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**Romesh Chander Vs. Amar Chand and ors.**

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**SooperKanoon Citation** : sooperkanoon.com/899952

**Court** : Jammu and Kashmir

**Decided On :** Jul-13-1995

**Reported in** : 1996CriLJ3150

**Judge** : Ab. Qadir Parray, J.

**Acts** : Jammu and Kashmir High Court Rules, 1975 - Rule 57(U); ;Ranbir Penal Code (IPC) - Sections 34, 302 and 304; ;Code of Criminal Procedure (CrPC) - Sections 161, 173, 237 and 435; ;Penal Law

**Appeal No.** : Cr. Rev. No. 11 of 1992

**Appellant** : Romesh Chander

**Respondent** : Amar Chand and ors.

**Advocate for Def.** : V.B. Gupta, Adv.

**Advocate for Pet/Ap.** : M.A. Goni, Adv.

**Disposition** : Petition allowed

**Judgement** :
ORDER

**Ab. Qadir Parray, J.**

1. This revision petition has been filed against the order of discharge passed by learned Session Judge, Bhaderwah dated 19-2-1992 in case State versus Anar Chand under Sections 302/34 of RPC for setting aside the same.

2. In order to appreciate the matter in its correct perspective, it will be advisable to give brief resume of the facts which have given rise to the present petition.

3. One Ali Shah, Inspector who was officer Incharge of Police Station Bhaderwah had lodged am FIR on 30-10-1991 at 9.45 a.m. on having received information through reliable sources that near Sanso Bridge about 200 Kms. on Chai Road that a corpse is lying on spot in pool of blood who had received some injuries on his head.

4. On this information, the police moved on spot and found that besides the corpse, a pair of black shoes, a wrist watch along with chain and some match sticks scattered on the ground. It was presumed that some scuffle had taken place which has resulted in the death of the deceased who was lying on spot and as such, a case under Section 302 RPC was registered.

5. On investigation, it was found that the corpse was that of one Prem Lal S/O Hira Lal Bhagat R/O Thoba tahsil Bhaderwah'and was identified by one Romesh Chander, his real brother, who is petitioner in this revision petition. It was further revealed that the person of the deceased Was last seen in the company of accused Anar Chand and Omkar Singh and subsequently on second day, his corpse was found on the road and in his hand, certain hair were also detected. The seizure memo of articles lying on spot seems to have been prepared on 30th October, 1991 and even the. foot prints of the shoes have been detected on spot which have also been got identified through Forensic methods, connecting the accused with the alleged occurrence. Even, the hair which was found in the hand of the deceased have been got examined by the Forensic experts and identified that of one of the accused.

6. After the investigation was completed, challan seems to have been filed in the court of learned Chief Judicial Magistrate, Bhaderwah who committed the case on 29-11 -1991 and directed the accused and the case to be produced before learned

Sessions Judge, Bhaderwah on 11-12-1991 as the offence charged against the accused was one under Section 302/34 RPC.

7. After the perusal of the documents and final report under Section 173 Cr.P.C. and the statements of witnesses recorded under Section 161 Cr.P.C. during the course of investigation, the learned Sessions Judge has charged the accused under. Section 304-II of Ranbir Penal Code read with Section 34 RPC and it is against this order that the present revision has been filed.

8. Heard learned counsel for the parties at length and perused the records.

9. It may be noted that the duties and functions of a Judge under the relevant provisions of Procedure and law for framing of the charge are envisaged tinder the relevant Chapter XIX of Code of Criminal Procedure. Mo-doubt the judge has to appreciate the documents and the statement of witnesses which have been recorded under Section 161 Cr. P.C. and see to the probabilities of the case and total effect of the evidence and has not to act as a mouth piece of the prosecution and has to sift the evidence for limited purposes of finding whether a prima facie case against accused has been made out and if so what is the relevant section of Penal Law.

10. Thus, in the above background, the first preliminary objection which has been raised by the accused/respondent is that the revision petition has been filed by an incompetent person who is only a prosecution witness cited in the challan. The matter has been proceeded on the police report. So in case any grievance about the charge of the accused was felt by the prosecution, the prosecution itself should have moved the present revision petition and it is not the person of the private party who has to take vengeance from a person of the accused and the private individual has no locus-standi in police challan to file a revision petition. More-over even if a private individual is an aggrieved person, he has to work under the instructions/brief of the prosecution and have not to project their grievances more-so by filing a revision or appeal in the matter, which is only aimed at to protract the proceedings and wreck vengeance from the other party. In support of this contention, learned counsel for the respondents has relied on the citation of the judgment reported in 1992 Cri LJ 2004 (J&K;) wherein his Lordship (Hon'ble Khan

J.) has made reliance on AIR 1996 SC 911 :(1966 Cri LJ 700) wherein their lordships of the apex court have observed :.In a case which has proceeded on a police report a private party has really no locus standi. No doubt, the terms of Section 435 under which the jurisdiction of the learned Sessions Judge was invoked are very wide and he could even have taken up the matter suo motu. It would, however, not be irrelevant to bear in mind the fact that the Court's jurisdiction was invoked by a private party. The criminal law is not to be used as an instrument of wrecking private vengeance by an aggrieved party against the person who according to that party had caused injury to it. Barring a few exceptions, in criminal matters the party who is treated as the aggrieved party is the State which is the custodian of the social interests of the community at large and so it is for the State to take all the steps necessary for bringing the person who has acted against the social interests of the community to book....

11. It may be observed that the terms of Section 435 Cr. P.C. are very wide and the court can take up the matter suo-motu irrespective of the fact whether the private individual be a witness in the criminal proceedings or a complainant. However, when the matter has been brought to the notice of a revisional court or the matter comes to the notice of a revisional court otherwise on a reference, is Revisional Court barred to look to the legalities, regularities or otherwise to examine the record of any proceedings for satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior court? There is no bar in looking to such legalities as envisaged under the relevant provisions of revisional jurisdiction.

