

THE HON'BLE SRI JUSTICE P.KESHA RAO

CRIMINAL REVISION CASE No.1031 OF 2014

ORDER:

Heard the learned counsel for the petitioner and learned Public Prosecutor appearing for the first respondent-State. Pursuant to the order of this Court when a personal notice is taken out to the second respondent, the track consignment report filed before the Court shows that the item is delivered on 24.04.2015. The same is made part of the record. In spite of service of notice, the second respondent has not chosen to appear either in person or by engaging any counsel.

2. The present Criminal Revision Case is filed questioning the orders passed in CrI.M.P.No.105 of 2013 in S.C.No.259 of 2013, dated 11.02.2014 on the file of the II Additional Assistant Sessions Judge, Cyberabad, Ranga Reddy District, dismissing the application filed under Section 227 of Cr.P.C. to discharge the petitioner for the offence under Section 306 I.P.C.

3. The facts in brief are that the second respondent herein who is the husband of the deceased-Raja Rajeshwari filed a complaint on 27.11.2009 before the Station House Officer, L.B.Nagar alleging that on 8.11.2009 early morning, A.1 to A.6, abused his wife since she obstructed the construction of a shed occupying the road portion by the said accused. In that connection, all the accused beat her. The said complaint led to registration of a crime vide F.I.R.No.1329 of 2009 and after investigation, a charge sheet was laid against the accused. The Court below after taking cognizance of the offence against the accused including the petitioner herein,

who is A.3, numbered the case as S.C.No.595 of 2010. Since the petitioner herein was absconding, the case was split up and the trial was conducted against all other accused.

4. The prosecution, in all, examined P.Ws.1 to 10 and marked Exs.P.1 to P.9 apart from Ex.D.1, complaint given by A.1 and exhibited M.O.1. On behalf of defence, no oral or documentary evidence was adduced.

5. After appreciating and analysing the evidence let in by the prosecution, the learned Principal Assistant Sessions Judge acquitted A.1,A.2 and A.4 to A.6 since they were not found guilty of the offence punishable under Section 306 I.P.C.

6. The petitioner herein obtained an anticipatory bail and went to U.S.A. since he got admission in Master's degree in Engineering at State University of New York, U.S.A. Therefore, the case was split up against the petitioner. However, on return as he made himself available to the prosecution, the case against him has been registered as S.C.No.259 of 2013 for the above said offence. Pending the said case, the petitioner filed CrI.M.P.No.105 of 2013 under Section 227 of Cr.P.C. to discharge him from the aforesaid offence. The said application came to be dismissed by orders dated 11.02.2014. Aggrieved by the said orders, the present Criminal Revision Case is filed.

7. The learned counsel appearing for the petitioner would contend that the petitioner herein is similarly situated with that of the other accused in S.C.No.595 of 2010. The evidence available against all the accused is similar in nature and there are no

independent facts and separate allegations against the petitioner. Therefore, the findings arrived at in S.C.No.595 of 2010 are very much applicable to the petitioner herein and on that ground, the petitioner is liable to be discharged. In fact, the learned counsel brought to the notice of this Court paragraph 8 of the said judgment, which reads as under:

