



2024:DHC:853



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 01.02.2024

+ CRL.A. 963/2023

DAVESH KUMAR

..... Appellant

Through: Mr. P. K. Malik, Adv.

versus

GAURI @ SUPRIYA & ORS.

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

%

J U D G M E N T

ANOOP KUMAR MENDIRATTA, J (ORAL)

CRL.M.A. 31837/2023

Exemption allowed, subject to just exceptions.

Application stands disposed of.

CRL.A. 963/2023

1. An appeal under Section 341 of the Code of Criminal Procedure, 1973 (Cr.P.C) has been preferred on behalf of the appellant against order dated 11.09.2023, passed by learned Special Judge (NDPS)-02, Central District, Tis Hazari, whereby an application preferred on behalf of the appellant under Section 195 read with Section 340 Cr.P.C. for initiating proceedings against the respondents under Section 195/196/199 & 211 of Indian Penal Code, 1860 (IPC) was dismissed.

2. In brief, the appellant faced trial for commission of offences under



Section 302/201 IPC on the allegations of murder of his disabled son 'D' aged about six years on 16.09.2009 at his residence, who was suffering from 'Down Syndrome'. The child is alleged to have been throttled by the appellant and cremated the dead body, thereby causing the evidence of commission of offence to disappear. Appellant also allegedly criminally intimidated his wife Gauri (respondent No.1) and also attempted to murder his son on 15.09.2009.

3. Learned counsel for the appellant submits that the appellant has faced trial and incarceration on the basis of false accusations and deposition made by the respondents with regard to commission of murder of his son 'D'. It is vehemently submitted that after investigation, the police did not find any case against the appellant but the proceedings were continued by way of complaint case by respondent No.1. Submissions made before the learned Trial Court have been reiterated and it is further contended that application under Section 340 read with Section 195 Cr.P.C., preferred for initiating the proceedings against the respondents has been wrongly dismissed.

4. I have heard learned counsel for the appellant at length and given considered thought to the contentions raised.

The findings of the learned Trial Court in paragraph 21 and 22 of the impugned order may be briefly noticed:

"21. From the allegations as mentioned in the application, I could not find that the respondents have given false evidence or fabricated false evidence intentionally etc. and therefore, to my mind, no offence punishable under section 182, 193, 194, 195, 196, 199 and 211 of the IPC are prima facie made out in the present case against the respondents. Merely because there are improvements/contradictions etc. in the statement/testimony of the respondent (s) as compared to their previous



statement given to police, if any or given during evidence either pre-summoning or post-summoning or post-charge cannot be said that the respondent (s) has/have given false evidence or fabricated false evidence intentionally. I do not find that there is a deliberate falsehood on the part of the respondents. The mere fact that the respondents have made contradictory statements in the judicial proceedings is not by itself always sufficient to justify a prosecution under sections 193 and 199 of the IPC. My learned predecessor had acquitted the applicant herein by judgment dated 29.08.2019 because of contradictions/improvements etc in the testimony of the respondents herein. It is specifically observed by the learned predecessor in the said judgment that the prosecution on the sole testimony of PW-1 (respondent no.1 herein), coupled with the improbable conduct of PW-1 herself has failed to prove beyond a reasonable doubt that the accused (applicant herein) on 15.09.2009 in the manner as deposed to by PW-1 had made an attempt on the life of Dipanshu which was aborted by the complainant. My learned predecessor has also found that charge under sections 506 and 201 of the IPC have also not been established beyond reasonable doubt. In the said judgment of acquittal, my learned predecessor has not given any finding that the respondent (s) has/have deliberately/intentionally given false evidence or fabricated false evidence.

22. Even if, it is assumed for the sake of arguments that the respondent (s) has/have given or fabricated false evidence intentionally then also this Court is not of opinion that it is expedient in the interests of justice to initiate an enquiry into the said offences. The expediency is normally be judged by the Court by weighing not the magnitude of injury suffered by the person affected by any false or fabricate evidence but having regard to the effect of impact, such commission of offence has upon administration of justice. Every incorrect or false statement does not make it incumbent on the Court to order prosecution. The Court orders prosecution in the larger interest of the administration of justice not to gravity the feelings of personal revenge or vindictiveness or to serve the ends of a private party. Only in glaring cases of deliberate falsehood where conviction is highly likely that the Court directs prosecution. Prosecution should be ordered when it is considered expedient in the interests of justice to punish the delinquent not merely because there is



