

IN THE HIGH COURT OF ORISSA AT CUTTACK
CRLREV No.381 of 2014

Radha Swain

.... ***Petitioner***
Mr. Trilochan Nanda, Advocate

Versus

State of Odisha

.... ***Opp. Party***
Mr.S.S.Pradhan, AGA

CORAM:
JUSTICE SAVITRI RATHO

Order No.

ORDER
29.04.2022

09. 1. I have heard Mr. Trilochan Nanda, learned counsel for the petitioner and Mr.S.S.Pradhan, learned Addl. Government Advocate through hybrid mode.
2. In this Criminal Revision, the petitioner has challenged the order dated 29.4.2014 passed by the learned Addl. Sessions Judge-cum-Special Judge (Vigilance), Balangir in S.C. No.22/11 of 2011 framing charge under Sections 120-B/302 and 201/34 of I.P.C. so far as it relates to the petitioner.
3. The case of the prosecution is that on the basis of information lodged by one, Ashwini Kumar Swain, Bolangir Sadar Police Station, P.S. Case No.242 of 2010 was registered against unknown persons. The informant alleged that on 24.09.2010 at

midnight, his brother, namely, Abanikanta Swain was found dead on Sambalpur Road in suspicious circumstances.

Investigation revealed that the petitioner had illicit relationship with the co-accused Sarit Sahu and he often visited her house in the absence of her husband the deceased. When the deceased had objected to this, they had a quarrel about one month before the incident for which she conspired with Sarit Sahu and other co accused persons to kill the deceased and for this purpose a liquor party had been arranged at Hotel Rajmahal, Bolangir before the incident. Sarit Sahu informed the deceased about the death of her husband and she conveyed the fact of his death due to a road accident to his family members without disclosing the source of such information. During investigation, she had given prevaricating statements regarding the number from which she received the information regarding death of the deceased, for which her call records were verified and it was found that she had deleted details of incoming and outgoing phone calls which aroused the suspicion of the Investigating Officer. When Sarit Sahu was interrogated he confessed about his illicit relationship with the petitioner and to have got her consent for doing away with the life of her husband and that he had arranged a feast at hotel Rajmahal with the deceased and other co-accused persons on 23.09.2010 and after the

deceased took liquor till 11.00 pm, he was taken in the bolero of Sarit Sahu while his motorcycle of the deceased was driven by Pinku. On the way, they killed him and threw his body on NH 201 on the western side of the road and his motorcycle on the eastern side to give it a picture of vehicular accident and informed the petitioner over telephone. Chargesheet was therefore submitted against the petitioner and four others for the alleged commission of offences as aforesaid.

4. Mr. Nanda, learned counsel for the petitioner submits that there is no material to frame charge against the petitioner but charge has been framed against her for the offences under Sections 120-B/302/201/34 of I.P.C. mechanically on the basis of suspicion, which is not enough to maintain the charge. He has submitted that to make out a case of conspiracy, there has to be a meeting of minds of two or more persons which is lacking in case of the petitioner and no role either covert or overt has been ascribed to her. He relies on the decision in the case of *Yogesh @ Sachin Jagdish Joshi vs State of Maharashtra* reported in (2010) 45 OCR (SC) 503 in support of his submission that the ingredients to make out a case of conspiracy are not made out.

5. Mr. S.S.Pradhan, learned Addl. Government Advocate submits that strong suspicion is enough to frame charge and there

are enough materials to sustain the charge which would be apparent from the statements of the son and daughter of the deceased and their tenant, the CDR records of the phones of the petitioner and the co accused Sarit Sahu. He has placed the statements of the son and daughter of the petitioner and the deceased and their tenant Jamhira Manhira and the information regarding the call records of the petitioner which reveal that there is an average of ten calls between the petitioner and Sarit Sahu and the duration of the calls were quite long which is ample proof of prior meeting of minds between the two of them . On 23.09.2010 (date of occurrence), there were fourteen calls between them and the last call was at 9.00 pm. After a gap of three hours, there were ten calls between 12.03 am and 12.47 am. By that time, the deceased had been killed.

