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TELANGANA

Judicial Services Exam

CIVIL JUDGE (Junior Division)

High Court of Telangana

Judgement

Volume - 2

SIERRA INNOVATIONS

TELANGANA JUDICIARY SERVICES

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The Power under Section 311 of the CrPC. 1973 Should Be Invoked By the Court Only To Meet the Ends of Justice

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Central bureau of investigation

(Supreme Court)

Judgment: Hon'ble J. A.K. Sikri, Hon'ble J. S. Abdul Nazeer

Pronounced by: Hon'ble S. Abdul Nazeer, J

Date: 04 January 2019

Facts

C.B.I. filed charge sheet against the appellant and three other under section 477 (A), 471, 468 420, 120B of the IPC read with Section 5(1)(c)(d) of prevention of corruption Act. The case was put of trial and 29 prosecution witnesses were examined. The prosecution filed an application under Section 1 1of the CrPC for examination of handwriting expert (Mr. H.S. Tuteja), which was allowed but he failed to appear. Prosecution again sought time and it was granted but he again failed to appear.

Decision of Supreme Court

The Supreme Court observed that this practice had been going on unopposed for a period thirteen years, starting from the year 2004, However, the case was registered in the year 1983 and 2 Prosecution witnesses have already been examined but despite the fact that multiple applications have been filed to summon that handwriting expert and all have been allowed but prosecution ha failed to procure the attendance of handwriting expert. The court also observed that Prosecution evidence was closed long back and reason for non-examining of expert witness is not satisfactory.

Therefore, summoning the witness at belated stage would cause great prejudice to the accused and should not be allowed. Similarly, the court should not encourage the filing of successive applications for recall of a witness under section 31 1 of the CrPC.

The First part of Section 31 1of the CrPC, is permissive and gives discretionary authority to criminal courts and enables it at any stage of the inquiry, trial or other proceedings of the code to. act in three ways-

1. Summon any person as a witness; or
2. To examine any person in attendance, though not summoned as witness; or
3. To recall and re-examine any person already examined.

The Second Part, which is mandatory, imposing an obligation on the court-

1. To summon and examine, or
2. To recall and re-examine any such person, if his evidence appears to be essential to the just decision of the case.

Therefore, the power conferred under Section 31 1of the CrPC, should be invoked only to meet the ends of justice and same is to be exercised only for strong and valid reasons. Under Section 31 1of the CrPC, the court has wide power to even recall witnesses for re-examination or further examination, which is imperative in the interest of Justice.

The Court held that the power should be exercised with great caution and circumspection and not be exercised if the court is of the view that the application has been filed as an abuse of the process of law.

[Section 482 of Cr.P.C.]

Offence under Section 307 IPC Cannot Be Quashed under section 482 Cr.P.C. On The Basis Of Settlement between the Parties.

State of madhya pradesh

Versus

Kalyan singh and ors.

Division Bench of Hon'ble Supreme Court

Hon'ble D.Y. Chandrachud & M.R. Shah JJ.

Pronounced by: Justice M.R. Shah

Dated: January 4th, 2019.

Law point

* Non compoundable offences cannot be quashed under section 482 Cr.P.C. solely on the basis of settlement between the parties,
* State, being an interested party, can refuse to compound an offence even when the complainant has made a settlement with the accused to compound it.

Brief facts

The Respondent No.5 (original Complainant) filed a complaint against Respondent Nos. I to 4 (the original accused) for the offences under Sections 307, 294 read with Section 34 of the PC. The original accused filed a bail application which was rejected by the Ld. Sessions Court and thereafter, the original accused approached the High Court by filing the miscellaneous criminal case under Section 482 Cr.P.C. and requested to quash the criminal proceeding on the ground that the accused and the original complainant have settled the dispute amicably.

The original complainant submitted affidavit on this behalf and submitted that he have no objection for dropping the criminal proceedings.

The High Court in exercise of power under section 482 Cr.P.C. quashed the criminal proceedings against the original accused under Sections 307, 294

read with 34 IPC, solely on the ground of settlement and that the original complainant does not want to prosecute against the accused. But the same was opposed by the prosecution.

Feeling aggrieved and dissatisfied with the judgment and order passed by the High Court, he State of Madhya Pradesh preferred the present appeal before the Hon'ble Supreme Court.

