

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

Cr. Rev. No. 49/2014
Cr.M.A No. 44/2014
c/w
Pet. u/s 561-A No. 82/2014
Cr.M.A No. 99/2014
Cr.M.A No. 25/2014 &
Cr. Rev. No. 09/2014,
Cr.MA Nos. 08/2014, 48/2014

Date of Decision: 22.04.2015

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| Sunit Singh and anr. a/w connected matters | Vs. | State of J&K |
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Coram:

Hon'ble Mr. Justice Janak Raj Kotwal, Judge

Appearing Counsel:

For petitioner/appellant(s): **In Cr. Rev. No. 49/2014**
Mr. B. S. Salathia, Sr. Adv. with
Mr. Ajay Vaid, Adv.
In 561-A No. 82/2014
None
Cr. Rev. No. 09/2014
Mrs. Seema Shekhar, AAG

For respondent/caveator (s): **In Cr. Rev. No. 49/2014**
Mrs. Seema Shekhar, AAG
In 561-A No. 82/2014
Mr. B. S. Salathia, Sr. Adv. with
Mr. Ajay Vaid, Adv.
Cr. Rev. No. 09/2014
Mr. B. S. Salathia, Sr. Adv. with
Mr. Ajay Vaid, Adv.

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| i. | Whether approved for reporting in Press/Media | : | Yes/No/Optional |
| ii. | Whether to be reported in Digest/Journal | : | Yes/No |
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1. On 04.08.2013 PW-Ankush Talashi lodged written information at Police Station, Nagrota about attack and assault on him and his father, Tej Nath Talashi. FIR No. 249/2013 under sections 307, 364/34 RPC and 4/25 Arms Act was registered and Police took up the

investigation. On the same day, Doctors at Government Medical College, Jammu declared Tej Nath Talashi as brought dead and offence under section 302 RPC was therefore added in the case. Eventually, charge-sheet under sections 302, 307, 364/34 RPC was submitted against Sunit Singh alias Sumit Singh (A-1), Naresh Sharma (A-2) and Gourav Partap Singh alias Shanki (A-3) and under section 212 RPC against Channkar Singh alias Billu (A-4) and Atam Singh (A-5). A-1 in addition was charged under section 4/25 Arms Act. Charge sheet after committal came up for trial before the court of Sessions Judge, Jammu.

2. Learned Sessions Judge by his order dated 08.02.2014 found *prima facie* commission of offences under sections 304 Part-II, 364, 212/34 RPC r/w 4/25 Arms Act by A-1, offences under sections 304 Part-II, 364, 212/34 RPC by A-2 and A-3 and offence under section 212 RPC by A-4 and A-5. Charges against the accused were framed accordingly, who pleaded not guilty and claimed to be tried. Learned Sessions Judge, did not frame charge under section 302 RPC against the accused, however, without recording order of discharge to that extent. Alongside learned Sessions Judge refused bail, firstly, to A-1, A-2 and A-3 vide order dated 15.02.2014 and subsequently to A-1 and A-3 vide order dated 14.07.2014.

3. State has assailed order dated 08.02.2014 passed by the learned Sessions Judge in so far as it relates to discharge of A-1 to A-3 under section 302 RPC by invoking revisional jurisdiction of this Court in Cr. Revision No. 09/2014. In addition, wife and daughter of the deceased have also assailed the order by invoking inherent jurisdiction of this Court under section 561-A No. 80/2014. In Cr. Revision 49/2014, A-1 and A-3 have assailed order dated 14.07.2014 whereby bail to them has been refused.
4. Heard. I have perused the record.
5. Facts of the prosecution case have been stated in detail in the impugned order dated 08.02.2014. I may, however, state, briefly, the facts, which are necessary and suffice for disposal of these petitions:
 - 5(a) On 04.08.2013, informant, PW-Ankush Talashi accompanied with his father, Tej Nath Talashi (deceased) and uncle, PW-Pyare Lal Talashi had set out for their regular evening walk towards flyover at village, Jagti. A-1, A-2 and A-3 waylaid them at Karli Nallah because of an old enmity and tried to kidnap the informant. Deceased came to the rescue of his son and on this all the three accused made murderous attack on the informant and his father. A-3, Gourav Partap Singh, caught hold of the deceased, whereas A-

2 inflicted blow with a hockey stick on him and A-1, Sunit Singh, stabbed him with a 'kirtch' in right side of his abdomen. Deceased sustained grievous injuries and fell on the ground. Deceased was shifted to GMC Hospital, Jammu where Doctors declared him brought dead. It is alleged that A-1 was nourishing enmity with the informant as he suspected that the informant belonged to the group of Sonu and Rohit, who had earlier in the year, 2012 attacked A-1 and had prior to the occurrence threatened the informant with dire consequences. It is alleged that on the day of occurrence A-1, A-2 and A-3 armed with a 'kirtch' and hockey etc. had set out from their house by a Bolero vehicle in search of the informant with a common criminal intention of committing his murder. *En route* they had also picked up one Amit Kumar, whom they dropped before fleeing from the place of occurrence after committing the offence. It is also alleged that A-4 and A-5 had helped A-1, A2 and A-3 in escaping arrest by taking them to Sujampur Punjab by their I-20 vehicle.

