

**HONOURABLE Dr. JUSTICE B.SIVA SANKARA
RAO**

CRIMINAL PETITION No.5999 of 2015

%09.07.2015

Garlapati Kamal Kumar

...Petitioner/ accused No.6

VERSUS

\$ The State of Telangana
Rep. by Public Prosecutor,
High Court of Judicature at Hyderabad

...Respondent/ complainant

< GIST:

> HEAD NOTE:

!Counsel for Petitioner: Sri G.Kiran Kumar

^Counsel for Respondents: Public Prosecutor (TG)

? Cases referred

1. 1992 APLJ (CrI) 183
2. 2000 (1) ALT (CrI) 174
3. 2001 (2) ALT (CrI) 482 = (2) ALD (crl) 851
4. 2003 (1) ALT CrI 56 (AP)
5. CrI.P.No.12708 of 2014, dated 28.10.2014

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

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CRIMINAL PETITION No.5999 of 2015

Between:

Garlapati Kamal Kumar

.. Petitioner/ accused No.6

And

The State of Telangana
Rep. by Public Prosecutor,
High Court of Judicature at Hyderabad

.. Respondents/ Complainant

DATE OF JUDGMENT PRONOUNCED: 09-07-2015

SUBMITTED FOR APPROVAL:

**HONOURABLE Dr. JUSTICE B.SIVA SANKARA
RAO**

1. Whether Reporters of Local newspapers
Yes/No

may be allowed to see the Judgment?

2. Whether the copies of judgment may be
marked to Law Reporters/Journals

Yes/No

3. Whether Their Lordship wish to
see the fair copy of the Judgment?

Yes/No

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Crl.P. No.5999 of 2015

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ORDER :

The petitioner is accused No.6 of PRC No.91 of 1994, outcome of Crime No.7 of 1992 of Godavarikhani-II Town Police Station. The committal proceedings are pending before Judicial Magistrate of First Class, Sultanabad. The so-called occurrence has taken place on 13.02.1992 after 10.00 pm, there were in all six accused and the police, having investigated the crime, on the report

of complainant, who is father of deceased, filed the final report. Finally in PRC No.91 of 1994, the case of accused Nos.1, 2 and 4 was separated and committed to the Court of Sessions, faced a trial in Sessions case No.755 of 1994 and by judgment dated 20.04.1995 the case against them was ended in acquittal on benefit of doubt, for the prosecution miserably failed to prove the guilt of accused beyond all reasonable doubt. Subsequently, among the others, accused Nos.3, 5 and 6 shown in abscondance again the case was split up and committed so far accused Nos.3 and 5 is concerned covered by S.C. No.285 of 2009 and they were also tried and the case was ended in acquittal against them on 07.08.2009. It is thereby, accused No.6 is alone concerned with PRC No.91 of 1994, all through in abscondance. He now seeks quashment of the PRC proceedings.

2) The contention of the petitioner—accused No.6 mainly is that, from the entire material of the prosecution leave about the charge, there is no whisper of any role of him but for a stray sentence at page No.3 continuation para last but one line that accused Nos.5 and 6 are watching the movements, and A-4 cut the neck of the deceased, while A-1 to A-3 caught hold of the hands and legs of the deceased. A-4 surrendered. A-5 and 6 are in abscondance. The direct attack attributed is against accused Nos.1 to 4 and they were the persons, who shared the common intention. So far as accused Nos/5 and 6 are concerned, apart from members of unlawful assembly, the charge sheet laid is for the offence punishable under Section 302 IPC.

3) From the above contentions, it is important to note that, in the evidence of PW.1—de facto complainant there are two contradictions marked as Ex.D1 and D2. In his version in the FIR, he stated that two persons came into his house and enquired about

his son on the fateful day at about 10.00 pm and on knowing that the deceased went to Bhagavatham programme at the cross roads of Jangaon they left. Whereas his statement during investigation is that accused Nos.1, 2 and 4 are responsible as they killed his son. However, he deposed that basing on a rumor spread in the village he could state in his Section 161 Cr.P.C statement supra. In fact, there is no whisper about accused No.5 much less accused No.6 in his evidence. It is also important to note that the charge sheet simply mentioned the name of accused No.5 as Pasha, S/o.Vali Mohammed, R/o.Hanmannagar, Godavarikhani but not even given the particulars of accused No.6 and simply mentioned as Kumar without further name, age, residential address and particulars of caste or creed.

4) It is suffice to say once the main accused concerned that is accused Nos.1 to 4 in respect of whom two spells of the sessions trial were concluded in acquittal for no proof, the other accused Nos.5 and 6 if at all concerned for the offence under Section 302 read with 34 or 149 IPC for sharing of common interest or being members of the unlawful assembly of whom even the accused No.5 also acquitted; So far as the accused No.6 is concerned, his name is not fully mentioned much less his address or avocation. Thus, to say with no proper address for identity from mere mentioning of an incomplete name as Kumar, now police came forward saying his name as Garlapati Kamal Kumar, S/o.Rama Krishna and are trying for him to say as he is the accused No.6, even taken the same as he is accused No.6 for identity from the material on record, the accusation no way survives and thus there is no need to the accused No.6 to face trial. The law is well settled in this regard by the expressions of this Court in ***Jangavula Rambabu vs the State***^[1], ***Thallapalli Rajaiah vs State of AP***^[2], ***G.Venkataratnam Kumar vs***

State of AP^[3], Azghar Ahmed Khan (A-9) vs The State of A.P., rep. by its Public Prosecutor, High Court, Hyderabad^[4] and another unreported expression of this Court in Sama Swamy vs State of Telangana^[5].

5) No doubt, as held in G.Venkataratnam Kumar (supra), if there is a prima facie accusation against the split up case accused to face trial, mere acquittal of some of accused who faced trial already is not a ground to acquit or discharge or to quash. However, if there is no material prima facie, it is nothing but a futile exercise as pointed out in Tallapalli Rajaiah (surpa). The learned public prosecutor did not chose to dispute above material on record though not conceded the factum of there is no material to face trial by accused No.6, apart from the issue of his identity.

6) Accordingly, the Criminal Petition is allowed and the proceedings in PRC No.91 of 1994 on the file of Judicial Magistrate of First Class, Sultanabad against the petitioner/ accused No.6 are quashed.

7) Miscellaneous petitions, if any pending in this Criminal Petition, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

09.07.2015

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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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