

SUPREME COURT OF INDIA

Sanichar Sahni

Vs.

State of Bihar

Crl.A.No.772 of 2008

(Dr. Mukundakam Sharma and Dr. B.S. Chauhan JJ.)

26.05.2009

JUDGEMENT

Dr. B.S. Chauhan, J.

1. This appeal has been filed against the judgment and order passed by the High Court of Patna in Criminal Appeal No.328 of 2003 affirming the judgment and order of the trial court dated 30th May, 2003 and order of sentence dated 2nd June, 2003 passed in Sessions Trial No.122 of 2002.

2. The facts and circumstances giving rise to this appeal are that a First Information Report was lodged on 12.10.2001 against Munilal Sahni, Biswanath Sahni, brother and father of the appellant respectively. Golu Paswan and Kishore Thakur under Sections 394/302/34 of the *Indian Penal Code, 1860* (in short "IPC") and Section 27 of the Arms Act for the murder of deceased Bhola Chaudhary. During the course of investigation, it came to light that the appellant had conspired with his father and brother to finish Bhola Chaudhary. Charge sheet was filed against Munilal Sahni, Biswanath Sahni and the appellant. At the time of framing of the charge on 21.11.2002, the appellant was charged only under Section 120-B IPC alone and the co-accused Munilal Sahni was charged under Sections 302/34, 394 and 412 of the IPC and Section 27 of the IPC. Accused Bishwanath Sahni was charged under Section 302/34 IPC. None of the co-accused was charged for conspiracy under Section 120-B IPC. The appellant was not charged with any other offence except under Section 120-B IPC though the specific case of the prosecution was that the appellant hatched the criminal conspiracy with his father and brother to eliminate Bhola Chaudhary. On conclusion of the trial, the appellant was convicted vide judgment and order dated 30.5.2003 under Section 120-B IPC and was sentenced to undergo rigorous imprisonment for life. Accused Bishwanath Sahni was convicted under Section 302/34 IPC and sentenced to R.I. for life. Accused Munilal Sahni was convicted under Sections 302, 394 and 412 of the IPC and sentenced to undergo R.I. for life under Section 302, R.I. for seven years under Section 394 and R.I. for three years under Section 412 IPC. He was further convicted under Section 27 of the Arms Act and sentenced to undergo R.I. for one year.

3. Being aggrieved, all the convicted persons including the present appellant filed appeal which has been decided by the impugned judgment and order dated 13.12.2007 by which the High Court acquitted Bishwanath Sahni, giving benefit of doubt. Appeal of the present appellant and Munilal Sahni was dismissed.

4. Munilal Sahni challenged the judgment and order of the High Court and his special leave petition has been dismissed by this Court. Hence, the present appeal by appellant, Sanichar Sahni.

5. Mr. A.P. Sahay, learned counsel appearing for the appellant has submitted that there was no evidence for hatching the conspiracy so far as the appellant is concerned. The appellant had falsely been implicated in this case and no charge of conspiracy under Section 120B IPC had been framed against any of the co-accused and hence it is not permissible in law to convict the appellant under the said charge as he has also not been charged for any other offence. No person can conspire with himself. Therefore, the appeal deserves to be allowed.

6. On the other hand, Shri Chandan Kumar, learned counsel appearing for the State of Bihar has vehemently opposed the submission made by the counsel for the appellant submitting that there was sufficient evidence against the appellant for collecting "Rangdari" from the deceased Bhola Chaudhary. However he could not pay at one time, when the appellant was in jail for committing some other offence. Appellant came from jail to the Court and his father and brother met him there. The appellant conspired with them to eliminate Bhola Chaudhary. If there has been some defect in framing of the charge, unless the appellant shows what prejudice has been caused to him, judgment and order of conviction passed by the courts below should not be interfered with on such technicalities. The appeal has no merit and is liable to be dismissed.

7. We have considered the rival submissions made by learned counsel for the parties and perused the record. Admittedly, the appellant had been charged under Section 120-B IPC and under no other provision of law. The other co-accused had been charged under different provisions but none of them had been charged under Section 120B IPC. So far as the evidence on record is concerned, two witnesses were examined on the point of conspiracy, namely, Ashok Paswan PW.2, and Ashok Kumar Verma PW.5. Learned counsel for the parties had taken us to the depositions thereof. Both the said witnesses had fully supported the prosecution case so far as point of conspiracy to eliminate Bhola Chaudhary is concerned. It is strange that in the cross-examination of Ashok Paswan PW.2, the defence did not make even a suggestion that he had been deposing falsely to implicate the appellant. When the statement of the appellant under Section 313 of the *Code of Criminal Procedure* (in short "Cr.P.C.") was recorded on 5.4.2003 and was asked about conspiracy, he simply replied that he had not conspired and he would produce the defence witnesses in this regard. We fail to understand as where was the question of adducing evidence after recording of the statement of the accused under Section 313 Cr.P.C.

