

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL REVISION APPLICATION NO. 47 OF 2014

State of Goa,
Through Police Inspector,
Shri Ram Asare,
Major in age,
Cuncolim Police Station,
Cuncolim, Salcete Goa. .. Applicant

Versus

Mr. Javed Hussain Sayed,
s/o Hussain Sayed, Major
R/o. H. No. 434/A-1-1,
Matimorod, St. Jose de Areal,
Salcete, Goa. .. Respondent

Mr. M. Amonkar, Additional Public Prosecutor for the applicant.

Mr. Ryan Menezes, Advocate for the respondent.

CORAM :- C. V. BHADANG, J.

Date : 31st March, 2015.

ORAL JUDGMENT :

Admit.

2. Mr. Menezes, the learned Counsel waives service.

3. Heard finally, with the consent of the learned Counsel
for the parties.

4. By this Revision Application, the State is challenging the order dated 18/07/2014 passed by the learned Additional Sessions Judge, South Goa, Margao in Sessions Case No.19/2014, by which the respondent, who was the original accused no. 3, has been discharged from the offences punishable under Sections 302 and 201 read with Section 34 of the Indian Penal Code (I.P.C., for short).

5. Brief facts, necessary for the disposal of the Revision Application, may be stated thus :

That according to prosecution, now deceased Vijay Pujar had developed intimacy with one Hafeeza Mulla, who is the wife of the accused no. 1 Jaffer Mulla. The accused no. 2 Abdul Sayed and the respondent Javed Sayed are the brothers of Hafija. The motive behind the incident is said to be alleged intimacy between the deceased Vijay Pujar and Hafeeza Mulla. It is said that the incident occurred on 09/10/2013 when the accused no. 1 Jaffer Mulla had gone to Vellim where he saw the deceased Vijay sitting in a Bar. Further, according to the prosecution, the accused Jaffer Mulla brought Vijay to his house to accost him about the alleged relations of the deceased with Hafeeza Mulla. It is said that later, at about 21.00 hours or so, the accused no. 2

Abdul Sayed and the accused no.3 Javed Sayed came to the house of the accused no. 1. Vijay was said to be under the influence of liquor and was not in a position to stand properly. It is said that Jaffer accosted Vijay as to his relations with Hafeeza Mulla in the presence of her brothers. The material case is that thereafter, the deceased took Jaffer Mulla outside the house and the accused no. 2 Abdul Sayed followed them to listen to their talks. Subsequently, the accused Jaffer returned and declared that he has finished the deceased. Further, according to the prosecution, the accused nos. 2 and 3 were also instrumental along with the accused no. 1 in the commission of murder of Vijay Pujar and of disposing of his body.

6. In such circumstances, the three accused came to be chargesheeted before the learned Sessions Judge in Sessions Case No. 19/2014. The learned Sessions Judge, on hearing the parties, by the impugned order, has discharged the respondent from the offences under Sections 302 and 201 read with Section 34 of I.P.C.. Feeling aggrieved, the State has come up in Revision.

7. I have heard Shri Amonkar, learned Additional Public Prosecutor for the State and Shri Menezes, learned Counsel for the respondent.

8. It is submitted by the learned Additional Public Prosecutor that at the stage of framing of charge, the Court is not expected to embark upon a detailed appreciation of the material and evidence and it would be sufficient that the material produced by the prosecution, *prima faice*, indicates complicity of the accused in the alleged crime. The learned Additional Public Prosecutor has taken me through the statement of Hafeeza Mulla, as also the impugned order, in order to submit that the statement of Hafeeza Mulla will be sufficient to *prima facie* show the involvement of the respondent in the offence. The learned Additional Public Prosecutor has also referred to the alleged discovery made by the accused no. 1, in which the accused no. 1 has stated that he, along with the accused nos. 2 and 3, had finished the deceased. It is submitted that in such circumstances, the impugned order needs interference.

9. On the contrary, Shri Menezes, learned Counsel for the respondent has submitted that at the stage of framing of charge, the prosecution cannot rely on mere suspicion and what is required, would be a strong suspicion, as has been held by the Hon'ble Apex Court in ***Yogesh alias Sachin Jagdish Joshi Vs. State of Maharashtra*** reported in (2008)10 SCC 394 and ***P.***

Vijayan Vs. State of Kerala and another reported in (2010)2 SCC 398. It is submitted that the statement of Hafeeza Mulla would indicate that the respondent was only shown to be present in the house and there are no allegations of any overt act, whatsoever, attributed to him. It is submitted that the evidence about the so called discovery under Section 27 of the Indian Evidence Act attributable to the accused no. 1 cannot also come to the aid of the prosecution inasmuch as the same, even if proved, cannot be used against a co-accused.

10. I have considered the rival circumstances and the submissions made. On perusal of the impugned order and the statement of Hafeeza Mulla, I do not find that any case for interference, in the impugned order is made out.

11. The learned Additional Public Prosecutor has placed sole reliance on the statement of Hafeeza Mulla, which shows that, insofar as the respondent is concerned, the only allegation is that he was present in the house and there is no overt act attributed to him. The statement would, *prima facie*, indicate that it was the deceased, who took the accused no. 1 outside the house and they were followed by the accused no. 2, while the present respondent remained in the house itself. Even so far as the reliance placed on

the recovery allegedly made by the accused no. 1 is concerned, the same cannot come to the aid of the prosecution, in order to show that any case of "strong suspicion", is made out against the respondent. I do not find that the impugned order demonstrates exercise of jurisdiction with material irregularity, so as to need interference.

12. In the result, Revision Application is dismissed.

C. V. BHADANG, J.

SMA