6. Petitioners have assailed impugned order contending that the learned trial court has not discussed facts and evidence relating to involvement of the accused in commission of offence under section 302 RPC and have discharged them without assigning any reason. It is contended also that learned trial court has not

evaluated probative value of evidence in a manner as it should be done at the stage of framing charge.

7. Reading out the impugned order, Ms. Seema Shekhar, learned AAG, appearing for the State laid stress to point out that learned trial court has not dealt with evidence proposed by the prosecution and has not recorded any reason as to how offence under section 302 RPC is not made out.
8. Per contra, Mr. B. S. Salathia, learned senior Advocate, appearing for the accused supported the impugned order. Mr. Salathia painstakingly sought to make out that as per the prosecution case accused had no intention to do any harm much less to commit murder of the deceased. The alleged occurrence to the extent of the attack on the deceased had taken place spontaneously in the spur of moment and it is admitted case of the prosecution that accused had no intention to cause death of the deceased as according to the prosecution they had set out in search of the son of the deceased. Mr. Salathia submitted further that in the fact situation of the case accused cannot be said to have committed offence of murder and there is no reasonable ground for framing charge under section 302 RPC. Mr. Salathia submitted further that as per the prosecution case the death had occurred by a single blow inflicted by one the three accused and there is

nothing in the material produced by the prosecution that the accused had any knowledge that such a blow was sufficient to cause death so accused cannot be tried for offence under section 302. Mr. Salathia relied upon 1996 Criminal Law Journal 3672, 1997 Criminal Law Journal 1525, 2008 Volume-10 SCC 394, AIR 1999 SC 1428 and AIR 1999 SC 976.

9. Learned Sessions Judge after giving a detailed account of facts of the case starting from lodging of the FIR up to filing of the charge sheet in first five pages (para 1 to 3) of the impugned order has taken up for his determination a proposition 'as to whether this is a fit case for framing charge against the accused for the commission of offence under section 302 RPC or not' (para 4 and 5). Learned Judge has then informed himself about the provisions of section 268 Cr.P.C. which provides as to when the accused should be discharged as also section 269 Cr.P.C. which provides as to when charge should be framed (paras 6 to 8). At one stage learned Sessions Judge refreshed himself with legal position laid down by the Supreme Court in *Yogesh alias Sachin Jagdish Joshi v. State of Maharashtra* 2008 Cr. LJ 3872 that 'in order to determine whether a case for trial has been made out by the prosecution, the judge has the power to sift and weigh the material for the limited purpose of finding out whether or not a prima facie case is made out

against the accused. The test to determine a prima facie case depends upon the facts of each case and in this regard it is neither feasible nor desirable to lay down a rule of universal application. By and large, however, if two views are equally possible and the judge is satisfied that the evidence produced before him gives rise to suspicion only as distinguished from grave suspicion, he will be fully within his right to discharge the accused. At his stage, he is not to see as to whether the trial will end in conviction or not' (para 13).

10. Learned defence counsel initially seems to have taken a plea before the learned trial court that the incident had taken place during the course of a sudden quarrel, therefore, section 302 RPC is not attracted and charge under section 304 Part II was required to be framed (para 10). In backdrop of this plea, learned Sessions Judge discussed quite at length the scope of Exception-4 to section 300 RPC, which provides that 'culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without offender's having taken undue advantage or acted in a cruel or unusual manner' (para 9, 11 and 12). After giving a dissertation as to when Exception-4 would apply, learned Judge, however, did not record any conclusion as to whether the same was applicable to the case on hand or not.

11. The other plea, which, as per the impugned order, was taken by the defence counsel was that there is no *prima facie* case against the accused for their involvement in the commission of offence under section 302 RPC as according to learned defence counsel it was never their intention to commit murder of the deceased and he died of infliction of a minor injury on him inadvertently without intention (para-14). In backdrop of this argument, learned trial court straight way jumped to the conclusion that there was a *prima facie* case under sections 304 Part-II, 364, 212/34 RPC and 4/25 Arms Act. The operative part of the impugned order is comprised in its last two paragraphs (14 and 15), which I cull out as under:

“14. The accused have been charged sheeted for the commission of offence under section 302 RPC. The learned counsel for the accused has submitted that there is no *prima facie* evidence against the accused for their involvement in the commission of said offence as according to him it was never their intention to commit murder of the deceased and he died because the accused inflicted minor injuries on him inadvertently though it was not their attention.

15. In view of such circumstances on record there is *prima facie* evidence against the accused Sunit Singh alias Sumit Singh for the commission of offence falling under section 304 Part II, 364, 212/34 RPC r/w 4/25 Arms Act and offence falling under section 304 Part II, 364, 212/34 RPC against the accused Naresh Sharma and Gaurab Partap Singh. The offence under section 212 RPC is *prima facie* found proved against the accused Channkar Singh and Uttam Singh. Let the file

come up for framing formal charge against the accused on 17.02.2014”.

