

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 26.03.2015
Judgment pronounced on : 20.04.2015

CRL.REV.P.281/2012

VEENA AJMANI

..... Petitioner

versus

STATE & ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Y. Das, Sr. Advocate with Mr. Arunav Patnaik and Mr. D.B.
Ray, Advocates
For the Respondents : Ms. Isha Khanna, APP for State with Insp. Rakesh Kumar, ATO/GTB
Enclave for R-1
Mr. Varun Kumar Jain, Advocate for R-2
Mr. Yashvardhan with Mr. Piyush Singh, Advocates for R-3

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Mr. Yashvardhan with Mr. Piyush Singh, Advocates for R-2

CORAM:
HON'BLE MR JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J

1. This common order will dispose of two Criminal revision petitions being Nos 281/2012 and 282/2012 filed by Veena Ajmani for setting aside the final orders on charge passed by Learned Additional Sessions Judge, Karkardooma dated 01.11.2011 and 03.03.2012 whereby accused Imran @ Raju and Manoj @ Mandola were discharged and only an offence under section 411 of the Indian Penal Code, 1908 (hereinafter referred as "IPC") was made out against accused Javed Khan.

2. Briefly, the prosecution case is that on 20.10.2010, at about 06:15 AM, vide DD No. 4-B, an information was received that one person is lying in an unconscious state at C- Block Mandir Wali Service Road, Dilshad Garden, Delhi. SI Om Singh visited the 64-Foota Road where the unconscious person was lying and the latter was taken to GTB Hospital by PCR Van where the doctor declared him dead. On the same day, the dead body was identified as Kamal Kishore Ajmani S/o Late Sh. B.R. Ajmani R/o D-36, Kirti Nagar New Delhi. The post mortem examination of the body was

conducted and opinion regarding the cause of death was given as “asphyxia as a result of compression of neck”.

3. On 29.10.2010, a written complaint was given by Subhash Chand Wadhwa S/o Late Sh Mohan Lal Wadhwa R/o J-5/57, Rajouri Garden, New Delhi to the police stating therein that on 19.10.2010, Sh. Kamal Kishore Ajmani (deceased) who was employed as Chief Manager, Syndicate Bank at Raj Nagar, Ghaziabad had reached his office. However, he did not return home at night. On contacting his mobile phones, they were found to be switched off. Thereafter, missing report was lodged at Police station, Kirti Nagar, New Delhi and Ghaziabad. It was further stated that at the time of incident, the deceased was carrying two mobile phones, a pair of spectacles, a black colour hanging bag containing miscellaneous papers, some currency notes, one credit card of Syndicate Bank and a Metro Train Smart Card. However, none of these items were found at the time of recovery of the dead body. It was also stated that the deceased was currently investigating loan scams of branches of Syndicate Bank.

4. On the said complaint, FIR No. 276 under section 302 IPC was registered at Police Station, Mansarovar Park, Delhi. The IO could not get any eye witness so the site plan could not be prepared. However, on

30.10.2010, on the pointing out of ASI Dharam Singh of PCR, they reached the place of incident and a prepared a site plan.

5. On examining the CDR of the mobile phones of the deceased, it was revealed that in the mobile phone of the deceased having IMEI No. 355724026234870 someone was using SIM Card No. 9891704078. The same was seized from one Jitender Kumar S/o Lal Singh R/o D-1068, Gali No. 9 Ashok Nagar, Delhi. On further investigation, it was revealed that Jitender had purchased the said phone from Amit Kumar @ Jeetu who is the owner of Arya Telecom, Ashok Nagar for Rs. 800/-. It was further revealed that Amit @ Jitu had in turn purchased the said mobile phone from Imran @ Raju on 20.10.2010 for Rs. 400/-. Thereafter, search for accused Imran @ Raju ensued but he could not be traced.

