

**2022 Scej 1060**

SUPREME COURT OF INDIA

Ajay Rastogi, C.T. Ravikumar JJ.

**Vikramjit Kakati v. The State of Assam**

Criminal Appeal No(s). 1140 of 2022, [Arising out of SLP (Crl.) No(s). 1211 of 2022]

04.08.2022

**Criminal Procedure Code, 1973, Section 227 - Penal Code, 1860, Sections 302, 120B - Discharge - Charge relating to conspiracy to kill - Deceased died under suspicious circumstances by burning at his home - Appellant received a telephonic message from the wife of the deceased that her husband had sustained burn injuries and requested him to come to their house and after receipt of the information, he, along with another colleague came to the house of the deceased by his car and took him to the nearby Nursing Home and then to the Medical College Hospital, where he succumbed to the injuries - No prima facie material was brought to show appellant's motive - Only eyewitness, is a domestic servant, who did not state anything about appellant's involvement in the crime in her statement under Section 161/164 Cr.P.C. - She stated that at the instance of the deceased, deceased's wife called the appellant for help and further stated that the appellant took the deceased to the hospital in his car - Complainant (mother of the deceased) who was not even an eyewitness - Not made any statement against the appellant in the FIR - Later allegation made in statement under Section 161 Cr.P.C. - existence of prima facie material regarding participation of the appellant in the commission of crime or existence of grave suspicion against him - Allegation not substantiated by any material or oral/documentary evidence - Appellant discharged. [Paras 11-12, 14-16]**

**Criminal Procedure Code, 1973, S. 227 - Destruction of evidence - Allegation not substantiated by any material or oral/documentary evidence in the charge-sheet - No other witnesses stated anything about the appellant visiting the house of the deceased either before or after the alleged destruction of evidence has taken place, except the complainant, who even in the FIR did not make any statement against the appellant, but later made a bald statement of her strong suspicion in her statement under Section 161 Cr.P.C. - Discharged from the charge under Section 201, IPC. [Para 13]**

**Criminal Procedure Code, 1973, Section 227 - Discharge - Legal principles applicable *P. Vijayan v. State of Kerala [2010 (2) SCC 398]*, , *M.E.***

***Shivalingamurthy v. Central Bureau of Investigation, Bengaluru [2020 (2) SCC 768], relied.***

**Cases referred:**

1. *M.E. Shivalingamurthy v. Central Bureau of Investigation, Bengaluru [2020 (2) SCC 768] (Para 10)*
2. *P. Vijayan v. State of Kerala & Another [2010 (2) SCC 398] (Para 10)*

**JUDGMENT**

**AJAY RASTOGI, J.**

1. Leave granted.
2. The instant appeal is directed against the order passed by the High Court of Gauhati dated 3rd December, 2021 declining to interfere with the order passed by the Additional Sessions Judge (Fast Track Court), Sivasagar, in Sessions Case No.57(SS) of 2012, rejecting the discharge application filed by the appellant under Section 227 Cr.P.C.
3. The seminal facts relevant for the purpose are that on 28th April, 2009, an FIR was lodged by one Smt. Rajia Islam (mother of the deceased) at Sivasagar Police Station stating, inter alia, that her son Lt. Qureshi Sahidul Islam was burnt to death under suspicious circumstances inside his rented house at Sivasagar by his wife and the present appellant. Her son succumbed to the injuries sustained by him while on the way to hospital. On receipt of the complaint, an FIR was registered at Sivasagar P.S. Case No.198/2009, under Section 302 IPC. The police filed chargesheet under Sections 302/120B/201/118 IPC against three persons namely Smt. Zahida Imdad Islam (wife of the deceased), Smt. Jahanara Islam (mother of Zahida Imdad Islam) and the present appellant, along with a list of thirteen witnesses. The only allegation levelled against the present appellant was that he had, in conspiracy with other accused persons, removed the evidence of offence from the place where the alleged crime had been committed.
4. The learned trial Judge initially by order dated 21st June, 2012, after hearing learned counsel for the appellant, came to the conclusion that there is prima facie case against him and others and fixed 17th July, 2012 as the next date of hearing for framing of charges and thereafter, charges were framed against accused Zahida Imdad Islam, Jahanara Islam and the appellant under Sections 302/120B IPC and under Section 201 IPC against Jahanara

Islam and the appellant by the order dated 17th July, 2012.