12. So when the matter in the present case has been brought to the notice of this revisional court by a private person who is one of the witnesses and whose brother has been done to death as per averments, but while examining the records and the material which has been brought on record per documents referred to under Section 173 Cr. P.C. and the statements recorded under Section 161 Cr. P.C. and other reports filed by the Forensic experts etc. and other circumstances projected by the Investigating agency, a prima facie case under Section 302/34 RPC seems to have been made out rather than a case under Section 304-II RPC, as charged

by learned Sessions Judge. So while exercising the revisional jurisdiction, I do find that the charge framed by learned Sessions Judge in the present case is not the one, which should have been.

13. No-doubt the learned Sessions Judge has not to act as a mouth piece of the prosecution, but that does not mean that it should result in the miscarriage of justice. To appreciate this argument, I would again like to reiterate it that a situation can be conceived wherein the matter has come up in revision under Section 435 Cr. P.C. as in the present case and when the court feels that the order impugned is manifestly an adverse order, has resulted in miscarriage of justice, the court is not debarred to interfere in such orders even sou-motu.

14. The powers of a revisional court are very wide. It is just per chance and the matter has been brought to the notice of the revisional court by a private party, but when the matter comes for perusal in any capacity, the court has to see the correctness, legality or propriety of any finding, sentence or order recorded or passed and the revisional court has to exercise its discretion judiciously and not if an arbitrary manner. One of the factors which is to be considered by the revisional authority is whether intervention of the revising authority is/was sought at the earliest. In the case which came up for consideration before my brother judge (Khan, J.), the intervention of the revisional court was being sought after a lapse of over six years and in the case which has been cited at the bar in this case, the apex court also has shown their indulgence not to interfere, only on the ground, because intervention was being sought at a very belated stage.

15. The second argument which has been raised by learned counsel for the respondents is that the trial Judge has not to act like a post office but has to apply its mind while framing a charge. So in case learned Sessions Judge, Bhaderwah has charged the accused under Section 304-II read with Section 34 RPC instead of Section 302 RPC under which charge sheet was put up by the police, it does not in any way call for the intervention of the revisional court and has referred in support of his contentions AIR 1979 SC 366 : (1979 Cri LJ 154) and 1991 Cri LJ 602 : (AIR 1991 SC 967).

16. By addressing the above referred arguments, learned counsel for the respondents tries to project that there is no direct evidence to show that the accused have committed the crime of murder. There are sufficient circumstances, as argued by learned counsel for the respondents, which lead to the possibility that the deceased has received injuries by fall. In that back-ground the accused have been rightly charged under Section 304-II RPC as there is no direct evidence on record or any eye witness to suggest that the deceased was done to death by the accused persons and in that back drop, the charge framed by the trial court docs not warrant for any interference by the revisional court.

17. The submissions made by learned counsel for the respondents/accused in this behalf can be appreciated at the final conclusion of the trial, and the conviction of the accused, if the charges made out stand proved and not at the stage of framing of the charge. So this argument of learned counsel for the respondents/accused is answered accordingly.

18. In the case in hand, I do find that immediately after the charge has been framed, the private individual has moved the present revision petition. The matter stands referred to the court. Though the matter has been brought to the notice of the court by a private individual, but nevertheless, the powers vested in the court under revisional jurisdiction can be invoked by looking to the records and seeing whether the order impugned does testify the correctness, legality or propriety.

19. While applying this touch stone to the case in hand, I do find that the learned Sessions Judge while charging the accused under Section 304-II read with Section 34 RPC has not given correct appreciation of the documents referred to under Section 173 Cr. P.C. and the statement of witnesses recorded under Section 161 Cr.P.C. and other evidence collected by the investigating agency to connect the accused with the alleged murder of the deceased and the scuffle which is alleged to have taken place prior to the death of the deceased as is being shown by the site map and other circumstantial evidence collected by the prosecution during investigation, which is sufficient to show that it is intact case under Section 302 RPC read with Section 34 RPC which is made out rather than an offence under Section 304-II read with Section 34 RPC.

20. Though provisions of Section 237 Cr. P.C. do empower the court to convict a person under any offence after the culmination of the trial. So it would have been appropriate of learned trial Judge to convict the accused in case a heinous offence was made out against the accused at the relevant time, as argued by learned counsel. It may be noted that the courts should not take chances of allowing the accused to move freely or in any way interfere with the evidence and try to win over the witnesses. In the present case by charging the accused under Section 304-II RPC, the accused have been bailed out and they are moving freely. Also averments have been made and are on the file supported by affidavits before the trial court by the witnesses that they are being harassed by the accused party. The affidavits on the file are that of Shiv Ram and Omi Chund which is sufficient indication and alarming one of which due notice has not been taken by the trial court at the time of framing of the charge and has rejected both these affidavits cursorily without there being any counter affidavit on behalf of the accused to appreciate the evidence.

21. For the foregoing reasons, the revision petition is allowed and the order of learned Sessions Judge, Bhaderwah dated 19-2-1992 is set aside. The learned Sessions Judge Bhaderwah is directed to charge the accused afresh under Section 302 read with Section 34 RPC and they be taken into custody by issuance of necessary coersive orders for arresting them. However, the learned Sessions Judge will not be barred to hear their bail application, if and when moved at the relevant time for consideration. The bails granted to the accused are accordingly withdrawn. The record be transmitted back to the trial court immediately. The revision file be consigned to records.

22. Announced by me in terms of Rule 57(U) of the Jammu and Kashmir High Court Rules, 1975.

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