Point of determination

Whether the High Court rightly quashed the criminal proceeding under sections 307 294 read with 34 IPC by using inherent power given under section 482 Cr. P.C.?

Observations of Hon'ble supreme court

The Hon'ble Supreme Court observed that:

* One of the accused person was reported to be a hardcore criminal having criminal antecedents.
* The offences under sections 307, 294 read with section 34 IPC are now compoundable and are of serious nature.
* The Hon'ble Supreme Court referred Gulab Das and Ors. . State of Madhya Pradesh (2011) 12 SCALE 625, In which, the Hon'ble Supreme Court observed and held that, despite any settlement between the complainant on the one hand and the accused on the other, the criminal proceedings for the offence under section 307 of IPC cannot be quashed as offence under section 307 is a now compoundable offence

Decision of hon'ble supreme court

The Hon'ble Supreme Court after observing the facts and circumstance of the case and looking into the seriousness of the allegations held that:

1. The High Court has committed a grave error in quashing the criminal proceeding for the offence under Sections 307, 294 read with Section 34 of IPC, solely on the ground that the original complainant and the accused have settled the dispute and the same cannot sustained thus, same deserves to be quashed and set aside.
2. Consequently, the said criminal proceedings were ordered to be proceeded further in accordance with law and on its own merits.

[Section 354(3) of Cr.P.C. Section 302 IPC]

Intention resulted into an attack more severe than planned which then resulted into death would not fall in rare of the rarest cases.

Yogendra @ Jogendra Singh
Versus
State of Madhya Pradesh

3 Judges Bench

Hon'ble S.A. Bobde, R. Subhash Reddy and L. Nageswara Rao JJ.

Dated: January, 17, 2019

Law point

1. Concept of mitigating factors in the area of death penalty must receive a liberal and expansive construction by the courts in accord with the sentencing policy writ large in Section 354(3).
2. A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed.
3. If there is a pattern discernible across both the cases then a second conviction for murder would warrant the imposition of a death sentence.

Brief facts

In this case the deceased Ruby was married to one Mr. Sanjay Gupta and had two issues from the wedlock. The Appellant coveted her and the husband suspected an affair between his wife - the deceased and the Appellant and harassed her accusing her of the same. The deceased thereafter came to live with her maternal uncle. The Appellant pressurized the deceased's father (PW 8) for summoning her to Porsa (a place) and threatened him with dire consequences if his demand was not fulfilled.

On the ominous night of summer, the deceased and her family members went to their respective rooms and retired for the night. The doors were kept open since it was summer. There was light in the rooms and the courtyard from some bulbs. The Appellant snuck into the room of the deceased and warned

her "though she doesn't want to live with him he is not going to let her live with anybody else". The father of the deceased, Dataram (PW 8) woke up on hearing this and saw the Appellant running away after throwing acid on his daughter. The deceased started screaming, whereupon other family members tried to save her, the Appellant then, threw acid on the other members of the family, burning and injuring all of them. In the attack, the deceased sustained burn injuries to the extent of 90% all over her body while others also sustained burn injuries. In the incident the grandmother of the deceased Smt. Chandrakala (PW 3) and one Raju nephew (PW 7) of the deceased and Janu (PW 4) brother of the deceased were also injured. Dying declaration of the decdeased was recorded which pointed out the accused as culprit Also dying declarations made by the injured were consistence with the dying declaration of the deceased. Though the injured survived the injuries.

The Appellant committed this crime when he was out on bail in another case wherein he has been convicted for murder and his sentence has been upheld. In that case the appellant was charged along with co-accused one Kiran Nurse for committing the murder of one Laxmi Narayan alias Laxman Singh in the intervening night of 27.07. 1994 and 28.07. 1994. And this incident occurred on 21.07.2013.

Decision of the trial court

The Sessions Court awarded the Appellant death sentence under Section 302 of the IPC and also, convicted him for disfiguring and injuring these people by throwing acid under Section 326(A) of IPC.

Decision of hon'ble high court

By an order of High Court of Madhya Pradesh, Gwalior Bench, dated 12. 12.2014 confirming the death sentence awarded to the appellant by the Sessions Court, Ambah, District Morena (M.P.) vide its judgment in Sessions Trial No.388/2013 dated 24.07.2014. The Appellant has been convicted under sections 302, 326(A) and 460 of IPC and awarded capital punishment of death sentence, life sentence on three counts and fine of Rs.25,000/-each, and ten years' R.I. and fine of Rs.5000/- with default stipulations, respectively. This death sentence has been confirmed by the High Court on a reference under

Section 366 of Cr.P.C. An appeal was then filed before the Hon'ble Supreme Court on behalf of appellant accused.