“8. There is no dispute with regard to the death of Smt.Raja Rajeswari and also committing of suicide by her. Now the point is to be decided whether the accused are responsible for committing the suicide by the said P.Ra Rajeswari. The entire case of the prosecution is relied on Ex.P.7-suicide note. The plain reading of the suicide note reveals that the first page of the suicide note is written with blue colour ink pen and 2nd and 3rd pages are written with different hand writing with black colour ink pen. That too in the first page of Ex.P.7 it was not mentioned any abusive words of accused and it is only mentioning of beating by the accused on deceased Raja Rajeswari and her husband. More over the first page of Ex.P.7 is also completed by mentioning that “Itlu, Yours faithfully” and her signature. But surprisingly the 2nd and 3rd pages were also attached to the first page of Ex.P7. For that the learned Addl. PP argued that the entire three pages were taken from the blouse of the deceased-Raja Rajeswari, as such there is no chance for them to fabricate the 2nd and 3rd pages of Ex.P7. But at the last of Ex.P7 it was mentioned only “Itlu, P.Raja Rajeswari”. But in the first page it was also mentioned that “yours faithfully”. That too if the deceased wants to prepare the suicide note, there is no necessity for her to close the first page and add the 2nd and 3rd pages. More over the 2nd and 3rd pages are in black ink and it is also not the case of the prosecution is that after preparing the first page and subsequently 2nd and 3rd pages were written by the deceased-Raja Rajeswari. In the same aspect the learned Counsel for the accused argued that the police impleaded the 2nd and 3rd pages even through first page completed by putting the signature by the deceased. The accused Counsel raised a plea with regard to the genuinity of the 2nd and 3rd pages. It is the bounded duty of the prosecution to send all the pages to the Hand Writing Expert for comparison to substantiate their case. No such step was taken by the prosecution herein. But they simply stated that all the three pages were taken from the blouse of the deceased. But the explanation given by the

prosecution is not satisfactory in respect of the Ex.P7 suicide note. More over the police also did not attempt to collect at least the signatures or the writings of the deceased other than Ex.P7. If the prosecution agency collect the other signatures and writings of the deceased, the real fact may come into light. In this aspect the learned APP argued that if the accused took the plea of the genuinity of Ex.P7 suicide note, it is for the accused to prove that the writings in 2nd and 3rd pages of Ex.P7 not belongs to the deceased. But it is not a civil case. In criminal cases the prosecution has to prove the guilt of the accused beyond all reasonable doubt and it is not necessary for the accused to prove his pleas. So in this respect Ex.P7 there is a doubt with regard to the genuinity of Ex.P7 document.”

8. To support his contentions, the learned counsel replied on a decision of this Court rendered in CrI.P.No.3484 of 2018, dated 16.04.2018. It is a case where the accused therein were charged for the offence under Section 8(c) r/w 22 of NDPS Act, 1985. However, as the petitioner therein (A.4) was not available for the prosecution, the case was split up and it was proceeded against the other accused. On trial, the other accused were acquitted of the said offence. Then the petitioner-A.4 filed CrI.P.No.3484 of 2018 before this Court to quash the proceedings against him. The facts of the said case are similar to the facts of the case on hand. In the said case, this Court, while appreciating the facts, held as under:

“As rightly pointed out by the learned counsel for the petitioner, in the charge sheet, the prosecution has not mentioned any independent evidence to that of A.1 and A.2 against A.3 and A.4 to proceed with the trial to establish their guilt. Therefore, the findings in N.S.C.No.53 of 2007 will apply to the petitioner/A.4 also.

In SAHADEVAN AND ANOTHER vs. STATE OF TAMIL NADU
((2012) 6 SCC 403), it is observed as follows:

“It is very difficult to set any universal principle which could be applied to all cases irrespective of the facts, circumstances and the findings returned by the court of competent jurisdiction. It will always depend upon the facts and circumstances of a given case. Where the court finds

that the prosecution evidence suffers from serious contradictions, is unreliable, is ex facie neither cogent nor true and the prosecution has failed to discharge the established onus of proving the guilt of the accused beyond reasonable doubt, the court will be well within its jurisdiction to return the finding of acquittal and even suo motu extend the benefit to a non-appealing accused as well, more so, where the court even disbelieves the very occurrence of the crime itself. Of course, the role attributed to each of the accused and other attendant circumstances would be relevant considerations for the court to apply its discretion judiciously.”

In *SUNIL KUMAR vs. STATE OF DELHI* (1999 LawSuit(Del) 561), it is observed as follows:

“The question thus is as to whether in the face of the judgment of acquittal the petitioner should still be permitted to undergo the ordeal of a trial. In Sat Kumar vs.State of Haryana AIR 1974 SC 294, it was held that there is no rule of law that if the Court acquits some of the accused on the evidence of a witness raising doubt with regard to them the other accused against whom there is absolute certainty about his complicity in the crime based on the remaining credible part of the evidence of that witness must be acquitted. (See also Har Prasad vs.State of madhya Pradesh AIR 1971 SC 1450: Makan Jivan vs. State of Gujarat AIR 1971 SC 1779: Mohd Main Uddin Vs.State of Maharashtra 1971 SCC (cri)(617). But where the evidence against all the accused persons is inseparable and indivisible and if some of the accused persons have been acquitted, the remaining accused persons cannot be treated differently on the basis of the same evidence.”

