

## Sudha Singh Vs State of U.P. and Another

**Court:** Allahabad High Court (Lucknow Bench)

**Date of Decision:** July 12, 2013

**Citation:** (2013) 82 ALLCC 827

**Hon'ble Judges:** Vishnu Chandra Gupta, J

**Bench:** Single Bench

**Advocate:** A.R. Khan, for the Appellant;

### Judgement

Vishnu Chandra Gupta, J.

Heard Sri A.R. Khan, learned Counsel for the petitioner and Sri Abhay Veer Singh, learned AGA for the State.

By means of this petition u/s 482 Cr.P.C. petitioner has prayed for quashing the charge-sheet and also prayed to stay the further proceeding of

Criminal Case No. 79-A/2003 now numbered as 946 of 2006, Case Crime No. 74 of 1998, u/s 120-B IPC read with section 302 IPC, P.S.-

Kandhaie, District Pratapgarh pending in the Court of Chief Judicial Magistrate, Pratapgarh.

2. Learned AGA informed that no appeal has been filed against the judgment of acquittal passed in Sessions Trial No. 404 of 2003. Opposite

party No. 2 in respect of personal service did not appear or file any counter-affidavit.

3. The brief facts for deciding the petition are that the First Information Report has been lodged by one Arvind Kumar, opposite party No. 2 to

this petition in Police Station Kandhaie, district Pratapgarh which was registered as Case Crime No. 74 of 1998, u/s 302 IPC against Vinod

Kumar Singh, Kashi Naresh, Ram Bahadur Singh, Deo Kali, Manoj Kumar Singh, Anand Kumar Singh and Sudha Singh. One accused has been

arrayed as Chachiya Sas which later on found to be Smt. Kanti. After investigation of this case charge-sheet has been filed against the accused

persons. A separate charge-sheet has been filed against Vinod Kumar Singh and Sudha Singh, u/s 120-B IPC read with section 302 IPC as on

28.3.2003, The charge-sheet against other co-accused was separately filed. Sudha Singh absconded and did not appear to face the trial. In

sessions trial No. 404 of 2003 the accused Anand Kumar Singh, Manoj Kumar Singh, Kashi Nath, Vinod Kumar Singh, Ram Bahadur, Smt.

Kanti and Smt. Deo Kali were acquitted for the charge levelled against them u/s 302 read with section 149 IPC. As the present petitioner was

absconding, so she could not be prosecuted.

4. The petitioner by this petition sought for quashing of the proceeding pending against her in Criminal Case No. 79-A of 2003 now as 942 of

2006, u/s 120-B read with section 302 IPC in connection with aforesaid Crime No. 74 of 1998 and also sought stay of implementation of non-

bailable warrant issued against the petitioner by Chief Judicial Magistrate. Learned Counsel for the petitioner submitted that when case ended in

acquittal of all the accused the trial of the present applicant if allowed to continue would be an abuse of process of law. He relied upon the

judgment of the Apex Court in Netaji Subhas Chandra Bose Vs. State of West Bengal, and Central Bureau of Investigation Vs. Anil Kumar Singh, . He has also

placed relied upon the judgment of Sant Ram Master @ Sant Ram Jaiswal v. State of U.P. 2005 (51) ACC 906

On the contrary learned AGA Sri Abhay Veer Singh submitted that on the basis of judgment of acquittal of co-accused the present petitioner

cannot be granted any benefit and relied upon the judgment of Division Bench of this Court in K.M. Rinki v. State of U.P. and others, 2008 (63)

ACC 476

5. Learned Counsel for the petitioner urged that main accused have been acquitted from the charge of murder and the judgment of acquittal is now

become final, therefore there is no occasion to proceed against the present applicant for the alleged conspiracy committing the murder.

6. In Kumari Rinki's case (supra), the Division Bench of this Court discussed the effect after considering the several authorities of the Apex Court

on this score and held in paras 7, 8, 9, 10, 13 and 14 which is reproduced hereinbelow;

7. It is a settled principle of the law that every case turns on its own facts and evidence as may be adduced and acquittal of a co-accused in the trial

emanating from the same case crime does not necessarily entail acquittal of the other co-accused who are yet to be put on trial.

