

COMMON ORDER BELOW EXH.21 & 28

(dt.17.02.2022)

The accused/applicant No.2 namely Maduri Badrinarayan Gote has moved applications Exh.21 suo-motu, for tendering pardon to her, contending that she has realized the mistake which she has committed. She is ready to give full and truthful statement in the trial disclosing the role of the accused No.1 Badrinarayan for commission of murder of deceased Vaishnavai Vijay Jadhav. On her statement there will be every possibility of conviction of her husband i.e. accused No.1. So pardon be tendered to her and she be shifted to Jail of other district.

2. The prosecution has filed say (Exh.23). It is submitted that before granting any pardon to accused No.2 Madhuri Gote. It is necessary to verify from her whether she is voluntarily ready to offer herself for giving truthful statement before this Court. It is also necessary to examine her statement first whether it is supporting to the case of prosecution and evidence collected by Investigating Officer on the scrutiny of her statement prosecution is prepared to grant her pardon for the offence committed by her by following procedure under Section 307 and 308 of Cr.P.C.

3. The prosecution has moved an application (Exh.28) for tendering pardon to accused/applicant No.2 Madhuri. It is submitted that she is ready to give full and truthful statement in the trial disclosing her role and that of accused No.1 Badrinayayan for commission of murder of deceased Vaishnavi Vijay Jadhav. There is no any eye witness in the said crime who had witnessed the murder of deceased Vaishnavi by both accused. Therefore, it is clear accused No.2 Madhuri have direct knowledge being participant in the said crime. Therefore, prosecution is now agreed to accept the offer made by accused No.2 Madhuri to state all

the truthful facts and adduced truthful evidence on oath of all the facts and circumstances which are within her knowledge while committing the said offence without concealing evidence. Hence, according to the prosecution, it is necessary to grant her pardon.

4. The accused No.1 Badrinarayan stated before Court that there is no eye witness of the incident. The father of deceased is rich person. The relative of Madhuri influenced her and pressure her. So under their pressure, she is ready to be witnessed of prosecution and file false application. Therefore, due to pressure of other his wife/accused No.2 Madhuri will ready for tendering pardon.

5. In this regard, I heard Mr. U.A. Deshmukh, the learned Special Prosecutor and concerned accused in person.

6. The learned special prosecutor submitted that no eye witnesses available on record. Therefore, in the wake of such prosecution case, the evidence of applicant/accused Madhuri is necessary to prove guilt of accused No.1 Badrinarayan.

7. Having heard the learned Special Prosecutor, I have gone through the charge-sheet and statements of witnesses and gone through Sec 307 of Cr.P.C. Section 307 Cr.P.C. enables the court to which the case is committed to tender pardon before judgment is passed for, the same purpose as envisaged under Section 306 Cr.P.C. However, Section 307 stipulates that pardon should be tendered on the same condition to such persons. The wording 'same condition' mentioned in Section 307 Cr.P.C. has been construed as one confining to the conditions made mention of in Section 306(1) Cr.P.C. It is significant to notice that Section 307 Cr.P.C. does not indicate that the Sessions Court or the court to which the case is committed, while tendering pardon, has to record its reasons or to record whether the tendering was accepted or not accepted. It also does not contain the conditions similar to Section 306(4)(b) Cr.P.C.

8. In Ratanlal and Dhirajlal in the 'Commentary on the Code of Criminal Procedure', Vol.2 at page 1079, the authors have summarized it as follows:

- "1. The power to grant pardon enjoined under Sections 306 and 307 of the Code as a substantive power and it rests on the judicial discretion of the Court.
2. The power of the Court is not circumscribed by any condition except the one, namely, that the action must be with a view to obtaining the evidence of any person who is supposed to have been directly or indirectly concerned in, or privy to, an offence.
3. The Court has to proceed with great caution and on sufficient grounds recognizing the risk which the grant of pardon involved of allowing an offender to escape just punishment at the expense of the other accused.
4. The secrecy of the crime and paucity of evidence, solely for the apprehension of the other offenders, recovery of the incriminating objects and production of the evidence otherwise unobtainable might afford reasonable grounds for exercising the power.
5. The disclosure of the person seeking pardon must be complete.
6. While tendering pardon, the Court should make an offer to the one least guilty among the several ."

9. It has been held by The Honble Apex Court and various High Courts in many cases that granting pardon and examining approver as witness are at best a necessary evil. The purpose of the section seems to be that there may be instances where in spite of proper and honest investigation, evidence may not be available in cases of grave and serious offences. Therefore, it becomes necessary to resort to Section 306 or Section 307 Cr.P.C. as the case may be to ensure that the offenders do not escape from the clutches of law. Sections 306 and 307 Cr.P.C. have been enacted to enable the court to obtain evidence which is not otherwise forthcoming.

10. By keeping in mind above principles of Law and purpose and

object of Sections 306 and 307 of Cr. P.C. I am going to analyse case in hand. In the present case the accused No. 2 plays important role, she is also a real culprit. Record reveals that role played by her in murder of deceased Vaishnavi is not less than the accused No.1 Badrinarayan. In the present case, there is no secrecy of the crime and sufficient circumstantial evidence is available on record against both the accused persons. The incriminating objects already recovered and confessional statement of accused persons under Section 27 of Evidence Act and discovery of dead body of deceased and all other evidence on the basis of disclosure statement is there. So, without affecting merit of case at this juncture of case restraining myself on point of granting pardon or not, I am of view that the best possible evidence against the both accused available on record. The accomplice who has more charges of crime on him then he cannot be pardoned by the court. The person with lessor participation in the crime may be tendered pardon by the Court, to punish the main culprits.

11. Present case is not the case were in spite of proper and honest investigation, evidence not available. Even special prosecutor not stated that no evidence available on record to prove charges against both accused. His only contention is that eye witnesses not available and accused No.2 Madhuri participated in crime and have full knowledge. Only ground that eye witnesses not available is not sufficient to tender the pardon that too to the accused who is actual culprit and plays more role in commission of offence. The Section 307 cannot be used just for saving one of the real culprit i.e accused No.2 Madhuri and allow her to escape from the clutches of law by granting her pardon at the expense of accused No.1. Considering evidence available on record with caution and considering risk of granting pardon and facts and circumstances of the case, I do not feel proper to take resort of Section 307 Cr.P.C. Hence, I proceed to pass

Sessions Case No. 34/2020

5

State -vs- Badrinarayan+1

following Order:-

ORDER

Application Exh.21 and 28 stand rejected.

Dt:- 17.02.2022

(Dr. Rachna R. Tehra)
Additional Sessions Judge,
Washim

CERTIFICATE

I affirm that the contents of this P.D.F. file Judgment/Order are same word to word, as per the original order:-

Name of the Stenographer :- N. B. Khandare, Stenographer (Grade -I)

Court Name :- District Judge-2 & A.S.J. Washim

Date :- 17.02.2022

Order signed by the

Presiding Officer on :- 17.02.2022

Order uploaded on :- 18.02.2022