

State Of U. P vs Dr. Sanjay Singh on 27 January, 1994

Equivalent citations: 1994 SCC, SUPL. (2) 707, AIR ONLINE 1994 SC 84, 1994 SCC (SUPP) 707, (1995) 2 MAH LR 43, 1994 SCC (CRI) 1701

Author: S.R. Pandian

Bench: S.R. Pandian, M.M. Punchhi

PETITIONER:

STATE OF U. P.

Vs.

RESPONDENT:

DR. SANJAY SINGH

DATE OF JUDGMENT 27/01/1994

BENCH:

PANDIAN, S.R. (J)

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PANDIAN, S.R. (J)

PUNCHHI, M.M.

CITATION:

1994 SCC Supl. (2) 707

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1. This SLP is filed by the State of U.P. represented by the Central Bureau of Investigation, C.G.O. Complex, Lodi Road, New Delhi, against the judgment dated 9-2-1992 of the High Court of Allahabad, Lucknow Bench rendered in Criminal Revision Application No. 339 of 1990 dismissing the revision and affirming the order of the learned Sessions Judge, Lucknow, made in Session Trial No. 293 of 1989 discharging Respondents 1 and 2 herein who were arrayed as accused 1 and 2 before the said trial court.

2.The brief facts of the case which led to the filing of this petition are as follows.

3.The deceased herein, namely, Shri Syed Modi was a National Badminton Champion for 8 years and he represented India in various international championships. He was promoted as Sports Superintendent in 1984 at Lucknow and was subsequently promoted as Senior Welfare Superintendent in North Eastern Railways, Lucknow which post he held at the time of his murder on 28-7-1987.

4.The 1st respondent, namely, Shri Sanjay Singh was a Minister in Uttar Pradesh from 22-7-1982 to 22-8-1987 holding the portfolio of Forests, Dairy, Fisheries, Transport etc. In 1984 the portfolio of Sports was also allotted to him from 9-2-1984 to 12-3-1985. Besides, he was the Chairman of the Cooperative Dairy Federation Ltd., at Lucknow during 1984 to 1987.

5.The second respondent, Smt Amita Kulkarni Modi did her B.A. (Final) privately as a teacher candidate from Lucknow University in the year 1983-84 although she was in government service in the Central Railways, Bombay holding the post of Senior Clerk. In February 1984 the second respondent came to Lucknow for appearing in B.A. Examination conducted by Lucknow University and since then she continued to stay at Lucknow after resigning her job in Railways. Then she was appointed as Marketing Manager in Lucknow against a post in the Sports quota created at the behest of the first respondent.

6. The deceased and the second respondent came into contact with each other when both of them had gone to Beijing (China) for participating in the Third International Asian Invitation Championship in 1978. Thereafter, the deceased who fell in love with the second respondent married the second respondent on 14-5-1984 under the Special Marriage Act. It is said that even before the marriage, second respondent was having positive leanings towards the first respondent from the beginning of 1984, in spite of her engagement with Syed Modi. This intimacy and the extramarital relationship of the second respondent with the first respondent, according to the prosecution, was well within the knowledge of the deceased.

7.It is a case of the prosecution that some time thereafter the deceased did not like this relationship and repeatedly asked the second respondent to give up her association with the first respondent, who was also a Badminton champion. But, the second respondent did not accede to the advice of the deceased husband. It is the further case of the prosecution that on account of this resentment on the part of the deceased, these two respondents along with accused 3 to 7 (of whom A-4 Aman Bahadur Singh and A-7 Balai Singh were subsequently murdered) hatched the conspiracy to put an end to the life of the deceased.

8.Some time between June 1988 and 20-7-1988 all the accused inclusive of the respondents entered into a criminal conspiracy to commit the murder of the deceased and in pursuance of the said conspiracy the deceased was shot dead on 28-7-1988 while he was emerging out of the Stadium at Lucknow. On the above allegations, the prosecution sought to prosecute A-1 to A-7 for an offence under Section 120-B read with Section 302 IPC, besides prosecuting A-3 to A-7 under Section 302 read with Section 34 IPC and A-4 (before the trial court) under Section 25 read with Section 27 of

the Indian Arms Act and A-6 (before the trial court) under Section 302 read with Section 34 and A-7 (before the trial court) under Section 27 of the Arms Act.

9. These two respondents challenging the prosecution approached the trial court for discharging them under Section 228 of the Code of Criminal Procedure. The trial court after scrutinising the entire documents, placed on record has concluded in paragraph 110 of its judgment pertaining to the case of second respondent as follows:

"The material on record does not, prima facie, establish any physical manifestation on the part of A-2 in any part of the conspiracy or its execution. Consequently, it may be said that there is no sufficient ground to put A-2 on trial, in connection with the murder of Syed Modi. She is, therefore, liable to be discharged."

Thereafter the trial court has held thus:

"It has already been found in para 101 above, that the prosecution has failed to make out a prima facie case of motive on the part of A-1 and A-2, or either of them to liquidate Modi."

10. With regard to the case of the first respondent, the trial court found thus:

"Mere association among A-1, A-2 and A-3 is not adequate to prove conspiracy among them. There ought to be material on record to indicate tacit understanding among them as to what had to be done. In this connection, it may be pertinent to observe that relative acts or conduct of A-1 and A-2 do not appear to be conscientious and clear to mark their concurrence with regard to the liquidation of Syed Modi. Such concurrence could not be inferred by a group of innocuous circumstances, artfully arranged, so as to give an appearance of coherence. On a broad view of the entire facts, circumstances and the material placed before this Court, it does not appear that A-1 can, reasonably, be connected with the crime in question. Accordingly, A-1 is also liable to be discharged."