8. The decision in S.P.E., Madras Vs. K.V. Sundaravelu, is a decision of pivotal significance in which the Apex Court held that the commitment

once made u/s 213 Cr.P.C. by a competent Magistrate the same could be quashed only on a point of law. The facts in that case were that the

respondent was carrying on business as an exporter of handloom cloth in Madras and he was alleged to have committed offences under sections

420 and 471 read with section 466 IPC and section 132 of the Customs Act relating to certain bales of goods covered by two invoices. The

Court before commitment, split his case in two, covered by each of the two invoices. The respondent in the first case was acquitted by the High

Court on 9.3.1974. The second case was then taken up for trial. The respondent applied to the High Court for quashing the proceedings. The

High Court quashed the proceedings pending in the Court of Asstt. Sessions for three reasons namely, (1) the evidence in both the cases being

similar and one case having ended in acquittal, further prosecution in the present case would amount to abuse of the process of the Court; (ii) even

otherwise, the alleged offences were committed somewhere in 1955 and it would be unfair if not unjust to put the petitioner on trial after about 10

years; and (iii) the charge was not likely to stand. The Apex Court further ruled that merely because the trial in the second case had not started,

there was no justification for taking the view that evidence in both the cases was similar. Moreover, it was not the requirement of law that if one

case had ended in acquittal prosecution in another case would be illegal. It could not also be said that it would be illegal to commence the trial in a

case after a period of 10 years or so. So also, it could not be said that the High Court's opinion that the charge was not likely to stand the trial was

on a point of law within the meaning of section 215. The Apex Court further held that the judgment in the first case was clearly irrelevant and could

not be taken into consideration for making the order in the second case. Para 5 being relevant is quoted below.

5. The High Court has in fact taken its earlier judgment in Sessions Case No. 34 of 1968, which ended in acquittal, into consideration in the

present case, and has reached the conclusion that the present appeal is "not likely to stand." Here again, the High Court lost sight of the provisions

of sections 40 to 44 of the Evidence Act which state the circumstances in which previous judgment are relevant in civil and criminal cases. Thus

section 40 states the circumstances in which a previous judgment may be relevant to bar a second suit or trial, and has no application to the present

case for the obvious reason that no judgment, order or decree is said to be in existence in this case which could in law be said to prevent the

Sessions Court from holding the trial. Section 41 deals with the relevancy of certain judgments in probate, matrimonial, admiralty or insolvency

jurisdiction and is equally inapplicable. Section 42 deals with the relevancy and effect of judgments, orders or decrees other than those mentioned

in section 41 in so far as they relate to matters of a public nature, and is again inapplicable to the present case. Then comes section 43 which

clearly states that judgments, orders or decrees, other than those mentioned in sections 40, 41 and 42, are irrelevant, unless the existence of such

judgment, order or decree is a fact in issue, or is relevant under some other provisions of the Act. As it has not been shown that the judgment in

Sessions Case No. 34 of 1968 could be said to be relevant under the other provisions of the Evidence Act, it was clearly "irrelevant" and could

not have been taken into consideration by the High Court for the purpose of making the impugned order. The remaining section 44 deals with fraud

or collusion in obtaining a judgment, or incompetency of a Court which delivered it, and can possibly have no application in the present case. It

would thus appear that the High Court not only lost sight of the above facts, but also ignored the provisions of section 215 of the Code of Criminal

Procedure and thus committed an error of law in basing the impugned judgment on a judgment which was clearly irrelevant.

9. Yet another decision on the point is K.G. Premshanker Vs. Inspector of Police and Another, . The quintessence of what the Apex Court held

therein is that the previous judgment which is final can be relied upon as provided under sections 40 to 43 of the Evidence Act in civil suits between

the same parties. Principle of res judicata may apply, in a criminal case. Section 300 of Cr.P.C. makes provision that once a person is convicted or

acquitted, he may not be tried again for the same offence if the conditions mentioned therein are satisfied. Moreover, if the criminal case and the

civil proceedings are for the same cause, judgment of the Civil Court would be relevant if conditions of any of the sections 40 to 43 are satisfied,

but it cannot be said that the same would be conclusive except as provided in section 41. Section 41 provides which judgment would be

conclusive proof of what is stated therein. Further, the judgment, order or decree passed in a previous civil proceedings, if relevant, as provided

under sections 40 to 42 or other provisions of the Evidence Act then in each case. Court has to decide to what extent it is binding or conclusive

with regard to the matter (s) decided therein. Hence, in each and every case, first question which would require consideration is whether judgment,

order or decree is relevant? If relevant its effect. It may be relevant for a limited purpose, such as, motive or as a fact in issue. This would depend

upon facts of each case. It was further observed by the Apex Court that where the complainant in a criminal case had also filed a civil suit for

damages against the accused in criminal case and the Trial Court dismissed the suit, the criminal prosecution would not be required to be dropped

on that ground because under the Evidence Act to what extent judgments given in the previous proceedings are relevant is provided and therefore

it would be against the law if it is held that as soon as the judgment and decree is passed in a civil suit the criminal proceedings are required to be

dropped if the suit is decided against the plaintiff who is the complainant in the criminal proceedings.

(Emphasis supplied).

