

SaharuddIn Naskar and ors. Vs. State of West Bengal and 7 ors.

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Court : Kolkata

Decided On : Aug-05-2003

Reported in : 2004(1)CHN429

Judge : Debiprasad Sengupta, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Section 223; ;[Indian Penal Code \(IPC\), 1860](#) - Sections 34 to 304A, 482 and 498A

Appeal No. : C.R.R. No. 1265 of 2003

Appellant : SaharuddIn Naskar and ors.

Respondent : State of West Bengal and 7 ors.

Advocate for Def. : Swapan Mallick, Adv., ;Chabi Ray and ;Ranjan Sanyal, Advs. for opposite party Nos. 2-5

Advocate for Pet/Ap. : Prabir Roy and ;Abdul Hamid, Advs.

Judgement :

Debiprasad Sengupta, J.

1. In the present application the petitioners have challenged an order dated 11.6.2003 passed by the learned Additional Sessions Judge, 2nd Fast Track Court, Alipore in Sessions Trial No. 2(6) 2003 thereby framing charge under

Sections 302/34/498A of the Indian Penal Code.

2. Over the incident of death of one Samsunnehar Bibi Bishnupur P. S. Case No. 106 dated 13.4.98 was registered under Sections 498A/302/34 of the Indian Penal Code on the basis of a complaint lodged by one Humayun Mollah (present O. P. No. 2) against the present petitioners.

3. Petitioner No. 5 herein also lodged a complaint before the learned S. D. J. M. on the death of his wife Samsunnehar Bibi. Said complaint was forwarded to Bishnupur police station and was registered as Bishnupur P. S. Case No. 170 dated 22.6.98 under Sections 149/302/120B/34 of Indian Penal Code against the present Opposite Party Nos. 2 to 8.

4. On completion of investigation police submitted chargesheet in Bishnupur P. S. case No. 106 under Sections 149/302/120B I. P. C. against the present petitioners. In Bishnupur P. S. case No. 170 also chargesheet was submitted by the police under Sections 147/302/120B/34 I.P.C. Both the cases were investigated by the C. I. D., W. B.

5. When Bishnupur P. S. case No. 170 was at the stage of investigation, present O. P. Nos. 2 to 5 came up before this Court for quashing of investigational proceeding. The said application was disposed of by the Hon'ble Justice S. K. Tiwari (as His Lordship then was) on 21.9.98. While disposing of the said application it was observed by the Hon'ble Justice Tiwari as follows:--

'.....However, on the face of the impugned complaint filed in the Court of the learned Magistrate, it is clear that the petitioner can at the worst be prosecuted under Section 304A of I.P.C and not under Section 302 I.P.C., because there was no intention to kill. The attention of the Investigating Officer is invited to the case of Cheru Bin v. State of Bihar, AIR 1964 SC 205.'

6. After submission of chargesheet both the cases were committed to the Court of Sessions. Bishnupur P. S. case No. 106, which was registered against the petitioners, was numbered as Sessions Trial No. 2(6)03. In the said case the learned Additional Sessions Judge, 2nd Fast Track Court, Alipore after

considering the materials placed before him framed charge against the present petitioners under Sections 302/34 I.P.C and Section 498A I. P.C against accused Yusuf Laskar.

7. The other case (Bishnupur P. S. Case No, 170), which was registered on the complaint of the present petitioner No. 5 against the present O. P. Nos. 2 to 8, was numbered as S. T. No. 1 (6) 2003. The same learned Additional Sessions Judge, 2nd Fast Track Court, Alipore by his order dated 9.6.2003 framed charge against the present O. P. Nos. 2 to 8 under Section 304A/34 of the Indian Penal Code.

8. It is the contention of the learned Advocate of the petitioner that both the cases were registered over the incident of murder of one Samsunnehar Bibi. Both the cases were registered with Bishnupur P. S. and investigation was conducted by the C. I. D., W. B. On submission of chargsheet both the cases were committed to the Court of Sessions and the same are now in the Court of learned Additional Sessions Judge, 2nd Fast Track Court, Alipore for trial. In S. T. No. 2(6)03, in which the present petitioners are made accused, charge was framed against them under Section 302/34 I.P.C. But in S. T. No. 1(6)03 the learned Trial Judge framed charge against the present O. P. Nos. 2 to 8 under Section 304A/34 I. P. C. It is further submitted by the learned Advocate of the petitioner that from a perusal of the order dated 9.6.2003 passed by the learned Trial Judge framing charge under Section 304A/34 I. P. C., it becomes evident that such charge was framed keeping in view the observations made by S. K. Tiwari, J in C. R. R. No. 2212 of 1998. It is further contended by the learned Advocate of the petitioners that the charge against the O. P. Nos. 2 to 8 should be under the same sections as has been framed against them in S. T. No. 2(6)03.

