

Radhey Shyam

Vs

Kunj Behari and Others

With

State of Rajasthan

Vs

Kunji Behari @ Kunji and Others

Criminal Appeal Nos. 630 and 631 of 1989

(CJI E. S. Venkataramiah, K. N. Singh, S. Natarajan JJ)

17.10.1989

JUDGMENT

NATARAJAN, J.-

1. Leave granted.

2. Heard counsel for the parties. The limited question for consideration in these appeals is whether the High Court has erred in quashing the charge framed under Section 302 read with Section 120-B IPC against respondents 1 to 3 by the Sessions Judge in exercise of its powers under Section 482 CrPC.

3. Regarding the murder of one Satish, whose grandfather is the appellant in the first appeal the investigation was made over to the CID, Jaipur from the police authorities of Todabhim on account of ineffective investigation by the latter. After investigating the case, the CID laid challan against six persons including respondents 1 to 3 for offences of murder and criminal conspiracy to murder. Respondents 1 and 2, it would appear, were absconding and hence proclamation had to be made against them under Section 82 CrPC. Thereafter respondents 1 and 2 moved the Sessions Judge and the High Court for anticipatory bail but failed.

4. The Sessions Judge framed charges against all the accused persons and insofar as respondents 1 to 3 are concerned, a charge under Section 302 read with Section 120-B IPC was framed. Respondents 1 to 3 moved the High Court under Section 482 CrPC for quashing the charge. As the High Court allowed the application and quashed the charge, these appeals, one by the deceased's grandfather and the other by the State, have come to be filed.

5. The reasons given by the High Court for quashing the charge against respondents 1 to 3 may be summarised as under :

(1) The statement of witness Ramji Lal under Section 161 CrPC has been recorded twice, the second statement being recorded by the CID after it had taken over the

investigation.

(2) The second statement of Ramji Lal materially differs from his first statement and as such no reliance can be placed on the second statement wherein respondents 1 to 3 are set out as conspirators to the murder of Satish.

(3) The statement of Sravan Lal recorded by the Addl. S.P., CID does not bear the date on which it was recorded and the omission manifests the attempt of the CID authorities to mislead the court about the date of examination of Sravan Lal.

(4) Statement of witnesses recorded under Section 161(3) CrPC cannot be made use of even for prima facie assessment of the case without examining the correctness of each and every line of the statement.

(5) Under Section 482 CrPC the High Court is duty bound, in the interests of justice, to go into the merits of the evidence by due evaluation of the statements of witnesses recorded by the police and the documents filed on the side of the prosecution.

6. Learned counsel for the appellants contended that the High Court has seriously erred in quashing the charge framed against respondents 1 and 3 in exercise of its powers under Section 482 CrPC because what is relevant for consideration at the stage of framing of charges is only the sufficiency of ground for proceeding against the accused and not whether the materials on record are sufficient and adequate for a conviction being rendered. He further urged that the High Court has gone wrong in treating the statements of witnesses recorded during investigation as if they were substantive pieces of evidence and as such their evidentiary value should be determined. It was also stated that the High Court has failed to give due consideration to the fact that the investigation came to be entrusted to the CID because the investigation done by the original investigating agency was found ineffective and as a consequence thereof the CID was bound to make a fresh investigation and record statements of witnesses once over again and that the value to be given to those statements can be determined only after the witnesses and the Investigating Officer were examined in court.

7. Learned counsel for respondents 1 to 3 sought to sustain the order of the High Court by contending that the High Court was fully justified, in the facts and circumstances of the case, in quashing the charge against respondents 1 to 3.

8. On a consideration of the matter, we find the grievance of the appellants to be well founded. The High Court has failed to give due consideration to the fact that the investigation of the case had been handed over to the CID because of unsatisfactory investigation by the authorities of Todabhim Police Station. As such the CID was under an obligation to examine once again the witnesses already examined and no examine other persons whom the original investigating agency ought to have examined but had failed to examine. In the very nature of things, a fuller and effective investigation by the CID is bound to bring out several materials not discovered or recorded by the first investigating agency. As to how much acceptance has to be given to the investigation done by the CID and the statements of witnesses recorded by its officers is a matter which can be determined only after the trial is held and the witnesses and the Investigating Officer adduce their evidence on oath. As regards the non-mention of the date of recording of the statement of Sravan Lal, a finding can be rendered on the omission only after the CID officer who recorded the statement is given opportunity to explain the reason for the omission. Insofar as the High Court's view that "in the interest of justice, it is the duty of the court under Section 482 CrPC to go into the merits of the

evidence and appreciate correctly the documents and the statements filed by the police", we may only refer to Mohd. Akbar Dar v. State of Jammu & Kashmir (1981 Supp SCC 80) where it has been pointed out that at the stage of framing of charges, meticulous consideration of evidence and materials by court is not required.

9. The High Court has also deemed it necessary to quash the charge against respondents 1 to 3 because in its opinion the evidence proposed to be adduced by the prosecution, even if fully accepted, cannot show that respondents 1 to 3 committed any offence and referred in that behalf to the decision in State of Bihar v. Ramesh Singh ((1977) 4 SCC 39 : 1977 SCC (Cri) 533 : (1978) 1 SCR 257, 259). We find that the High Court's conclusion about the inadequacy of the evidence against respondents 1 to 3, besides being a premature assessment of evidence, is also attributable to the wrong premises on which the High Court's reasoning is based.

10. We, therefore find that there was no warrant for the High Court to quash the charge against respondents 1 to 3 in exercise of its powers under Section 482 CrPC. The appeals are accordingly allowed and the order of the High Court is set aside. The charges framed against respondents 1 to 3 by the Sessions Judge are restored and they shall stand trial for the same in accordance with law.

11. We make it clear that in restoring the charges framed against respondents 1 to 3 by the Sessions Judge, we are not making any expression on the merits of the case.

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