11. The result was the trial court discharged both the respondents.

12. The State on being aggrieved by the order of the trial court preferred a revision before the High Court. The High Court by its well-considered judgment has affirmed the order of discharge of Respondents 1 and 2 observing thus:

"In view of the above discussion, it will be apparent that the learned Sessions Judge has considered every aspect of the case in his order while discharging two opposite parties. In doing so he has not committed any illegality or irregularity and the finding of the learned Sessions Judge cannot be said to be perverse or against the weight of evidence on record. Therefore, in the revisional jurisdiction this Court cannot appraise the evidence again. As the finding of the learned Sessions Judge is based on

the evidence available on the record the same does not deserve to be set aside. The result is that the revision petitions deserve to be dismissed."

13. Again the State on being dissatisfied with the order of the High Court confirming the order of discharge of the respondents by the trial court, has filed this SLP.

14. We have perused the records and heard learned Additional Solicitor General appearing on behalf of the petitioner and the learned Senior Counsel, Mr Shanti Bhushan appearing for the first respondent and Mr Ram Jethmalani appearing on behalf of the second respondent in extenso.

15. Admittedly, there is no direct evidence to prove the conspiracy except by circumstantial evidence. The learned Additional Solicitor General has frankly admitted to the query from the Court that an attempt on the side of the prosecution to record a statement under Section 164 of the Code of Criminal Procedure from any one of the accused, was not fruitful. Therefore, we have to find out whether the circumstantial evidence placed on record makes sufficient ground for proceeding against the respondents/accused for the offence with which they were indicted.

16. At the threshold, we may state that the circumstances placed on record are not at all sufficient to make out a case of conspiracy. The submission made by the learned Solicitor General that the circumstances surrounding the case make out a case of conspiracy is not acceptable. The decisions cited in support of the above submission cannot be availed of since on the facts the case of conspiracy has to fail for lack of sufficient evidence.

17. The circumstantial evidence even if accepted in its entirety, as pointed out by the courts below creates only a suspicion of motive. Needless to point out that the motive which induces a man to do any particular act is known to him and to him alone.

18. At the highest, the prosecution can only suggest from the circumstances what is or may be the motive for any particular act. However, motive is not a sine qua non for bringing the offence of murder or of any crime home to the accused. At the same time the absence of ascertainable motive comes to nothing, if the crime is proved to have been committed by a sane person but to make out a case by proof of a motive alone that too suspicion of motive apparently tending towards any possible crime, is not only a very unsatisfactory but also a dangerous process, because circumstances do not always lead to particular and definite inferences and the inferences themselves may sometimes be erroneous.

19. When we scrutinise the entire material placed on record, even if unrebuked or totally accepted, we are of the view that they do not make out a case for conviction and the mere suspicion of motive cannot serve as a sufficient ground for framing the charges in the absence of any material, prima facie showing that the particular motive has passed into action and that the accused is connected with that action in question.

20. This Court in *Century Spinning & Manufacturing Co. Ltd. v. State of Maharashtra*¹ while examining the scope of Section 251(A) sub-sections (2) and (3) of the old Code corresponding to

Sections 239 and 240 of the new Code has made the following observation: (SCC p. 291, para 17: AIR p. 552, para 16) "... If on this material, the Court comes to the conclusion that there is no ground for presuming that the accused has committed an offence, then it can appropriately consider the charge to be groundless and discharge the accused. The argument that the Court at the stage of framing the charges has not to apply its judicial mind for considering whether or not there is a ground for presuming the commission of the offence by the accused is not supportable either on the plain language of the section or on its judicial interpretation or on any other recognised principle of law. The order framing the charges does substantially affect the person's liberty and it is not possible to countenance the view that the Court must automatically frame the charge merely because the prosecution authorities, by relying on the documents referred to in Section 173, consider it proper to institute the case. The responsibility of framing the charges is that of the Court and it has to judicially consider the question of doing so. Without fully advertent to the material on the record it must not blindly adopt the decision of the prosecution."

21.Y.V. Chandrachud, J. (as the learned Chief Justice then was) speaking for the three-Judge Bench in *State of Karnataka v. L. Muniswamy*² in which the State challenged the order of discharge made by the trial court in exercise of its powers under Section 227 of the Code of Criminal Procedure, 1973 has ruled thus:(AIR p. 1492, para 7) "This section is contained in Chapter XVIII called 'Trial before a Court of Sessions'. It is clear from the provision that the Sessions Court has the power to discharge an accused if after perusing the record and hearing the parties he comes to the conclusion, for reason to be recorded that there is not sufficient ground for proceeding against the accused. The object of the provision which requires the Sessions Judge to record his reasons is to enable the superior court to examine the correctness of the reasons for which the Sessions Judge has held that there is or is not sufficient ground for proceeding against the accused."

22.Thereafter referring the decision of *Century Spinning & Manufacturing Co. Ltd. v. State of Maharashtra*¹, the learned Judge has observed:

1 (1972) 3 SCC 282: 1972 SCC (Cri) 495: AIR 1972 SC 545 2 (1977) 2 SCC 699: 1977 SCC (Cri) 404: AIR 1977 SC 1489 "For the purpose of determining whether there is sufficient ground for proceeding against an accused the Court possesses a comparatively wider discretion in the exercise of which it can determine the question whether the material on the record, if unrebutted, is such on the basis of which a conviction can be said reasonably to be possible."

23.From whichever angle, we examine the entire material placed on record, we feel that the prosecution has not made out a case of conspiracy against these two respondents or any of them, as rightly concluded by the courts below.

24.Resultantly, we do not see any reason much less compelling reason to interfere with the well-reasoned and considered judgments of the courts below.

25. In the result, the SLP is dismissed.