6. On 13.11.2010, on secret information received by the police, Imran @ Raju and Javed Khan were arrested from Bhopura Border, Delhi. They both made their disclosure statements and admitted their guilt. TSR bearing No. UP-14-BT-3763, which was used in committing the crime, was also taken into possession from accused Imran @ Raju. The wrist watch of the deceased was recovered from the possession of accused Javed Khan.

7. Accused Imran @ Raju and Javed Khan disclosed in their disclosure statements that they had hired the TSR bearing No. UP-14-BT-3763, on the relevant day and in the evening, at 7 PM, Imran @ Raju, Javed Khan, Manoj @ Mandola, Akash @ Gola and Kaka @ Raju went to Ghaziabad from Gagan T- Point with intention to commit robbery. From there, they picked up one middle aged man and made him sit in between them in the said TSR on the pretext of dropping him at Dilshad Garden Metro Station. Imran @ Raju was driving the TSR. Javed and Manoj @ Mandola held the man and Akash @ Gola took both of his mobile phones. Kaka @ Raju put his hand in this man's pocket to remove his purse. On his raising an alarm, Manoj @ Mandola slapped him, pressed his neck and removed his purse. Akash @ Gola took his bag containing some papers. The middle aged man fell unconscious on account of pressing of the neck and they threw him on the service road. There were Rs. 250/- in his purse and some cards which were taken by Kaka @ Raju. Javed took his wrist watch and both the mobile phones were given to Imran for selling them. Thereafter, Imran disposed off the said mobile phones to Amit@ Jitu for a sum of Rs. 800/- which they shared among themselves.

8. Amit @ Jeetu was interrogated. He informed that he had purchased both the mobile phones of deceased from Imran and he had sold the second mobile phone to Ishtiyak Ahmed for Rs. 800/- which is being used with SIM card no. 9971900267. Thereafter, the second mobile phone of deceased was recovered from Ishtiyak Ahmed.

9. On 14.11.2010, accused Akash @ Gola was arrested and bag belonging to the deceased was recovered at his instance. Accused Kaka @ Raju was also apprehended. They both were found to be juveniles. Accused Manoj @ Mandola was absconding. The said wrist watch and bag were identified in the Test Identification Parade by the wife of the deceased. It is stated that from the call detail record of mobile no. 8750367577 (which was used by Imran @ Raju on 19/20.10.2010), it was revealed that on 19.10.2010, at about 6PM-7PM, Imran @ Raju was present along with his accomplices in between Saboli Mandoli and Nand Nagari and thereafter, at 8 PM, he was present at Ghaziabad, Lohia Nagar. Subsequently, at 8:41 PM, accused Imran @ Raju alongwith his accomplices, were present in between Dilshad Garden and Tahir Pur where the dead body of the deceased was found. Thereafter, Imran @ Raju changed the SIM card of his mobile and

started using new number 9891452258 which was purchased on ID proof of some other person so that it could not be traced.

10. Investigation was also carried out with respect to the TSR bearing no. UP-14-BT-3763 and it was revealed that the registered owner Munna Lal had given the TSR on hire to Jaineshwar Pal and Jaineshwar Pal had further given the said TSR to his relative Deepak. On 19.10.2010, Deepak had given the TSR on rent of Rs 300/- to Imran @ Raju.

11. Later, Manoj @ Mandola was arrested as a proclaimed offender and a kalandara under section 41.1(ba), Cr.P.C. along with supplementary charge sheet was filed before the Learned MM, who supplied the copies under section 207, CrPC to the accused and supplementary charge sheet was again committed to the court of Learned ASJ.

12. Vide impugned order dated 01.11.2011, accused Imran@ Raju was discharged from the present case and only an offence under section 411, IPC was made against Javed Khan. The trial court has held that the only evidence that can be read against Imran @ Raju is that he was arrested with TSR bearing No. UP-14-BT-3763 which he was driving. It was further held by the trial court that the solitary evidence that has come on record against the accused Javed is that he was found in possession of the wrist watch of the

deceased which was recovered after 23 days of the incident. Therefore, it cannot be linked to robbery or murder.

