
(2013) 01 MP CK 0130
In the Madhya Pradesh High Court
Case No : Criminal Rev. No. 715 of 2009

Jagdish Narayan Bhardwaj

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 29-01-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 319, 397, 401
Evidence Act, 1872 — Section 113B
Penal Code, 1860 (IPC) — Section 304B, 34, 498A

Citation : (2013) ILR (MP) 705 : (2014) 2 MPHT 317

Hon'ble Judges : Brij Kishore Dubey, J

Bench : Single Bench

Advocate : Awadesh Singh Bhadoriya, for the Appellant; R.K. Shrivastava, P.L. and Rajesh Shukla, for the Respondent

Final Decision : Dismissed

Judgement

Brij Kishore Dubey, J.—This Revision petition has been preferred by the petitioner herein/accused under Sections 397 & 401 of Cr. P.C. being aggrieved by the impugned order dated 02.09.2009 passed by Sessions Judge, Bhind in Sessions Trial No. 147/2008 whereby, the application preferred by the prosecution u/s 319 of Cr. P.C. has been allowed and directed that the petitioner be added as an accused person in the trial. It is apparent from the record that Anita (since deceased) was married with Manoj, who is son of the present petitioner on 25.04.2007, according to Hindu rites. The deceased was subjected to cruelty and harassment for non-fulfillment of demand of dowry by her husband and other relatives of her husband. Ultimately, she died on 13.11.2007 in her in-laws house by burn injuries. On the basis of information regarding the death of the deceased received from Ram Prakash Joshi, father of the deceased, Merg No. 52/2007 was registered on 13.11.2007 by the Police, City Kotwali, Bhind and conducted inquiry into the matter. After due inquiry, offence under Sections 304-B & 498-A read with 34 of IPC was registered on 18.11.2007 by C.B.S. Raghuvanshi, Town Inspector against the husband of the deceased and other family members of her

husband including the present petitioner. After completing the investigation of the case, the Investigating Officer filed challan against the accused Manoj, Govind, Madhu and Amit but excluded the names of the petitioner/Jagdish and his wife, Smt. Geeta. During the trial, an application u/s 319 of Cr. P.C. was filed by the prosecution before the learned Sessions Judge. Learned Sessions Judge after arriving at a conclusion that prima-facie the petitioner, Jagdish and Smt. Geeta have also participated in the commission of crime, took the cognizance against them and directed that they be summoned through warrant of arrest as co-accused in the case, therefore, present revision petition has been filed by the petitioner.

2. It is apposite to mention here that Jagdish and his wife, Smt. Geeta both have jointly preferred this revision but during pendency of this revision, Smt. Geeta had died, therefore, her name has been deleted from the array of revision.

3. Shri A.S. Bhadoriya, learned counsel for the petitioner submitted that in the charge-sheet, there is no material against the petitioner. During the investigation, it was found that the deceased was residing in a separate house, therefore, the police has discharged the petitioner. Learned counsel has further submitted that the Trial Court has not considered the statement of Ku. Manisha recorded during the investigation and Panchnama in which it is mentioned that the petitioner residing in a separate house. His further submission is that the learned Sessions Judge found that there is sufficient and reasonable ground for proceeding against the petitioner but it has not been found that there exists a possibility that the petitioner so summoned is in all likelihood would be convicted, therefore, cognizance cannot be taken against the petitioner. He has placed reliance on the following cases:-

(i) Mohd. Shafi Vs. Mohd. Rafiq and Another, , and

(ii) Brindaban Das and Others Vs. State of West Bengal,

4. Shri R.K. Shrivastava, Panel Lawyer argued in support of the impugned order and prayed for its dismissal.

5. Shri Rajesh Shukla, learned counsel appearing on behalf of the complainant has also argued in support of the impugned order and submitted that the alleged separate house of the petitioner is not far away from the residence of the deceased. He has drawn attention of this Court towards the map of scene of occurrence and submitted that in between the house of the petitioner, Jagdish and the residence of the deceased, there is only 10 feet wide gali. He placed reliance on a decision of the Supreme Court in the case of Geeta Ram v. VediRam, (2002) 10 SCC 499

6. Learned counsel for the complainant has also contended that it is apparently clear that the death of Anita took place due to burn or bodily injury occurred within seven months of her marriage and before her death, she was subjected with cruelty and harassment by her husband and relatives of her husband,

therefore, by invoking the provisions of Section 113-B of Evidence Act, it is clear that the petitioner has committed the offence of dowry death punishable u/s 304-B of IPC.

