

CRIMINAL REVISION
Present :The Hon'ble Mr. Justice Prasenjit Mandal

C.R.R. No. 4634 of 2009

Judgement On: June 23, 2010.

Abdul Gofur Halder

Versus

State of West Bengal & Ors.

POINTS

ANALOGOUS HEARING –Two cases of different nature Whether be tried together – Indian Penal Code 1860 , Ss. 376 , 342 ,325 ,34 – Constitution of India Article 227.

FACTS

The sessions case under Section 376 of the I.P.C. bears Kultali P. S. Case No.263 dated 13.09.2008 meaning thereby this case was lodged in earlier point of time against Abdul Gafur Halder. The FIR of that case clearly lays down the allegation of rape on two dates upon the victim. Thereafter the wife of Abdul Gafur Halder lodged an ejahar from which the Kultali P. S. Case No.264 dated 13.09.2008 under Sections 342/325/34 of the I.P.C arose. The offence alleged of in the two cases are not of the same nature. One is rape and the another is under Section 342/325/34 of the I.P.C. which is triable by the Magistrate.

HELD

Two offences alleged in the two cases is not of the same type, if those two cases tried together, the disposal of the sessions case may be severely hampered and there may be delay in the disposal of the sessions case. Every case shall be decided according to its own merit on the basis of evidence to be adduced over charge to be framed. If the two cases of different nature are tried together there will not be any convenient for the learned Sessions Judge to dispose of both of them simultaneously in the same trial. Therefore if analogous trial is held it will not be convenient at all. Para 6

For the petitioner: Mr. Apurba Krishna Das,
Mr. Bapin Baidya.

For the Opposite party no.2: Mr. Samiran Mandal.

For the State: Ms. Jharna Biswas.

Prasenjit Mandal, J:

THE COURT 1. This revisional application under Article 227 of the Constitution of India has been filed by the peittioner praying for passing orders for analogous hearing of the two cases, namely, Kultali P. S. Case No.264 dated 13.09.2008 under Sections 342/325/34 of the I.P.C. and the Kultali P. S. Case No.263 dated 13.09.2008 under Section 376 of the I.P.C.

2.The present peittioner is an accused in the Kultali P. S. Case No.263 dated 13.09.2008 under Section 376 of the I.P.C. It is submitted before me that this case is pending before the

learned Sessions Judge at the stage of recording evidence. The wife of the petitioner lodged one ejahar with the O.C., Kultali P.S. on 13.09.2008 stating, inter alia, that on 12.09.2008 at 11.30 p.m. while she and her husband, petitioner herein, were sleeping in their house, they heard a noise in the house of their neighbour. At that time, Jakir Peada and others came to their house and asked her husband to go there for solving the dispute for which one quarrel took place in the house of their neighbour. The petitioner went with them but after sometime his wife heard the sound of her husband. Then she went to the house of her neighbour along with her brother-in-law and found that accused Zakir Peada and others were assaulting her husband with bamboo stick and with fists and blows. Her husband was severely injured. As a result he was admitted to Bangur Hospital, Calcutta. Then she lodged an ejahar with the O.C. Kultali P.S. and her ejahar was processed and Kultali P.S. case no.264 dated 13.09.2008 under Section 342/325/34 of the I.P.C. was started. Police submitted a chargesheet in this case also. Now the prayer of the petitioner is for analogous hearing of these two cases by one learned Judge because those two incidents are nothing but one incident but described in different manner.

3.The learned Advocate for the petitioner submits that since the two cases arose out of the same incident and the two cases are numbered consecutively over the same date of occurrence, they should be tried by the learned Sessions Judge to avoid different sets of opinions, if tried separately.

4.On the other hand, the learned Advocate for the opposite party submits that the two cases cannot be treated analogously because in one case allegation is for rape against one accused and the other case is for assault. Though the two cases might take place in the same night and they were

numbered consecutively in the concerned P.S., the nature of offence of the two cases are quite distinct and separate.

5. Having considered the submission of the learned Advocate of both the sides and on perusal of the materials on record, I am of the view that the sessions case under Section 376 of the I.P.C. bears Kultali P. S. Case No.263 dated 13.09.2008 meaning thereby this case was lodged in earlier point of time against Abdul Gafur Halder. The FIR of that case clearly lays down the allegation of rape on two dates upon the victim. Thereafter the wife of Abdul Gafur Halder lodged an ejarah from which the Kultali P. S. Case No.264 dated 13.09.2008 under Sections 342/325/34 of the I.P.C arose. The offence alleged of in the two cases are not of the same nature. One is rape and the another is under Section 342/325/34 of the I.P.C. which is triable by the Magistrate. It is the repeated direction of the Apex Court that in the trial of rape cases, the learned Trial Judge is to devote his utmost sincerity in taking care of disposal of the sessions case.

6. On the other hand, the other case which is of the nature of restraint and assault causing grievous hurt, is triable by the Magistrate and such type of case can be decided by any Magistrate having jurisdiction over the same. Such type of case is to be disposed of as early as possible as per decision of the Apex Court. As the nature of the two offences alleged in the two cases is not of the same type, if those two cases tried together, the disposal of the sessions case may be severely hampered and there may be delay in the disposal of the sessions case. Every case shall be decided according to its own merit on the basis of evidence to be adduced over charge to be framed. If the two cases of different nature are tried together there will not be any convenient for the learned Sessions Judge to dispose of both of them simultaneously in the same trial. Therefore, I am of the

view that if analogous trial is held it will not be convenient at all. The application under Article 227 of the Constitution of India is therefore devoid of any merit.

7.It is, therefore, dismissed.

8.Considering the circumstances, there will be no order as to costs.

9.Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.

(Prasenjit Mandal, J.)