

Criminal Revision

PRESENT:

THE HON'BLE MR JUSTICE KALIDAS MUKHERJEE

JUDGMENT ON:24.8.2010.

CRR NO. 4064 OF 2008

Suprovat Mondal & Anr.

Vs.

State of West Bengal

Points:

Trial- Two cases out of murder of one person-Simultaneous trial of both cases by same Court whether permissible -Code of Criminal Procedure, 1973 S.228

Facts:

This is an application under Section 397/401/482 of the Code of Criminal Procedure praying for simultaneous trial of Sessions Case No. 66(6) of 2007 arising out of Krishnaganj P.S. Case No. 22 of 2001 dated 09.3.2001 under Section 302/34 I.P.C., now pending before the learned Additional Sessions Judge, Fast Track Court – I, Krishnanagar, Nadia along with the other case being Krishnaganj P.S. Case No. 23 of 2001 dated 09.3.2001 now pending before the learned Chief Judicial Magistrate, Nadia Krishnanagar since both the cases arose out of the murder of Narayan Mondal, both the cases should be tried by the same Court.

Held:

Although both the cases arose over the issue of the death of Narayan Mondal, the case No. 23 had a different aspect, in as much as, the accused persons were different and the allegation was also different. It is not the instance of case and counter case. Having regard to the distinctive features in

case No. 23 the contention of the petitioner for trial of both the cases before the same Court is not tenable. Para 6

For the Petitioners : Mr. Dipanjan Chatterjee

Mr. Ashish Dey

For the State : Mr. Debabrata Roy

KALIDAS MUKHERJEE, J.:

1. This is an application under Section 397/401/482 of the Code of Criminal Procedure praying for simultaneous trial of Sessions Case No. 66(6) of 2007 arising out of Krishnaganj P.S. Case No. 22 of 2001 dated 09.3.2001 under Section 302/34 I.P.C., now pending before the learned Additional Sessions Judge, Fast Track Court – I, Krishnanagar, Nadia along with the other case being Krishnaganj P.S. Case No. 23 of 2001 dated 09.3.2001 now pending before the learned Chief Judicial Magistrate, Nadia Krishnanagar.

2. In Krishnaganj P.S. Case No. 22 of 2001 dated 09.3.2001 the F.I.R. was lodged by one Sabita Biswas alleging that on 09.3.2001 at about 2.30 P.M. she and her brother Narayan Mondal went to Pratappur village and in front of the house of Sachin Mondal the villagers of Pratappur, namely, Faring Mondal started altercation with her brother. At that time Shanti Mondal, Subrata Mondal, Nemaï Garai and the youngest son of the Sailen Mondal of the same village attacked Narayan Mondal with sharp cutting weapon and firearms. Faring Mondal took out a firearm and shot at Narayan Mondal, but, it did not hit him. Thereafter Shanti Mondal took out a firearm and fired 2/3 rounds, as a result of which Narayan Mondal sustained severe bleeding injury and fell down on earth. At that time someone assaulted Narayan Mondal on the head and nose with the help of sharp cutting weapon. After

the receipt of the complaint the Krishnaganj P.S. Case No. 22 of 2001 dated 09.3.2001 was started under Section 302/34 I.P.C. and 25, 27 of the Arms Act.

3. The other case being Krishnaganj P.S. Case No. 23 of 2001 was started on the complaint of the NVF Kanailal Biswas of Pratappur Police Camp wherein it was alleged that the informant along with others were on duty in the police camp at Pratappur. On 09.3.2001 at about 2.30 P.M. they got information that some persons came to Pratappur village for creating disturbance. Thereafter, the informant along with two other personnel went to that village. After their arrival Narayan Gayen along with others tried to assault NVF Ashim Biswas on the head by means of a bamboo lathi and to snatch away the rifle. Blank fire was made by Sanyashi Sardar; thereafter one round was fired. Thereafter Narayan Mondal fell down on earth. At that time blank fire was made by the informant. The dead body of Narayan Mondal was lying near the temple for about one hour. Thereafter the inmates of the house of Narayan Mondal came there and threatened the informant and other personnel. Upon receipt of the complaint the Krishnaganj P.S. Case No. 23 dated 09.3.2001 was started. The charge sheet was submitted under Section 307 I.P.C. The P.S. Case No. 23 lodged by the NVF personnel was committed to the Court of Sessions and the learned Assistant Sessions Judge, Krishnanagar after consideration of the materials on record held that there was no sufficient ground for proceeding against the accused under Section 307 I.P.C. The learned Assistant Sessions Judge framed charge against the accused persons under Section 342, 353/34 I.P.C/ to which they pleaded not guilty and claimed to be tried. The learned Judge sent the case record to the learned Chief Judicial Magistrate, Nadia under Section 228(1)(a) Cr.P.C. for trial.

4. The contention of the learned Counsel appearing for the petitioner is that since both the cases arose out of the murder of Narayan Mondal, both the cases should be tried by the same Court.

5. The learned Counsel appearing for the State submits that it is not the instance of a case and counter case.

6. From the facts as discussed above it is clear that the case No. 22 arose for the murder of one Narayan Mondal and the case was started under Section 302/34 I.P.C. which is now pending before the learned Judge, Fast Track Court – I, Krishnanagar. The other case being Krishnanagar P.S. Case No. 23 was started on the complaint made by the NVF personnel alleging that the NVF personnel were attacked by the accused and the case under Section 307 I.P.C. was started. In view of the finding of the learned Assistant Session Judge, the case No. 23 is now pending before the learned Chief Judicial Magistrate, Krishnanagar as there was no case under Section 307 I.P.C. Although both the cases arose over the issue of the death of Narayan Mondal, the case No. 23 had a different aspect, in as much as, the accused persons were different and the allegation was also different. It is not the instance of case and counter case. Having regard to the distinctive features in case No. 23 I find that the contention of learned Counsel for the petitioner for trial of both the cases before the same Court is not tenable.

7. In the result, the application fails and stand dismissed.

8. Let a copy of this judgment along with the L.C.R. be sent to the learned Court below immediately.

9. Urgent Photostat certified copy, if applied for, be handed over to the parties as early as possible.

(Kalidas Mukherjee, J.)