5. The revision preferred by the appellant against framing of charge came to be dismissed by the High Court under the order impugned dated 3rd December, 2021, which is the subject matter of challenge in the present appeal.

6. The main thrust of the contention of the counsel for the appellant is that the appellant has no nexus with the commission of crime. He was a friend of the deceased working in the same office. At the time of the incident, the appellant was working for the Indian Oil Tanking (IOT), a joint venture of Indian Oil Corporation and Oil Tanking of Germany, as Project Engineer, Sivasagar. On the fateful morning, the appellant received a telephonic message from the wife of the deceased that her husband had sustained burn injuries and requested him to come to their house and after receipt of the information, he, along with other colleague Tariqul Rafique @ Maju, came to the house of the deceased by his car. Seeing burn injuries on the body of deceased, he along with Tariqul Rafique took him to the nearby Nursing Home at Sivasagar and after preliminary treatment, he was taken to Dibrugarh Medical College, where he succumbed to the injuries. So far as the present appellant is concerned, his intention was only to help out the deceased in getting proper and immediate medical treatment. Except this, there is no nexus of the appellant in the commission of alleged murder of the deceased and there is no material against him and no witness has deposed against the appellant.

7. Learned counsel further submits that the Ld. trial Judge was at least required to examine the existence of prima facie material regarding participation of the appellant in the commission of crime or existence of grave suspicion against him and when there is no prima facie material of suspicion what to say of grave suspicion, the charge cannot be framed and accordingly the counsel submitted that the charge framed against the appellant by the learned trial Judge is not sustainable as there is no evidence against him and prayed for its discharge.

8. Learned counsel for the respondent, on the other hand, submitted that there is sufficient evidence against the appellant to suspect commission of crime and only after examining the chargesheet and other material available on record, the charges were framed by the learned trial Judge and in the given facts and circumstances, there is no error committed by either the trial Judge by framing of charge or the High Court in dismissing the revision preferred by the appellant under the order impugned.

9. We have heard learned counsel for the parties and with their assistance perused the material available on record.

10. Before we proceed to examine the matter on merits any further, it will be apposite to take note of the legal principles applicable seeking discharge, for which we may refer to a judgment of this Court in *P. Vijayan v. State of Kerala & Another* [2010 (2) SCC 398], which has been further reiterated by this Court in the recent judgment in *M.E. Shivalingamurthy v. Central Bureau of Investigation, Bengaluru* [2020 (2) SCC 768] and discerned the following principles:

“17.1. If two views are possible and one of them gives rise to suspicion only as distinguished from grave suspicion, the trial Judge would be empowered to discharge the accused.

17.2. The trial Judge is not a mere post office to frame the charge at the instance of the prosecution.

17.3. The Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding. Evidence would consist of the statements recorded by the police or the documents produced before the Court.

17.4. If the evidence, which the Prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, “cannot show that the accused committed offence, then, there will be no sufficient ground for proceeding with the trial”.

17.5. It is open to the accused to explain away the materials giving rise to the grave suspicion.

17.6. The court has to consider the broad probabilities, the total effect of the evidence and the documents produced before the court, any basic infirmities appearing in the case and so on. This, however, would not entitle the court to make a roving inquiry into the pros and cons.

17.7. At the time of framing of the charges, the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution, has to be accepted as true.

17.8. There must exist some materials for entertaining the strong suspicion which can form the basis for drawing up a charge and refusing to discharge the accused.”