10. The recent decision on the point is Rajan Rai Vs. State of Bihar, . In this case, the Apex Court elucidating his view on section 40 of the

Evidence Act observed on the same lines as contained in para 5 of the decision of the Apex Court in S.P.E., Madras Vs. K.V. Sundaravelu, . The

Apex Court expatiated that section 40 of the Evidence Act states the circumstances in which a previous judgment may be relevant to bar a second

suit or trial. Section 40 has no application to the present case for the obvious reasons that no judgment, order or decree is said to be in existence in

this case which could in law be said to prevent the Sessions Court from holding the trial. The Apex Court further expatiated on section 41 of the

Evidence Act observing that this section deals with the relevancy of certain judgments in probate, matrimonial, admiralty or insolvency jurisdiction

and is equally inapplicable. The Apex Court also observed that as it has not been shown that the judgment of acquittal rendered by the High Court

in appeals arising out of earlier sessions trial could be said to be relevant under the other provisions of the Evidence Act it was clearly irrelevant

and could not have been taken into consideration by the High Court while passing the impugned judgment. Further the Apex Court observed that

section 44 of the Evidence Act deals with fraud or collusion in obtaining a judgment or incompetency of a Court which delivered it and can

possibly have no application in the present case. In ultimate analysis, the Apex held that it would thus appear that the High Court was quite justified

in ignoring the judgment of acquittal rendered by it which was clearly irrelevant. The Apex Court in the said decision placed credence for the view

on the decision of Karan Singh Vs. State of Madhya Pradesh, in which the Apex Court held as under:

As the High Court pointed out, that observation has no application to the present case as here the acquittal of Ramhans was not in any proceeding

to which the appellant was a party. Clearly, the decision in each case has to turn on the evidence led in it; Ranthans"s case depended on the

evidence led there while the appellant"s case had to be decided only on the evidence led in it. The evidence led in Ramhans"s case and the

decision there arrived at on that evidence would be wholly irrelevant in considering the merits of the appellant"s case.

.....

13. The inference that is deducible from discussion of the above decisions that the judgment of acquittal rendered in the trial of other co-accused is

wholly irrelevant as the said judgment would not be admissible under the provisions of sections 40 to 44 of the Evidence Act. It also leaves no

manner of doubt that every case has to be decided on the evidence adduced therein and therefore, the case of the petitioner has to be decided on

the basis of evidence which may be adduced during the course of trial.

14. The principles that are distilled from the discussion of the above decisions are:

(i) the acquittal of a co-accused in a separate trial cannot be made basis for quashing the proceedings against another co-accused who is being

separately tried on the principle that each case has to be decided on the evidence adduced in that case;

(ii) judgment of acquittal rendered in one case is not relevant in the case of co-accused separately tried inasmuch as sections 40 to 44 of the

Evidence Act deal with relevancy of certain judgments in probate, matrimonial, admiralty and insolvency jurisdiction and therefore inapplicable to a

criminal case.

7. So far as the fact of this case is concerned while passing the order of acquittal the learned Sessions Judge has not given any finding on the

question of conspiracy amongst the accused as alleged by the prosecution by filing separate charge-sheet u/s 120-B read with section 302 IPC.

The learned Sessions Judge also failed to frame the charge u/s 120-B read with section 302 IPC against accused Vinod. In the absence of any

finding about conspiracy among the accused and also for absence of charge u/s 120-B IPC against accused Vinod Kumar Singh in S.T. No. 404

of 2003 the benefit of acquittal shall not be extended to the present petitioner who has not appeared to face the trial.

8. An accused may be tried for the charge of conspiracy even if other co-accused with whom hatching of conspiracy is alleged are not traceable or

died or not tried for the said charge. It has non where found by Trial Court that alleged murder has not taken place.

9. In view of above facts the law cited by Counsel for the petitioner is not applicable in the present case. Moreover, the aforesaid judgment passed

in S.T. No. 404 of 2003 is not at all admissible under sections 42 and 44 of the Evidence Act and the same is wholly irrelevant so far as the

petitioner is concerned. It is well settled that every case has to be decided on the evidence adduced therein hence the case of the petitioner ought

to have been decided on the basis of evidence which may be adduced during the course of trial against her.

10. There is no finding of the Court that no conspiracy hatched amongst the accused as alleged by the prosecution by filing separate charge-sheet.

No charge u/s 120-B read with section 302 Cr.P.C. framed. In absence of any finding about conspiracy and also for absence of charge u/s 120-B

against accused Vinod Kumar Singh in S.T. No. 404 of 2003 the benefit of acquittal shall not be extended.

11. In view of above, the petition lacks merit and liable to be dismissed. Accordingly, the petition is dismissed.