciding this petition, in short, are

(2) That one Anita and Davender Kumar were friends. Anita was married to somebody else two years earlier to the commission of offence. The case of the prosecution is that a conspiracy was hatched by the accused with her co-accused to kill Devender Kumar and committed his murder and, thereafter, tried to dispose of his body and has, thus, committed offences punishable under Sections 302/201/120B IPC.

(3) Investigation carried out by the police revealed that even after her marriage, Anita used to meet Devender which allegedly was not liked by her mother and other relatives. Devender was working with one Dinesh and Akshay in a shop in Palika Bazar; dealing in electronic goods. Dinesh used to normally sit in the shop whereas Devender and Akshay used to look after the outside work. On 4th August, 1982, Devender had gone to Kota and in his absence a lady allegedly used to telephone at the shop and enquire about Devender and on being asked as to who she was, she introduced herself as the mother of Annu and wanted to talk to Devender Kumar. Telephone calls also used to be received by Dinesh from one Annu and she used to say, if Devender came before 7.30 p.m. he should either call her on telephone or meet her personally. On 10th August, 1992, Devender came to the shop, after his return from Kota, when he was informed about the telephone calls allegedly received at the shop from the mother of Annu. At this, Devender rang up the residence of Annu at about 6.00 p.m. Receiver was allegedly picked up by her mother and, according to Dinesh, from the conversation, it appeared that the mother of Annu was calling him to her residence. After telephone call was over, Dinesh enquired from Devender as to what conversation had taken place between him and the lady who was on other side and he was informed by Devender that she was inviting him to come to her residence and meet Annu. He also informed Dinesh that earlier she always used to say him not to meet Annu and it was surprising that she had asked him to come to her residence and he, therefore, apprehended something fishy as she was also enquiring on telephone as to whether Devender was taking wine or not. On 11th August, 1982, when Devender did not come to shop till about 12.30 p.m. Dinesh rang up the residence of Devender and he informed Dinesh that he would be a little late. At about 1.30 p.m. he was informed by Devender on telephone that he was sitting with Shiv Kumar in his shop and two or three more persons were

also sitting over there. He also informed him that he was taking liquor at that time.

(4) Thereafter, the whereabouts of Devender were not known to anybody and on 14th August, 1992, a report was lodged by his father with the police about Devender being missing since 11th August, 1992. On 15th August, 1992, at about 5 p.m., Rattan Lal, the father of Devender Kumar, again lodged a report at police station stating that on 14th August, 1992 he had lodged a report stating that since 11th August, 1992 his son, Devender Kumar, was missing after he had gone to the house of his friend Shiv Kumar and now he had read a news item in the newspaper that the dead body of a young boy was recovered from a refrigerator in Block-N, Sector 20, Noida and he suspected that the same must be of Devender Kumar as Shiv Kumar was doing business of refrigerators and as he had enmity with the deceased for the last about 2/3 years, he was convinced that Shiv Kumar along with his associates had killed Devender.

(5) After investigation, Shiv Kumar was arrested who is alleged to have confessed his involvement in the commission of the offence and, thereafter, the other accused persons were arrested. The alleged motive of murder was that the deceased was regularly meeting Anita, the sister-in-law of Shiv Kumar, in spite of Anita being married and, therefore, a conspiracy was hatched to kill him. The petitioner is the mother of Anita and it is alleged that she was also one of the persons who had hatched the conspiracy to kill Devender.

(6) After the challan had been filed, the Additional Sessions Judge on 22nd March, 1996 framed charges. The charges framed against the accused persons are as under:-

'THAT during the period between 11th August, 1992 at unknown place and time you all were the party to a criminal conspiracy to commit an offence punishable with death or imprisonment for life and thus you all committed an offence punishable under section 120B Indian Penal Code and within my cognizance.

THAT secondly during the above period time and place you all being the party to a criminal conspiracy intentionally and knowingly caused the death of Devender Kumar and committed his murder and thus committed an offence punishable u/s

302/120-B Indian Penal Code and within my cognizance.

THAT thirdly on the above date, time and place you all being the party to a criminal conspiracy knowing or having reason to believe that the above offence of murder had been committed caused the evidence of the commission of offence to disappear by hiding the dead body of deceased Davender Kumar in a fridge and than thrown in a nala in Up with the intention of screening you from legal punishment and thus committed an offence punishable under Section 201/120-B Indian Penal Code and within my cognizance.'

(7) Being aggrieved by the framing of charges against the petitioner, the present petitioner has filed this petition for quashing the same.