9. The learned Advocate appearing for the opposite parties submits that there is no illegality in the order of framing charge in S. T. No. 2(6)03. The learned Judge after considering the materials placed before him framed charge under Sections 302/34/498A I. P. C. against the present petitioners. It is the contention of the learned Advocate of the O. P. that charge in S. T. No. 1(6)03 was rightly framed by the learned Judge under Section 304A/34 I. P. C against the present O. P. Nos. 2 to 8 as the materials collected by the investigating agency did not disclose any

offence under Section 302 I. P. C. against the said accused persons. The learned Judge in view of the judgment of the Hon'ble Apex Court reported in 2001 Cal. Cr. L. R. (SC) 241, rightly decided to try both the cases together in the same Court. Learned Advocate finally submits that at this stage when the charge has been framed and dates have been fixed for recording evidence this Court should not interfere with the order impugned in any manner.

10. The learned Advocate of the opposite party relies upon a judgment reported in AIR 1980 SC 1780 (Kewal Krishan v. Suraj Bhan and Anr.). In the said judgment it was held by the Hon'ble Apex Court that where two cases exclusively triable by the Court of Sessions, one instituted of a police report under Section 173 Cr. P. C. and the other initiated on a criminal complaint, arise out of the same transaction, if the two cases are tried by two different Courts, there is a risk of two Courts coming two conflicting findings. To obviate such a risk, it is ordinarily desirable that the two cases should be tried separately but by the same Court.

11. The learned Advocate of the opposite party next relies upon a judgment of the Hon'ble Supreme Court reported in 2001 Calcutta Criminal Law Reporter (SC) 241 (Sudhir and Ors. v. State of M.P.). In the said judgment it was held that it is a salutary practice, when two criminal cases relate to the same incident, one case exclusive triable by Sessions Court and the other case not triable by Sessions Court, they are tried and disposed of by the same Court by pronouncing judgments on the same day. Sessions Court is competent to try both the cases in such circumstances.

12. I have gone through the judgments referred to above. The principles laid down by the Hon'ble Supreme Court in the said judgments are settled principles of law. The ratio of the said judgments is also applicable in the present case. Here both the cases being S. T. No. 2(6)03 and S. T. No. 1(6)03 are before the same learned Trial Judge, namely, the Additional Sessions Judge, 2nd Fast Track Court, Alipore for trial.

13. I have heard the learned Advocates of the respective parties. I have also perused the orders passed by the learned Additional Sessions Judge, 2nd Fast Track Court, Alipore. In my considered view the order dated 11.6.2003 passed by

the learned Judge in S. T. No. 2(6)03 framing charge under Section 302/34 and Section 498A I. P. C. against the present petitioners, does not suffer from any illegality. The learned Judge after considering the materials placed before him and after hearing the parties framed charges under the aforesaid section. This Court does not find any reason to interfere with the said order.

14. But so far as the order dated 9.6.2003 passed by the learned Trial Judge in S. T. No. 1(6)03 framing charge under Section 304A/34 I. P. C is concerned, I am of the view that the said order suffers from serious illegality. From a perusal of the said order it becomes clear that the learned Trial Judge framed charge under Section 304A/34 I. P. C. against the present O. P. Nos. 2 to 8 mainly on the basis of the observation made by Justice S. K. Tiwari in C. R. R. No. 2212 of 1998 which has already been referred to above. I find that such observation was made by Justice Tiwari at a stage when the case was at the initial stage of investigation. The Investigating Officer thereafter proceeded with the investigation and on completion of such investigation submitted chargesheet under Section 302/34 I. P. C. against the O. P. Nos. 2 to 8. But when the matter came up before the learned Trial Judge for consideration of charge, he framed charge under Section 304A/34 I. P. C only relying upon the observation made by this Court at the stage of investigation. The learned Judge totally ignored the materials placed before him. The learned Judge even after recording that the post-mortem report suggested the cause of death as strangulation, framed charged under Section 304A I. P. C.

15. Case diary was called for by this Court. On a perusal of the P. M report it appears that injuries were found on the dead body and it was opined that death was due to the effect of throttling.

16. In my considered view, when the learned Trial Judge took up the matter for consideration of charge, he should have dealt with the matter independently without being influenced in any way by the observation made by this Court on revisional application at the very initial stage of investigation.

17. In view of the discussion made above I dispose of the present application. The order dated 9.6.2003 passed by the learned Additional Sessions Judge, 2nd Fast Track Court, Alipore in S. T. No. 1(6)03 thereby framing charge under Section

304A/341. P. C. is hereby set aside. The learned Judge will take up the matter afresh for consideration of charge. After considering the materials placed before him and after hearing the parties the learned Judge will pass appropriate order without being influenced by any observation made by this Court earlier. The learned Judge will thereafter proceed with the trial of both the cases in accordance with law.

18. The learned Judge will also see that the trial is expedited and the same is concluded without any unnecessary delay.

19. The present revisional application is accordingly disposed of. Later.

The interim order earlier granted by this Court on 27.6.03 shall stand vacated.

Let this order be communicated to the Court below immediately.

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