Points of determination

1. Whether the court below erred by convicting the accused in 302 IPC?
2. Whether there are special reasons as to why the appellant should be sentenced to death?

Observation by Hon'ble supreme court

Answer to Point 1:

Hon'ble Court observed that they are satisfied that the Appellant has been rightly convicted for causing the death of the deceased Smt. Ruby as all the circumstances of the case and particularly the dying declaration of Sit. Ruby, unerringly point, to the Appellant as the one who caused her death. There is no conjecture, surmise or inference in the narration of the witnesses who saw the Appellant in the one act and were themselves the victim of his acid attack Also, the evidence on record was sufficient to prove the guilt of accused beyond reasonable doubt. Thus, the conviction of the accused under section 302 IPC stands valid and requires no interference.

Answer to Point 2

Hon'ble Court then advert to the question as to whether there are special reasons to sentence the Appellant to death. And then, the Court analysed the reasons which may count as special reasons' to sentence a convict to death as follow:

1. The term 'special reasons' undoubtedly means reasons that are one of a special kind and not general reasons. In the present case there is one factor, which might warrant the imposition of the death sentence, as vehemently, urged by the learned counsel for the State that the Appellant committed this crime when he was out on bail in another case wherein he has been convicted for murder and his sentence has been upheld, It is undoubtedly difficult to ignore we find that it is safer to imposition of sentence based on the facts of this particular case. If there is a pattern discernible across both the cases then a second conviction for murder would warrant the imposition of a death sentence. But that does not appear to be so in the present case, the earlier incident is totally

unrelated to the circumstance of this case. The appellant was charged along with co-accused one Kiran Nurse for committing the murder of one Laxmi Narayan alias Laxman Singh in the intervening night of 27.07.1994 and 28.07.1994. The present incident took place on 21.07.2013 and the last one almost ten years before the present incident.

2. In the case before us, the incident is related to the appellant being disappointed in his relation with the deceased who he believed deserted him, The circumstance of the case and particularly the choice of acid do not disclose a cold-blooded plan to murder the deceased. Like in many cases the intention seems to have been to severely injure or disfigure the deceased; in this case we think the intention resulted into an attack more severe than planned which then resulted in the death of the deceased. It is possible that what was premeditated was an injury and not death.
3. Observations, made above were not in any way to condone the acts of the appellant but merely to hold that there appear to be no special reasons in the present case that warrants an imposition of a death sentence on the Appellant.
4. In Bachan Singh v. State of Punjab (1980) 2 SCC 684, the Apex Court held as follows:

   "There are numerous other circumstances justifying the passing of the lighter sentence; as there are countervailing circumstances of aggravation. "We cannot obviously feed into a judicial computer all such situations since they are astrological imponderables in an imperfect and undulating society." Nonetheless, it cannot be over emphasised that the scope and concept of mitigating factors in the area of death penalty must receive a liberal and expansive construction by the courts in accord with the sentencing policy writ large in section 354 (3). Judges should never be bloodthirsty. Hanging of murderers has never been too good for them Facts and Figures, albeit incomplete, furnished by the Union of India, show that in the past, courts have inflicted the extreme penalty with extreme infrequency - a face which attests to the caution and compassion which they have always brought to beat on the exercise of their sentencing discretion in so grave a matter. It is, therefore imperative to voice the concern that courts, aided by the broad illustrative guide-lines indicated by us, will discharge the onerous function with evermore scrupulous care and humane concern, directed along the highroad of legislative policy outlined in Section 354(3) viz. that for persons convicted

of murder, life imprisonment is the rule and death sentence an exception. A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed."

5. Following which, Apex Court in Machhi Singh v. State of Punjab, (1983)3 SCC 470, classified instances of rarest of rare cases where death sentence can be justifiably imposed. In para 39, Hon'ble Court laid down the following tests that following questions may be asked and answered to identify the rarest of rare case:
   (a) Is there something uncommon about the crime which renders imprisonment for life inadequate and calls for a death sentence?
   (b) Are the circumstances of the crime such that there is no alternative but to impose weightage to the mitigating death sentence even after according maximum circumstances which speak in favour of the offender?

