

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 66 OF 2016

MR. SHYAM GEORGE., ... Petitioner
Versus
STATE THR. PUBLIC PROSECUTOR., ... Respondent

Mr. Menino Teles with Mr. A. Govekar, Advocates for the
Petitioner.
Mr. Pravin Faldessai, Additional Public Prosecutor for the
Respondent.

Coram:- C. V. BHADANG, J.

Date:- 17th January, 2017

ORAL ORDER:

The petitioner is the accused no.2 in Special Case No.55/2009 pending before the Children's Court at Panaji. There were in all four accused, including the petitioner, who were charge-sheeted before the Children's Court, out of which accused no.4 is dead. The prosecution is for the offences punishable under Section 305 read with Section 34 of IPC and Section 7(2)(c) read with Sections 8(2) and (4) of the Goa Children's Act, 2003. After the prosecution closed its case, the accused no.1 examined one Usha Subramanian as DW-1. She happens to be a social worker and a Member of All India Women's Conference. It appears that Smt. Usha Subramanian was cited as prosecution witness, but was not examined by the prosecution and she came to be examined as a defence witness. After cross examination of the said witness by the learned Public Prosecutor, the learned

Counsel for the petitioner (accused no.2) sought leave to cross examine this witness. The learned Children's Court found that there being no provision for cross examination of defence witness, no permission could be granted. The Children's Court also found that all the three accused have common line of defence and for this reason also, permission could not be granted.

Aggrieved by the refusal to cross examine the said witness, the petitioner is before this Court.

2. I have heard the learned Counsel for the petitioner and the learned Additional Public Prosecutor for the respondent. With the assistance of the learned Counsel for the parties, I have gone through the evidence of Smt. Usha Subramanian (DW-1) and the impugned order passed.

3. It is submitted on behalf of the petitioner that there is no prohibition for a co-accused cross examining a defence witness, examined by another co-accused. Reliance is placed on the decision of the Karnataka High Court in the case of SRI MOHAMED ZIAULLA Vs. MRS. SORGRA BEGUM & ANOTHER, ILR 1997 KAR 1378 and judgment dated 12.07.2013 of the Allahabad High Court in the case of NATTHU Vs. STATE OF U.P. passed in Capital Case No.3191/2012 and in particular, para 25 thereof. It is submitted that the line of defence of the petitioner is not similar to the defence of accused

no.1 and as such, leave to cross examine ought to have been granted. The learned Counsel submitted that there are incriminating circumstances, which have come on record in the evidence of DW-1 and she needs to be cross examined on behalf of the petitioner.

4. On the contrary, it is submitted by the learned Additional Public Prosecutor that there is nothing in the evidence of DW-1, which tends to incriminate the present petitioner. The learned Additional Public Prosecutor, however, does not dispute that in the event, there is a conflict of interest and defence between the two accused, interse, one of the co-accused will have to be granted permission to cross examine, the defence witness examined by the other accused. He submits that in the absence of any incriminating circumstances forthcoming in the evidence of DW-1 as against the petitioner, it would be superfluous to permit cross examination of the said witness on behalf of the petitioner.

5. I have carefully considered the rival circumstances and the submissions made. The Children's Court has declined to grant permission on two grounds, firstly, on the ground that there is no provision for the co-accused to cross examine the defence witness on behalf of another co-accused. Secondly, the line of defence of all the three accused being common. As noticed

earlier, it is not disputed on behalf of the State that in a given case, where there is a conflict of interest between the co-accused interse and certain incriminating material is brought on record in defence, an opportunity to cross examine such a witness will have to be granted. However, the question would again depend on facts and circumstances of each case, namely, whether or not the co-accused has common line of defence and secondly, whether there is any incriminating material brought on record in the evidence of the defence witness. In the present case, I have carefully gone through the evidence of DW-1 and all that the said witness has deposed is that she alongwith the deceased accused no. 4 and Mahalaxmi (PW-3) and the victim had travelled together to Chennai. Except this, nothing has come on record, much less to incriminate the petitioner. Thus, in the facts of the present case, I do not find that any case for interference is called for in the impugned order passed by the Children's Court, refusing leave to grant permission for cross examination.

The Criminal Revision Application is accordingly dismissed in limine.

C. V. BHADANG, J.

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