13. Vide impugned order dated 03.03.2012, accused Manoj @ Mandola was also discharged from the present case. The trial court has held that Manoj@ Mandola cannot be charged for any offence in the present case as there is no eye witness of the alleged offence under section 396/302 IPC and there is no recovery of any robbed item at the instance of the accused.

14. Mr. Das, learned Senior Counsel appearing on behalf of the Revision Petitioner contended that the trial court has erred in the impugned orders. Charges under section 302, 396, 412 and 34 ought to be framed against Imran @ Raju and Javed Khan and charges under section 302, 396 and 34 IPC ought to be framed against accused Manoj @ Mandola in view of the disclosure statements of the accused persons in the present case.

15. Mr. Das further contended that the CDR details of Imran @ Raju shows his presence at the scene of crime, i.e., Dilshad Garden- Tahirpur on the day of the incident and thus as per the last seen theory there exists evidence against the accused persons to have committed the alleged offences. In addition to this, there is a recovery of TSR, Wrist watch and bag of the deceased from the instance of Imran @ Raju, Javed Khan and Juvenile

Akash @ Gola respectively. Furthermore, there is also recovery of two mobile phones of the deceased from Jitender Kumar and Ishtiyak Ahmed who have purchased them from accused Amit Kumar @ Jeetu of Arya Telecom who stated to have purchased the said phones from Imran @ Raju.

16. It was then contended by the learned Senior Counsel that confessions of the juveniles were not taken into account by the learned trial court before discharging the accused persons.

17. It was argued on behalf of the respondents that the petitioner, the wife of the deceased has no locus standi to file these revision petitions as she is not the complainant in the subject FIR and even otherwise the accused persons are rightly discharged by the Trial Court. In support of his argument learned counsel has placed reliance on a decision of this court in **Shashi Kumar Goyal vs State and Others**, reported at **95 (2002) DLT 582**.

18. Learned counsel appearing on behalf of accused Imran stated that the present petitions are not maintainable and are liable to be dismissed as there is no infirmity in the impugned orders. It was stated that Imran had only rented the TSR and has nothing to do with the alleged offence. It was also stated that no efforts were made by the police to ascertain that the deceased

boarded the said TSR and the disclosure statements made to the police are inadmissible.

19. The learned counsel appearing on behalf of accused Manoj @ Mandola and Javed Khan stated that there is a delay of 10 days in lodging the FIR that is fatal to the case of the prosecution. Also police has failed to make a site plan of the incident. Raising the argument of delay in lodging the FIR, the learned counsel appearing on behalf of the respondents placed reliance on the judgment of the apex court in *Thulia Kali vs The State of Tamil Nadu* , reported at (1972) 3 SCC 393. The relevant paragraph is reproduced below:

12. It is in the evidence of Valanjiaraju that the house of Muthuswami is at a distance of three furlongs from the village of Valanjiaraju. Police station Valavanthi is also at a distance of three furlongs from the house of Muthuswami. Assuming that Muthuswami PW was not found at his house till 10.30 p.m. on March 12, 1970 by Valanjiaraju, it is not clear as to why no report was lodged by Valanjiaraju at the police station. It is, in our opinion, most difficult to believe that even though the accused had been seen at 2 p.m. committing the murder of Madhandi deceased and a large, number of villagers had been told about it soon thereafter, no report about the occurrence could be lodged till the following day. The police station was less than two miles from the village of Valanjiaraju and Kopia and their failure to make a

