



PUNJAB

Judicial Services Exam

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Judgement

Volume - 2



PUNJAB JUDICIAL SERVICES

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The Code of Criminal Procedure, 1973

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| 38. | Vishnu kumar tiwari versus state of Uttar prah through Secretary home, civil secretariat Lucknow and Another | How Magistrate Deal With Protest Complaints | July 09, 2019 |
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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

Swapan kumar chatterjee
Versus
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 110 of 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 311 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, the 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. v. 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 be 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 deceased 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