8. As per the trial court judgment the money bag containing Rs.11,000/- looted from the deceased Bhola Chaudhary was recovered from accused Munilal Sahni, the brother of the

appellant and it was established before the trial court that the appellant had been demanding "Rangdari" from the deceased on telephone. The Trial Court believed Ashok Paswan PW.2 and Ashok Kumar Verma PW.5, so far as the conspiracy part is concerned as they had stated that in their presence the appellant had directed his father and brother that if Bhola Chaudhary deceased would not pay amount he should be finished. Both the witnesses had given satisfactory explanation for being present in Hazipur Court at the relevant point of time. The documentary evidence had been produced to the satisfaction of the court to corroborate their evidence that the appellant was present in the Court on 12.10.2001 to appear in Sessions Trial No.116/2001. It was also satisfactorily proved that appellant had talked with co-accused, his brother and father in between the place court Hajat and the court. The trial court found no reason to disbelieve the depositions of Ashok Paswan PW.2 and Ashok Kumar Verma PW.5. The Trial Court came to the conclusion that appellant Sanichar Sahni hatched the conspiracy and directed his brother and father to finish Bhola Chaudhary in case the money was not paid by him and consequently, Bhola Chaudhary was murdered by the co-accused on 12.10.2001 at 8.45 P.M.

9. In appeal, the High Court dealt with the issue of conspiracy elaborately and found the evidence of Ashok Paswan PW.2 and Ashok Kumar Verma PW.5 fully trustworthy and came to the conclusion that Bhola Chaudhary was murdered by the co-accused in conspiracy for non-fulfillment of demand of "Rangdari". The High Court held that both the said witnesses were present on that date i.e. 12.10.2001 in the court premises Hazipur and the appellant Sanichar Sahni was also produced in the Court in custody and he met his father and brother and it was in their presence that he had asked the co-accused to finish Bhola Chaudhary if "Rangdari" was not paid.

10. The above concurrent findings of fact recorded by the courts below regarding the conspiracy and murder of Bhola Chaudhary by the co-accused do not require to be interfered with as there is nothing on record to show that the said findings are perverse.

11. So far as the issue of framing charge under Section 120-B against the appellant and non-framing the charge of conspiracy against other co-accused is concerned, the High Court had taken up the issue but in view of the sufficient material on record to prove the guilt, did not consider it proper to deal with it elaborately. The High Court has held as under:

"So far as legality of conviction of appellant Sanichar Sahni is concerned, we have no doubt in our mind that the evidence as discussed above is sufficient to fasten liability upon him for making conspiracy to commit murder of victim Bhola Chaudhary. The Court below has rightly convicted this appellant under Section 120B IPC."

12. Learned counsel Mr. A.P. Sahay, appearing for the appellant has placed reliance upon the judgment of this Court in *Topandas v. State of Bombay*¹ wherein it has been held that in a case of conspiracy there ought to be two or more persons who must be parties to an agreement and it is trite to say that one person alone can never be held guilty for criminal conspiracy for the simple reason that one cannot conspire with oneself. However, in the said case four persons were charged for having committed the offence under Section 120-B IPC

and out of them three were acquitted of the charges, remaining one could not be convicted to be guilty of the offence of criminal conspiracy. Same view has been SC 1326, wherein this Court held that the offence of conspiracy cannot survive the acquittal of the alleged co-conspirators. In that case also if the other co-accused were to be acquitted of all the charges, this Court held that the appellant Fakhruddin could not be convicted unless there was a proof that he had conspired with person or persons other than his co-accused. Both the above referred to cases had been where all co-accused had been acquitted of the charges of conspiracy. Thus the said cases referred to and relied upon by the learned counsel for the appellant are of no assistance as the facts involved in the instant case are quite distinguishable. At the most it can be held that the charge had not been framed properly. It is also not the case where the appellant can take the plea that he was not aware as what was the charge against him and what defence he could lead. There had been evidence of hatching the conspiracy of impeccable character. On the point of conspiracy the courts below have recorded the finding against the appellant.