6. I have gone through the case diary and perused the statements of the witnesses including the minor son and daughter of the petitioner (whose names are not being mentioned to protect their privacy), one Jatha @ Jamuna Manhira tenant of the petitioner who have stated about the intimacy between the petitioner and accused Sarit Sahu, the possible motive for murdering the deceased. The information regarding CDR of the phone numbers of the petitioner and accused Sarit Sahu and calls between them is available in the case diary. The post mortem report reveals a

number of injuries on the body of the deceased, which prima facie appear not be on account of a motor vehicle accident.

7. In the case of **Sachin @ Yogesh** (supra) while the prayer of the petitioner under Section 227 of the Cr.P.C had been rejected , his other family members had had been discharged by the Court . The Supreme Court observed that while discharging the other accused, the Courts had come to a conclusion that there was no material on record to show that they had hatched a conspiracy to commit the murder . It also found that the stand of the prosecution that the parents , sister and friends of the appellant had entered into a criminal conspiracy stood rejected and the High Court had opined that only a suspicion of motive was made out from the circumstances which was not enough to bring home an offence of murder . While discharging the appellant , the Hon'ble Supreme Court held as follows:

*24. More recently, in **State (NCT of Delhi) Vs. Navjot Sandhu @ Afsan Guru** , making exhaustive reference to several decisions on the point, including in **State Through Superintendent of Police, CBI /SIT Vs. Nalini & Ors.** , Venkatarama Reddi, J. observed thus:*

"97. Mostly, the conspiracies are proved by the circumstantial evidence, as the conspiracy is seldom an open affair. Usually both the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused (per Wadhwa, J. in Nalini's case at page 516). The well known rule governing circumstantial evidence is that each and every

incriminating circumstance must be clearly established by reliable evidence and "the circumstances proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible." (Tanviben Pankajkumar case , SCC page 185, para 45). G.N. Ray, J. in Tanibeert Pankajkumar observed that this Court should not allow the suspicion to take the place of legal proof."

25. Thus, it is manifest that the meeting of minds of two or more persons for doing an illegal act or an act by illegal means is sine qua non of the criminal conspiracy but it may not be possible to prove the agreement between them by direct proof. Nevertheless, existence of the conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. But the incriminating circumstances must form a chain of events from which a conclusion about the guilt of the accused could be drawn. It is well settled that an offence of conspiracy is a substantive offence and renders the mere agreement to commit an offence punishable even if an offence does not take place pursuant to the illegal agreement...".

8. In the settled position of law that at the stage of framing of charge the court is required to evaluate the material and documents on record at their face value with a view to find out if the ingredients of the offences are made out and at that stage the probative value of the materials are not to be considered . At this stage, the Court is to consider if there is a ground for presuming that the offence has been committed from the materials on record and at this stage, even strong suspicion as compared to mere suspicion , based on the material placed before the Court would justify the framing of charge against the accused. For the said

purpose, the Court is not supposed to make a roving enquiry into the pros and cons of the matter and weigh the evidence as if it was conducting a trial.

9. The facts of the present case are totally different from that of the case of **Yogesh @ Sachin** (supra). In the present case five persons including the petitioner have been charged of committing the murder of the husband of the petitioner. As mentioned earlier, I have gone through the case diary . I have also perused the notes of submission filed by the two counsels. The materials available in the case diary give rise to a strong suspicion regarding role of the petitioner in the crime for which I do not find any reason to interfere with the order framing charge.

The Criminal Revision is according dismissed.

10. It is made clear that the observations in this order regarding the materials available against the petitioner have been made for the purpose of consideration of charge and should not influence the trial court.

11. By order dated 24.07.2014, this Court had directed for stay of further proceedings in S.C No 22/11 of 2011 pending before the learned Addl. Sessions Judge – cum Special Judge Vigilance, Balangir, till the next date. The said order has not been

extended thereafter. But in case the trial is still pending, the learned trial Court is requested to take steps for completing the trial within a period of six months of receipt of this order.

A copy of this order be communicated to the learned trial Court.

12. Urgent certified copy be granted on proper application.

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(Savitri Ratho)
Judge

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