Thus, the above rulings would show that when the evidence placed on record is inseparable against different accused and the said evidence did not establish the case against some of the accused, the same could follow in respect of other accused also. Merely because, the accused A.4 is in abscondance that is not a ground to continue the trial against him as it would serve no useful purpose.”

9. Similarly, the learned counsel also relied on a decision of Apex Court reported in **Sanju Alias Sanjay Singh Sengar v. State of M.P.** ({2002} 5 SCC 371), wherein, after considering the similar set of facts, the Apex Court held as under:

“12. Reverting to the facts of the case, both the courts below have erroneously accepted the prosecution story that the suicide by the deceased is the direct result of the quarrel that had taken place on 25th July, 1998 wherein it is alleged that the appellant had used abusive

language and had reportedly told the deceased 'to go and die'. For this, the courts relied on a statement of Shashi Bhushan, brother of the deceased, made under [Section 161](#) Cr.P.C. when reportedly the deceased, after coming back from the house of the appellant, told him that the appellant had humiliated him and abused him with filthy words. The statement of Shashi Bhushan, recorded under [Section 161](#) Cr.P.C. is annexed as annexure P-3 to this appeal and going through the statement, we find that he has not stated that the deceased had told him that the appellant had asked him 'to go and die'. Even if we accept the prosecution story that the appellant did tell the deceased 'to go and die', that itself does not constitute the ingredient of 'instigation'.

10. Per contra, the learned Public Prosecutor appearing for the first respondent-State submitted that in the original case i.e. S.C.No.595 of 2010, the accused i.e. A.1,A.2 & A.4 to A.6 were acquitted after full-fledged trial since the prosecution failed to prove the guilt of the accused beyond all reasonable doubt. On questioning by this Court, the learned Public Prosecutor submitted that no separate evidence or allegations are available against the petitioner herein.

11. Having heard both the counsel and from the perusal of the material on record, the undisputed facts are that the petitioner herein, who is A.3 was charged for commission of offence under Section 306 I.P.C. along with other accused who were tried and acquitted after full-fledged trial in S.C.No.595 of 2010 by judgment dated 11.05.2012 on the file of the Principal Assistant Sessions Judge, R.R.District at L.B.Nagar. During the course of hearing, it is also brought to the notice of this Court that the State has not filed any appeal and the said judgment has become final.

12. Now, the issue that crops up for considered is:-

‘whether a separate trial has to be conducted against the petitioner herein since he was not available and the case was split up and registered as S.C.No.259 of 2013?’.

13. A perusal of the material on record which include the judgment in S.C.No.595 of 2010, would indicate that no separate allegations are made against the petitioner and the evidence let in by the prosecution through its witnesses is common against all the accused, which include the petitioner herein. When the record discloses that the evidence is inseparable and the said evidence did not establish the case against the other similarly situated accused in S.C.No.595 of 2010, the same has to be followed in respect of the petitioner herein. Merely because, the case against the petitioner herein has been split up and registered as S.C.No.259 of 2013, even if a fresh trial is conducted, no fresh evidence will be forthcoming and no useful purpose would be served. In these circumstances, this Court is of the opinion that the offence charged against the petitioner is liable to be dropped and he can be discharged.

14. Accordingly, the Criminal Revision Case is allowed discharging the petitioner for the charge under Section 306 I.P.C. in S.C.No.259 of 2013 on the file of the Principal Assistant Sessions Judge, R.R.District at L.B.Nagar.

Pending miscellaneous petitions, if any, shall stand closed.

P.KESHAHA RAO,J

29th AUGUST 2018.
Tsr