13. In *State of A.P. v. Thakkidiram Reddy*², this Court considered the issue of not framing the proper charges.

“In that case averment had been raised that charges have not been framed against the accused persons in accordance with Section 211 Cr.P.C.. In that case the charge had been framed under Section 148 IPC, though it was alleged that they were the members of an unlawful assembly, it was not mentioned what its common object was. Besides, it was contended, a charge under Section 302 IPC simpliciter was framed against all the accused persons and not with the aid of Section 149 IPC for which they were convicted by the trial court. This Court repealed the contention observing as under:

"10. Sub-section (1) of Section 464 of the *Code of Criminal Procedure 1973* ("*Code for short*") expressly provides that no finding, sentence or order by; a court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless in the opinion of the court of appeal, confirmation or revision, a failure of justice has in fact (emphasis supplied) been occasioned thereby. Sub-section (2) of the said section lays down the procedure that the court of appeal, confirmation or revision has to follow in case it is of the opinion that a failure of justice has in fact been occasioned. The other section relevant for our purposes is Section 465 of the Code; and it lays down that no finding, sentence or order passed by a court of competent jurisdiction shall be reversed or altered by a court of appeal, confirmation or revision on account of any error, omission or irregularity in the proceedings, unless in the opinion of that court, a failure of justice has in fact been occasioned. It further provides, inter alia, that in determining whether any error, omission or irregularity in any proceeding under this Code has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings."

The Court further held that in judging a question of prejudice, as of guilt, court must act with a broad vision and look to the substance and not to technicalities, and its main concern should be to see whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly and whether he was given a full and fair chance to defend himself. In the said case this Court ultimately came to the conclusion that in spite of defect in framing of charge, as no prejudice had been caused to the convicts, no interference was required.”

14. A Constitution Bench of this Court in *Willie (William) Slaney, v. State of M.P.*³, considered the issue of non- framing of charges properly and conviction of an accused for the offences for which he has not been charged and reached the conclusion as under:-

"In such a situation, the absence of a charge under one or other of the various heads of criminal liability for the offence cannot be said to be fatal by itself, and before a conviction for the substantive offence, without a charge, can be set aside, prejudice will have to be made out.

..... If it is so grave that prejudice will necessarily be implied or imported, it may be described as an illegality.

If the seriousness of the omission is of a lesser degree, it will be an irregularity and prejudice by way of failure of justice will have to be established".

15. This Court in *Gurpreet Singh v. State of Punjab*⁴, referred to and relied upon its earlier judgments in *Willie (William) Slaney, (supra)* and *State of A.P. v. Thakkidiram Reddy, (supra)* and held that unless there is failure of justice and thereby the cause of the accused has been prejudiced, no interference is required if the conviction can be upheld on the evidence led against the accused. The Court should not interfere unless it is established that the accused persons were in any way prejudiced due to the errors and omissions in framing the charges against him.

16. A similar view has been reiterated by this Court in *Ramji Singh v. State of Bihar*⁵.

17. Therefore, the law on the issue can be summarized to the effect that unless the convict is able to establish that defect in framing the charges has caused real prejudice to him and that he was not informed as what was the real case against him and that he could not defend himself properly, no interference is required on mere technicalities. Conviction order in fact is to be tested on the touchstone of prejudice theory.

18. In the instant case learned counsel for the appellant, Mr. Sahay could not point out as to what prejudice has been caused to the appellant. Charge has been framed against the appellant under Section 120-B IPC. He never raised any grievance against the same at the time of framing of the charge or during the course of the trial or by filing any petition for quashing the charge. The issue was not agitated before the High Court also. On this very

issue of conspiracy, the prosecution led evidence of impeccable character of two witnesses, namely, Ashok Paswan PW.2 and Ashok Kumar Verma PW.5. The appellant was given full opportunity to defend himself only on this very point of conspiracy as there was no other allegation against him. He was asked specific question by the trial court on the point of conspiracy while recording his statement under Section 313 Cr.P.C. Therefore, it cannot be held even by any stretch of imagination that any prejudice has been caused to the appellant on this very issue.

19. Thus, in view of the above, we do not find any force in this appeal. The appeal is, accordingly, dismissed.

¹*AIR 1956 SC 33*

²*(1998) 6 SCC 554*

³*AIR 1956 SC 116*

⁴*(2005) 12 SCC 615*

⁵*(2001) 9 SCC 528*