(8) The contention of Mr.Dinesh Mathur, Senior Advocate, appearing for the petitioner, is that there was no material on record before the court to hold even prima facie that the petitioner was a party to the criminal conspiracy to commit the offence punishable under Sections 302/201/120-B Indian Penal Code It is submitted by him that the only allegation against the petitioner before the court was the statement of Dinesh that a lady used to telephone Davender and that the said lady was the mother of Annu. According to Mr.Mathur, no person has identified the voice of the lady who used to telephone the deceased and, therefore, it could not be said that the said lady was the mother of Annu. Moreover, according to Mr.Mathur, as per the statement of Dinesh, the deceased was consuming liquor on 11th August, 1992 and, thereafter, he was missing. However, the post mortem report dated 14th August, 1992 shows that the date of death was 4/5 days before the date of post mortem and no alcohol had been found in the stomach of the deceased and the death was due to injuries which were ante mortem. According to him, the case was entirely based upon circumstantial evidence and the chain which allegedly linked the petitioner with the commission of offence was missing. It is further submitted by him that at the time of framing of the charge, the Court was not to act merely as a post office or mouthpiece of the prosecution but had to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court and the basic infirmities appearing in the case and so on. Referring to the judgment reported as

Pradeep Kumar v. State 1 (1994) CCR 386 it is argued by Mr.Mathur that court ought to have also given the reasons as to how and on what basis it could be said that a prima facie case had been made out against each of the accused.

(9) On behalf of the State, Mr.R.D.Jolly, App, has argued that it was a case of conspiracy and conspiracy is always hatched in secrecy and, therefore, there could not have been any direct evidence of the petitioner being involved in such conspiracy. He submits that it is only during trial that the evidence will be led to show how conspiracy was hatched by the accused persons. Moreover, there was a clear motive on the part of the accused to eliminate the deceased as he was meeting the married daughter of the petitioner in spite of his having been asked not to do the same. Mr.Jolly has relied upon the judgment reported as State of Bihar Vs . Ramesh Singh : 1977 CriLJ1606 in support of his contention that there being strong suspicion against the accused the court was justified in framing the charge as, at the time of framing of charge, the court was only to see that there was a strong suspicion which lead the court to think that there were grounds for presuming that the accused had committed an offence, and it would not be open to the court to say that there was no sufficient ground for proceeding against the accused.

(10) At the stage of framing of charge, the court is not to apply the same standard of test and judgment which it finally applies before recording of a finding of guilt or otherwise and at that stage, what the court has to see is whether there was ground enough for presuming that the accused had committed the offence for which he had been charged. The court is not to judge the truth, veracity and effect of evidence before it at that time meticulously with a view to examine as to whether it provides sufficient grounds for conviction of the accused or whether the trial was sure to culminate in conviction. However, the court at the time of framing of charge is also not to act as the mouthpiece of the prosecution and frame charges in a mechanical manner. The Judge while considering the question of framing of charges has undoubted power to sift and weigh evidence for the limited purpose of finding out whether or not a prima facie case against the accused had been made out and where the material placed before the court disclosed grave suspicion against the accused which had not been properly explained, the court will be fully

justified in framing a charge and proceeding with the trial.

(11) In the present case, I have gone through the charges framed by the learned Additional Sessions Judge and I find that no reasons whatsoever have been given by him to justify the framing of charges. As held by this Court in Pradeep Kumar v. State (Supra), the court is not to act in a mechanical manner in framing the charge and it must apply its mind to the material on record and the arguments of the parties. Short reasons must be given by the court so that on the reading of the order, one can perceive clearly as to how and on what basis the trial court came to the conclusion that a prima facie case was made out against the accused. The Additional Sessions Judge has merely said that between the period 11.8.1992 and 15.8.1992 the accused entered into a criminal conspiracy to commit the offences punishable under Sections 120-B Indian Penal Code, 302/120-B Indian Penal Code and 201/120-B Indian Penal Code. Though it will not be proper for this Court to comment upon the merits of the case to find out whether there was sufficient material before the Additional Sessions Judge disclosing grave suspicion against the petitioner, however, the order does not disclose the mental process of reasoning of the learned Additional Sessions Judge to show as to how and on what basis it could be said that a prima facie case was made out against the petitioner. All that has been said by the learned Additional Sessions Judge in the impugned order is that he was satisfied, from a perusal of the record, including the statement of witnesses under Section 161 and other evidence available with the prosecution, that there was sufficient material against all the accused persons for framing of the above charges. In my view this is not sufficient. The learned Additional Sessions Judge ought to have given short reasons in support of his conclusions at the time of framing of charges. Section 227 confers a very valuable right upon the accused as in case there was no material to show the involvement of the petitioner in the commission of crime, the court must discharge her and for this purpose the court must consider the respective arguments of the parties and give its reason for framing charges against the accused person, otherwise, the same may lead to injustice, the accused being exposed to hazards of criminal proceedings as it cannot be denied that criminal proceedings cause anxiety, worry and mental tension and the sword of Democles remain hanging and fear of punishing in the shape of incarceration looms large on the person accused of an

offence.

(12) In this view of the matter and without in any manner commenting upon the merits of the case, I quash the order framing charges against the petitioner and remand the case back to the Additional Sessions Judge with directions to pass a fresh order in accordance with law.

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