7. After having heard, learned counsel for the parties at length. I have carefully perused the evidence on record.

8. Section 319 of the Code of Criminal Procedure reads thus:-

319. Power to proceed against other persons appearing to be guilty of offence.-

(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court although not under arrest or upon a summons, may be detained by such court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person-under subsection (1) then-

(a) the proceeding in respect of such person shall be commenced afresh, and witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.

9. Thus, the Trial Court before taking recourse to the said provision, the requisite ingredients, must be fulfilled. Commission of an offence by a person not facing trial, must, therefore, appear to the court concerned. It cannot be ipse dixit on the part of the court. Discretion in this behalf must be judicially exercised. It is incumbent that the court must arrive at its satisfaction in this behalf. [Mohd. Shaft (supra) referred to]

10. It is not in dispute that P.W. 1, Ram Prakash Joshi and P.W. 2, Basanti Devi are the parents of the deceased. The marriage of the deceased, Anita (aged 23 years) was solemnized with one Manoj, who is the son of the present petitioner on 25.04.2007 and she died in her husband's house by burn injuries on 13.11.2007 i.e., within seven months from the date of her marriage. It is also not in dispute that Govind, Madhu and Amit are Jeth, Jethani and Devar, respectively of the deceased, Anita.

11. P.W. 1, Ram Prakash Joshi and P.W. 2 Basanti Devi have categorically deposed in their statements that their daughter, Anita got married on 25.4.2007.

Anita first time went to her in-laws house and remained there for 10 days, thereafter, she came back to their house and made a complaint that her husband, Jeth, Jethani and father-in-law were demanding one lac rupees, Colour T.V. & Cooler. On not meeting the demand of dowry, they subjected her to cruelty. Thereafter, whenever she came back to their house, she used to complain about the same. Then, they refused to send back her to matrimonial home (sasural) but two days before prior to the "Karva Chauth" festival, Amit came to their house and assured that now they will not cause any trouble to the deceased. By trusting the assurance given by Amit, they send their daughter with him. On the evening of "Deepawali Dauj", on telephone, Anita again complained by weeping that these people are beating her for not meeting their demand of dowry. Ultimately, on 13.11.2007, Jagdish, Geeta, Govind, Madhu, Amit and Manoj had killed Anita in their house by burning.

12. P.W. 1, Ram Prakash Joshi has also stated that he went to police station and informed about the death of his daughter, thereafter, police went to the spot and found that his daughter was lying dead in burnt condition.

13. It is transpired from the charge-sheet that after completing the merg inquiry, Town Inspector C.B.S. Raghuvanshi has registered FIR on 18.11.2007 against all the accused persons including the present petitioner for the offence punishable under Sections 304-B & 498-A read with 34 of IPC at Crime No. 268/2007. During the investigation, statements of the witnesses were recorded. From the statements recorded under Sections 161 of Cr. P.C. it is clear that the petitioner was also involved in the commission of the offence.

14. In Brindaban Das (supra), it has been held that the fulcrum on which the invocation of Section 319 Cr. P.C. rests is whether the summoning of persons other than the named accused would make such a difference to the prosecution as would enable it not only to prove its case but to also secure the conviction of the persons summoned.

15. In Mohd. Shaft (supra), the Apex Court held that before exercising its discretionary jurisdiction by the Court in terms of Section 319 of the Code of Criminal Procedure, it must arrive at the satisfaction that there exists a possibility that the accused so summoned is in all likelihood would be convicted. Such satisfaction can be arrived at inter alia upon completion of the cross-examination of the said witness. For the said purpose, the Court concerned may also like to consider other evidence.

16. In Geeta Ram (supra), the Apex Court held that Section 319 CrPC is intended to meet the situation where in course of trial, if materials come up against some other persons, who have not been arrayed as accused, and are not being tried, the court can summon them as accused.

17. While considering the scope of Section 319 of Cr. P.C., the Apex Court in 2002 (1) ACR 419 (SC) observed that "this Court held that the said provision gives ample power to any court to take cognizance and add any person not being

an accused before it and try him along with other accused, if there appears during the trial sufficient evidence indicating his involvement in the offence."

18. Thus, considering the evidence on record, the statements of the witnesses and judgments of Apex Court referred to here-in-above, I am of the view that it cannot be said that the Sessions Court committed any illegality or irregularity in summoning the petitioner as accused. Hence, no interference is called for in the impugned order passed by Sessions Judge, Bhind. The Trial Court is directed to proceed with the trial in accordance with law and conclude the same as early as possible. With the aforesaid, this revision petition stands dismissed.