11. Taking into consideration the aforesaid legal principles, if we consider the facts of the present case, it reveals from the perusal of chargesheet and other material available on record that the investigating officer has not brought even prima facie material in the charge-sheet as to what was the motive on the part of the appellant to commit the alleged offence. The deceased, in the instant case, was a colleague/friend of the appellant working in the same organization. On the fateful morning, the appellant learnt about burn injuries of the deceased through accused no.1 i.e. the wife of the deceased on telephone at about 5.30 a.m. on 22nd April, 2009. Without any loss of time, the appellant along with his colleague Tariqul Rafique @ Maju went to the house of the deceased by his car and took the deceased along with his wife (A1) to the nearby nursing home at Sivasagar. Since the said nursing home was not having the burn ward, after giving the initial treatment, deceased was referred to the Dibrugarh hospital. The deceased along with his wife and colleague of the

appellant went to the Dibrugarh hospital on an ambulance, but unfortunately, the deceased succumbed to the burn injuries in the hospital.

12. The only eyewitness in the present case is Hosna Begum, domestic servant present in the house of the deceased. She neither in her statement under Section 161 Cr.P.C. nor under Section 164 Cr.P.C. stated anything about the involvement of the appellant in the commission of the alleged offence, rather she categorically stated in the statement that at the instance of the deceased, the wife of the deceased called the appellant for help and further stated that the appellant took the deceased to the hospital in his car. She is the best witness of the case. Rest of the witnesses whose statements were recorded by the police nowhere implicated the appellant, except the complainant who was not even an eyewitness to the incident.

13. Regarding the allegation of destruction of evidence by the appellant along with the wife of the deceased (A1), no material, oral/documentary, has been placed by the police in the charge-sheet, which, in any manner, connect the appellant with the destruction of evidence. To the contrary, as per the statement of the witnesses which are recorded, the fact that reveals is that the appellant accompanied the deceased to the hospital at Sivasagar and from there to Dibrugarh, where the deceased succumbed to the injuries and based on the information given by the appellant, the deceased's relatives, including the complainant, came to the hospital and from there his body was taken to his native place Tezpur for performing the last rites. Here, no other witnesses, whose statements were recorded, stated anything about the appellant visiting the house of the deceased either before or after the alleged destruction of evidence has taken place, except the complainant, who even in the FIR did not make any statement against the appellant, but later made a bald statement of her strong suspicion in her statement under Section 161 Cr.P.C.

14. So far as the conspiracy, as alleged, is concerned, some evidence ought to have emerged or the prosecution could have brought on record some prima facie material whereby the appellant along with the accused persons had prior meeting of mind to execute the alleged offence and in the given facts and circumstances, there is no justification for the appellant to undergo the agony of facing trial, to which the appellant is not even prima facie connected. Still the prosecution filed charge-sheet on 30th August, 2011 for offence implicating the appellant under Sections 302/120B/201 IPC along with the wife of deceased (A1) and mother of wife of the deceased (A3).

15. There is no iota of evidence which, in any manner, connect the present appellant with the commission of crime and neither the trial Court nor the High Court has even taken pains to look into the record as to whether there is any oral/documentary evidence which in any manner connect the appellant with the alleged incident of crime and, in our considered

view, in the absence of even a prima facie material, oral/documentary, being placed by the prosecution in the chargesheet, the trial Court as well as the High Court have committed serious error in framing charge against the appellant. Even the complainant also in the complaint has not named the appellant as the perpetrator of the offence, rather she stated that she suspects foul play.

16. In the given facts and circumstances, we are of the view that the appeal deserves to be allowed. The order impugned passed by the High Court of Gauhati dated 3rd December, 2021 as well as the order dated 21st June, 2012 passed by the Additional Sessions Judge (Fast Track Court), Sivasagar, in Sessions Case No.57(SS) of 2012 are quashed and set aside and the appellant stands discharged from the charges framed against him.

17. We further make it clear that the observations made in this judgment are only confined to the appellant, Vikramjit Kakati and the trial Court may proceed with the matter against other accused persons independently without being influenced by the observations made herein and conclude the trial on its own merits in accordance with law.

18. The appeal is accordingly allowed. Pending application(s) if any, also stand disposed of.

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