report to the police till the following day would tend to show that none of them had witnessed the occurrence. It seems likely, as has been stated on behalf of the accused, that the villagers came to know of the death of Madhandi deceased on the evening of March 12, 1970. They did not then know about the actual assailant of the deceased, and on the following day, their suspicion fell on the accused and accordingly they involved him in this case. First information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the above report can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as names of eye witnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained. In the present case, Kopia, daughter-in-law of Madhandi deceased, according to the prosecution case, was present when the accused made murderous assault on the deceased. Valanjiaraju, stepson of the deceased, is also alleged to have arrived near the scene of occurrence on being told by Kopia. Neither of

them, nor any other villager, who is stated to have been told about the occurrence by Valanjiaraju and Kopia, made any report at the police station for more than 20 hours after the occurrence, even though the police station is only two miles from the place of occurrence. The said circumstance, in our opinion, would raise considerable doubt regarding the veracity of the evidence of those two witnesses and point to an infirmity in that evidence as would render it unsafe to base the conviction of the accused-appellant upon it.

20. It was further argued that only a wrist watch of the deceased was recovered from the instance of Javed Khan and that too after 23 days of the incident. And there is no recovery from Manoj @ Mandola. In view of this there is no incriminating evidence on record to frame charges against accused Javed Khan and Manoj @ Mandola.

21. The learned counsel for the respondents has relied upon the judgment of the Supreme Court in *Stree Atyachar Virodhi vs Dilip Nathumal Parishad*, reported at (1989) 1 SCC 715. The relevant portion of the said judgment is reproduced below:

20. We wish to add a word regarding interference by the High Court against a charge framed by the Sessions Court. Section 227 which confers power to discharge an accused was designed to prevent harassment to an innocent person by the arduous trial or the ordeal of prosecution. How that

intention is to be achieved is reasonably clear in the section itself. The power has been entrusted to the Session Judge who brings to bear his knowledge and experience in criminal trials. Besides, he has the assistance of counsel for the accused and Public Prosecutor. He is required to hear both sides before framing any charge against the accused or for discharging him. If the Sessions Judge after hearing the parties frames a charge and also makes an order in support thereof, the law must be allowed to take its own course. Self restraint on the part of the High Court should be the rule unless there is a glaring injustice stares the Court in the face. The opinion on any matter may differ depending upon the person who views it. There may be as many opinions on a particular matter as there are Courts but it is no ground for the High Court to interdict the trial. It would be better for the High Court to allow the trial to proceed.

22. I have heard counsel for the parties and perused the record. The CDR details of the mobile phone of Imran @ Raju reveal his presence at the place of the incident. The wrist watch and bag of the deceased were recovered at the instance of Javed Khan and juvenile Akash respectively. Corroborating the disclosure statements of the accused persons, the petitioner (wife of the deceased) had identified the wrist watch and the bag of her deceased husband in Test Identification Parade conducted by the Metropolitan Magistrate, Karkardooma as reflected in the order dated 30.11.2010.

23. The recoveries of the TSR and two mobile phones of the deceased also corroborate the disclosure statements made by the accused persons. Furthermore, considering the fact situation of the present case, the confessions of the two juveniles before the Juvenile Justice Board cannot be ignored for framing of charges. At the notice framing stage before the Juvenile Justice Board- III both the juveniles had confessed that they have committed the offences due to Manoj @ Mandola.

24. The postmortem report of the deceased bearing no. 1455/10 dated 20.10.2010 also delineates the cause of death of the deceased to be “Asphyxia as a result of compression of neck” which also substantiates the disclosure statements of the accused persons wherein it was stated that Manoj @ Mandola pressed the neck of the deceased and on account of that the deceased fell unconscious.

25. The delay of 10 days in lodging the FIR cannot be said to be fatal to the case of the prosecution at this pre-trial stage. The facts of *Thulia Kali* (*supra*) are clearly distinguishable from the facts of the present case. Furthermore, *Thulia Kali* (*Supra*) is not a decision on framing of charges. The Supreme Court has held that the delay in lodging the FIR should be satisfactorily explained. Considering the facts of the present case, an

opportunity to explain such delay ought to be granted to the prosecution at the time of trial.