some inaccuracy in the statement which may be innocent or immaterial. There must be prima facie case of deliberate falsehood on a matter of substance and the Court should be satisfied that there is a reasonable foundation for the charge. In the instant case, the respondent no. 1 has filed case against the applicant for committing murder of their child Deepanshu and for other offences but the applicant was acquitted. The respondent no. 1 is wife of the applicant. I do not find in instant case that there is a prima facie case of deliberate falsehood on a matter of substance. In my opinion it is neither expedient nor in the interest of justice to initiate proceedings under section 340 read with section 195 (1) of the CrPC."

5. It is well settled that merely because a witness may make contradictory statements in two different stages in judicial proceedings, it may not by itself be sufficient to justify their prosecution for perjury, unless and until it is established that the witness intentionally made a false statement or fabricated the evidence for the purpose of use in judicial proceedings. Further, the Court is still required to form an opinion that it is 'expedient in the interest of justice' to initiate an inquiry into the 'offences of false evidence' and 'offence against public justice', having regard to overall factual matrix. Reliance in this regard may be placed upon ***K.T.M.S. Mohd. and Another v. Union of India, (1992) 3 SCC 178*** and ***Amarsang Nathaji v. Hardik Harshadbhai Patel and Others, (2017) 1 SCC 113***. The imperative for initiating action under Section 340 Cr.P.C. is the concern for sustaining the purity of process of administration of justice.

6. It may also be observed that the parameter in an inquiry under Section 340(1) Cr.P.C. is whether a *prima facie* case is made out, which if unrebutted, may have a reasonable likelihood to establish the specified offence and whether it is also 'expedient in the interest of justice' to take



such action. Thus, the Court is required to keep overall factual matrix in consideration, and only in case the Court is of the opinion that it is 'expedient in the interest of justice', such permission needs to be granted.

7. The tragedy in the instant case is awful to comprehend, since allegations of paternal filicide have been leveled by respondent No.1 (wife of appellant) against her own husband/appellant. The disability of child itself was motive, as the appellant found it difficult to cope with the profound stress faced in upbringing the disabled child.

8. In nutshell, the allegations against the appellant are that exasperated by the special condition of his child 'D', he nursed evil intentions to eliminate him. The same also resulted in estranged relationship with his wife (respondent No.1), since she desisted the appellant from achieving his nefarious design. On 16.09.2009, the unfortunate child 'D' is alleged to have been murdered by the appellant, after having made an attempt on 15.09.2009, which was witnessed by the complainant/respondent No.1. However, the complaint was lodged only on 05.10.2010 after considerable delay. The testimony of complainant has been disbelieved by the learned Trial Court to be insufficient to convict the appellant, since despite being witness to the alleged incident of murder she failed to report the same to the police. Further, there is no other evidence after cremation of body of deceased, to corroborate that deceased was throttled to death. The appellant has been extended the benefit of doubt by the learned Trial Court in absence of incriminating evidence and contradictions in the testimony of witnesses.

9. Considering the facts and circumstances as revealed from the impugned judgment dated 29.08.2019, it may not be unnatural for the



2024:DHC:853



complainant wife to be in a shock and unable to take the expected course of action pitted against her husband. The complainant/respondent No.1 with passage of time, gathered the courage to report the incident, being pinched by her conscience. There is no reason that the mother of the appellant (respondent No.5) as well as his own relatives (respondent Nos.3 & 4) would have deposed against him, merely on alleged pressure by respondent No.1. Even the maid employed by the appellant appears to be an independent witness to the event which unfolded after the incident. In the facts and circumstances, merely because benefit of doubt has been extended to the appellant in view of inconsistencies which crept in evidence of witnesses during different stages of trial, cannot be a ground to allow the application under Section 340 Cr.P.C.

10. Considering the facts and circumstances of the case, this Court is of the considered opinion that the order passed by the learned Trial Court does not call for interference and it is neither 'expedient in the interest of justice' to initiate the proceedings under Section 340 read with Section 195(1) Cr.P.C.

Appeal is accordingly dismissed. Pending applications, if any, also stand disposed of. A copy of this order be forwarded to learned Trial Court for information.

ANOOP KUMAR MENDIRATTA
JUDGE

FEBRUARY 01, 2024/ssc/sd