12. By analyzing the impugned order my intention is to underline that the lengthy exercise by the learned Sessions Judge in dealing with and giving a dissertation on Exception-4 to section 300 RPC was entirely useless as in the end learned Judge did not record a positive finding or a finding by implication whether the said Exception was attracted in the case on hand or not. It is a different matter whether invoking Exception-4 in backdrop of the fact situation deserved that much attention and discussion as it was given by the learned Sessions Judge but the fact remains that it turned out to be useless exercise.
13. Sections 268 and 269 Cr.P.C. govern discharge of or framing of charge against the accused in a trial by the Court of Session. These two sections read:

“268. Discharge

If upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is no sufficient ground for proceeding against the accused he shall discharge the accused and record his reasons for so doing.”

(Emphasis supplied by me)

“269. Framing of CHARGE

(1) If, after such consideration and hearing as aforesaid, the Judge is of the opinion that there is ground for presuming that the accused has committed an offence which-

(a) Is not exclusively triable by the Court of

Sessions , he may frame charge against the accused and by order, transfer the case to the Chief Judicial Magistrate or any Judicial Magistrate competent to try the case, and thereupon the Chief Judicial Magistrate or any Judicial Magistrate to whom a case may have been transferred shall try the offence in accordance with the procedure provided for the trial of warrant cases instituted on police report,

(b) Is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2)”

14. It is now well settled that while dealing with the question of framing charge, the trial court should evaluate the record of the case and the documents submitted along with the charge-sheet and hear the accused and the prosecution with a view to finding out whether there is *prima facie* case for putting the accused to trial for commission of an offence or offences. Court has to see if the facts emerging there from taken at their face value constitute all the ingredients of the offence(s) for which an accused has been sent for trial. For this limited purpose trial judge can weigh and sift the evidence proposed by the prosecution. If upon evaluating the record and material, trial judge is of the view that there is not sufficient ground for proceeding against the accused for commission of offence(s), for which he has been sent for trial, or for any offence, he shall discharge the accused accordingly. If on the other hand, Judge is of the view that there is ground for presuming that

accused has committed the offence, he shall frame charge. It is important to note that section 268 Cr.P.C. enjoins the judge to give reasons in support of the order while discharging the accused. It is, however, not necessary on the part of the trial Judge to give reasons for the order framing charge. Detailed reasons for framing charge rather should be avoided lest it may not prejudice the trial of the accused.

15. Para 14 & 15 of the impugned order, which contain crux of the order in finding *prima facie* case under sections 304 Part-II, 364, 212/34 RPC and 4/25 Arms Act and saying nothing about section 302 RPC, on their plain reading would show that learned trial Judge has failed in discharging his duty enjoined under sections 268 & 269 Cr.P.C properly. Learned judge, it is seen, has in backdrop of the defence argument that there was no intention on the part of the accused to commit murder of the deceased and in that there is no *prima facie* case under section 302 has straightway held that there was a *prima facie* case under the sections other than 302 RPC without recording reasons as to why on the strength of the record and material including statements of two eye witnesses, Ankush Talashi (informant) and PW- Pyare Lal, there was not sufficient ground to frame charge under section 302 RPC. It is manifest from the order that learned Sessions Judge has not accorded consideration to the evidence

proposed by the prosecution, which is further evident from the failure in recording reasons for not framing charge under section 302 RPC.

16. Leaned Sessions Judge has thus committed error resulting in to failure of justice, which is manifest from the impugned order in not framing charge under section 302 RPC without according consideration to the material submitted to the court along with the charge-sheet by the Investigating Officer and without recording reasons for not doing so. Impugned order, therefore, is required to be set aside to secure the ends of justice.
17. Question in regard to framing of charge requires reconsideration. This is a case of total non consideration of the record and material by the trial court in relation to offence under section 302 RPC so the matter calls for reconsideration by the trial court as it would not be proper for this Court to enter into that arena as this part should be left open for the trial court.
18. For all that said and discussed above, Cr. Revision No. 09/2014 and 561-A No. 82/2014 are allowed and impugned order dated 08.02.2014 passed by the trial court is set aside. It has been noticed that after passing of the impugned order, statements of three prosecution witnesses have been recorded by the trial

court till the record came to be dispatched to this Court. Now that the order framing charge has been set aside, the entire proceedings subsequent thereto shall stand quashed.

19. The trial court shall take up the question in regard to framing of charge afresh and pass order after hearing both sides though totally uninfluenced by the view taken in the impugned order or setting aside of the impugned order by this Court. Learned trial court shall ensure that fresh order is passed without any delay and in any case within six weeks' time after record is received by the trial court.
20. Consequent upon setting aside of the impugned order, Cr. Revision No. 49/2014 is dismissed.
21. Record be remitted back to the trail court along with a copy of this order.

(Janak Raj Kotwal)
Judge

Jammu:
22.04.2015
Karam Chand