26. In *Stree Atyachari (Supra)*, the apex court has held that self restraint on the part of the High Court should be the rule unless a glaring injustice stares the Court in the face. In the present case the Learned Trial court has failed to appreciate the corroboration of the disclosure statements with the recovery of the TSR and articles belonging to the deceased. Moreover, the trial court has not considered the confessions of the juveniles before the Juvenile Justice Board. Therefore, the argument of the respondents restraining this court from interfering with the impugned order is without merit.

27. The decision cited by the counsel for the respondents in *Shashi Kumar (Supra)* also does not apply to the present case as the facts of *Shashi Kumar (Supra)* are entirely different. *Shashi Kumar (Supra)* is a case of section 498A, IPC. In the present case, when an appeal by the wife of the victim is maintainable under section 372 of Cr.P.C., she can challenge the discharge of the accused persons also.

28. The Supreme Court in *P. Vijayan vs State of Kerala and Another*, reported at (2010) 2 SCC 398 has held that the consideration of the court at

the stage of framing of charges is for the limited purpose of ascertaining whether or not there is sufficient ground for proceeding against the accused. Whether the material in the hands of the prosecution is sufficient or not are matters of trial. Moreover, the issue whether the trial will end in conviction or acquittal is also immaterial. The relevant portion of the decision is as reproduced below:

25. As discussed earlier, Section 227 in the new Code confers special power on the Judge to discharge an accused at the threshold if upon consideration of the records and documents, he find that "there is not sufficient ground" for proceeding against the accused. In other words, his consideration of the record and document at that stage is for the limited purpose of ascertaining whether or not there is sufficient ground for proceeding against the accused. If the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228, if not, he will discharge the accused. This provision was introduced in the Code to avoid wastage of public time when a *prima facie* case was not disclosed and to save the accused from avoidable harassment and expenditure.

26. In the case on hand, though, the learned Trial Judge has not assigned detailed reasons for dismissing the discharge petition filed under Section 227, it is clear from his order that after consideration of the relevant materials charge had been framed for offence under Section 302 read with Section 34 IPC and because of the same, he

dismissed the discharge petition. After evaluating the materials produced by the prosecution and after considering the probability of the case, the Judge being satisfied by the existence of sufficient grounds against the appellant and another accused framed a charge. Whether the materials at the hands of the prosecution are sufficient or not are matters for trial. At this stage, it cannot be claimed that there is no sufficient ground for proceeding against the appellant and discharge is the only remedy. Further, whether the trial will end in conviction or acquittal is also immaterial. All these relevant aspects have been carefully considered by the High Court and it rightly affirmed the order passed by the Trial Judge dismissing the discharge petition filed by A3-appellant herein. We fully agree with the said conclusion.

29. In view of the aforesaid discussion, I am of the opinion that trial court has erred in the impugned orders by discharging accused Imran @ Raju and Manoj @ Mandola and only framing a charge under section 411 IPC against accused Javed Khan. I am of the view that prima facie offence under sections 302, 396, 412 and 34 IPC is made out against Imran @ Raju and Javed Khan. And offence under sections 302, 396 and 34 IPC is made out against accused Manoj @ Mandola. There exist sufficient grounds to proceed against them. The impugned orders dated 1.11.2011 and 03.03.2012 are liable to be set aside qua accused Imran @ Raju, Javed Khan and Manoj @ Mandola. It is ordered accordingly.

30. The trial court is directed to frame charges under section 302, 396, 412 and 34 IPC against accused Imran @ Raju and Javed Khan. Further, it is directed to frame charges under section 302, 396 and 34 IPC against accused Manoj @ Mandola and proceed in accordance with law.

31. The revision petitions are allowed and disposed of accordingly. Pending applications, if any, also stand disposed of. The Registry is directed to send back the TCR/LCR.

SIDDHARTH MRIDUL, J

APRIL 20, 2015

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