Decision of the Hon'ble Supreme Court

Hon'ble Court on priori consideration held that there is no particular depravity or brutality in the acts of the Appellant that warrants a classification of this case as rarest of the are'. Therefore, the sentence of death imposed by the high Court is set aside and instead the undergo imprisonment for life and the appeals were accordingly allowed. Doubt. Thus, the conviction of the accused under section 302 IPC stands valid and requires no interference.

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1. The term 'special reasons' undoubtedly means reasons that are one of a special kind and not general reasons. In the present case there is one factor, which might warrant the imposition of the death sentence, as vehemently, urged by the learned counsel for the State that the Appellant committed this crime when he was out on bail in another case wherein he has been convicted for murder and his sentence has been upheld. It is

undoubtedly difficult to ignore this fact but we find that it is safer to consider the imposition of sentence based on the facts of this particular case. If there is a pattern discernible across both the cases then a second conviction for murder would warrant the imposition of a death sentence. But that does not appear to be so in the present case The earlier incident is totally unrelated to the circumstance of this case. The appellant was charged along with co-accused one Kiran Nurse for committing the murder of one Laxmi Narayan alias Laxman Singh in the intervening night of 27.07.1994 and 28.07.1994. The present incident took place on 21.07.2013 and the last one almost ten years before the present incident.

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   a) Is there something uncommon about the crime which renders sentence imprisonment for life inadequate and calls for a death sentence?
   b) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after, according maximum weightage to the mitigating circumstances which speak in favour of the offender?

Decision of the honable supreme court

Hon'ble Court on prigri consideration held that there is no particular depravity or brutality in the acts of the Appellant that warrants a classification of this case as rarest of the rare'. Therefore, the sentence of death imposed by the high Court is set aside and instead the appellant shall undergo imprisonment for life and the appeals were accordingly allowed.

Once Final Report Is Submitted Under Section 173 of the CrPC, Normally Accused, If Aggrieved By Final Report Shall Be Relegated To Approach Magistrate for Discharge

Sau saraswati bai

Versus

Lalita bai and ors.

(Supreme Court)

Judgment: Hon'ble L. Nageswara Rao J., Hon'ble
Delivered by: Hon'ble M. R. Shah, J.
Delivered On: 22.01.2019

Law points

It is not justified for the High Court to interfere with criminal proceedings in exercise of Inherent power under Section 482CrPC, when final report under Section 173CrPC filed and it is specifically concluded on the basis of the material on record that prima-facie case is made out.

Facts

The appellant (complainant) filed a criminal complaint against private respondents (accused) before the Magistrate alleging that the complainant purchased a plot from respondent No. 1 by way of registered sale deed in the year 2005. There after, the respondent No. 1 fraudulently resold the plot in 2010 in favour of accused No.2 (husband of Respondent No. 1) by re-designating as "plot No.24". In 2011, the above plot further sold in favour of Respondent No. 3. The Magistrate passed an order Under Section 156(3) of the CrPC. The Police lodged an FIR under Section 420/464/465/467/468/471 read with Section 34 of the IPC.

The accused thereafter, approached the High Court to quash the FIR under Section 482 of the CrPC. By the time, the matter was taken up for the final hearing by the High Court, the Investigating Officer completed the investigation in the matter and having found the prima- facie case against the accused, submitted the final report under Section 173 of the CrPC, concluding that accused had colluded and committed offences, as alleged, under above

sections. The High Court in exercise of power under Section 482 of the CrPC, has quashed the criminal proceedings including the final report.
The original complainant (appellant) has preferred the present appeal.

Conclusion

The Hon'ble bench observed that once the final report was submitted under Section 173 of the CrPC, normally the accused, if aggrieved by the final report shall be relegated to approach Magistrate for discharge. It further observed that High Court has without further discussing anything on merits of final report has quashed the entire criminal proceedings, including final report.

Therefore, the High Court was not justified in interfering with the criminal proceedings in exercise of power under Section 482 of the CrPC, and particularly when in the final report it was specifically concluded on the basis of the material on record that prima-facie case is made out for the offences alleged against the accused persons. Hence, appeal allowed.