
(2016) 04 RAJ CK 0067

In the Rajasthan High Court

Case No : Crl. Revision Petition No. 126 of 2015

Malam Singh & Others

APPELLANT

Vs

State of Rajasthan & Another

RESPONDENT

Date of Decision : 12-04-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 319

Citation : (2016) 2 CriLR 943

Hon'ble Judges : Sandeep Mehta, J.

Bench : Single Bench

Advocate : Vineet Jain, Advocate, for the Appellant; Pankaj Awasthi, P.P. and H.S. Balot, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

Sandeep Mehta, J.— Heard learned counsel for the parties.

2. By way of the instant revision petition, the petitioners have approached this Court being aggrieved of the order dated 27.11.2014 passed by learned Additional Sessions Judge (Women Atrocities Cases), Jodhpur in Sessions Case No.6/2013 titled as State v. Pradhuman Singh whereby, the learned trial Judge, accepted the application filed by the respondent no.2 complainant under Section 319 Cr.P.C. and directed that the petitioners no.1, 2 and 3 i.e. Malam Singh, Smt. Shilpa Kanwar and Kishan Singh respectively be summoned as additional accused to face trial for the offence under Section 498A IPC and the petitioner no.4 Smt. Pushpa Kanwar @ Usha be summoned as additional accused to face trial for the offences under Sections 498A and 304B/34 I.P.C. in the alternative under Section 302/34 I.P.C.

3. Facts in brief are that the respondent no.2 Moti Singh, the complainant lodged a typed report at P.S. Mahamandir, Jodhpur on 28.12.2010 alleging that his daughter Smt. Shakti Kanwar was married with Pradhuman Singh son of the petitioners no.3 and 4 on 16.2.2010. Substantial dowry was given in the

marriage. At the time of marriage, Shri Malam Singh the uncle (Tau) of the groom taunted the complainant in presence of guests that he had not given appropriate dowry in the marriage. He was told that numerous proposals offering substantially more dowry were readily asking for the hand of Pradhuman Singh. Shri Kishan Singh petitioner no.3 was also present at that time and he did not controvert the insinuation made by Malam Singh. After marriage, his daughter went to the matrimonial home. There, Malam Singh, Kishan Singh, Pradhuman Singh, Usha w/o Kishan Singh, Shilpa Kanwar, Mal Singh and Ram Singh's wife used to harass and humiliate Shakti Kanwar and taunted her that she had brought meager dowry in marriage. Shakti Kanwar used to tell the complainant about this misbehavior but he advised her to tolerate the same and assured her that things would improve with time. He met Kishan Singh and also talked to him on telephone and complained to him of these untoward happenings. Kishan Singh assured the complainant that no further demands would be made. For some time, thereafter the things were peaceful. His daughter used to visit his house regularly.

4. In the meantime, the mother-in-law told Shakti Kanwar that her ornaments were having impurities and got them checked through a goldsmith. Shakti Kanwar was told that the mixing of impurities in the gold ornaments was excessive and, therefore, her father should get new gold ornaments made. Shakti Kanwar continued to tolerate the ill behaviour meted out to her by the accused. On 24.6.2010, his son Shivdutt Singh was to be married on which Shakti Kanwar came to the parental home. The in-laws were also invited in the wedding of his son. Pradhuman Singh and Kishan Singh came to attend the marriage. There, Kishan Singh instigated Pradhuman Singh that he had come to attend the marriage of his brother-in-law and should not leave without a car being gifted to him. However, the complainant, owing to his financial condition, could not accede to the said demand and refused. Kishan Singh became annoyed and returned immediately. On the very next day, Pradhuman Singh left for Jodhpur taking Shakti Kanwar with him. He was threatened that his daughter would not return back. The first informant's father-in-law expired on 23.10.2010, upon which Kishan Singh left his daughter at the bus stand and returned. The first informant went to Jodhpur for leaving his daughter at the matrimonial home on 27.10.2010. The girl's mother-in-law used abusive language upon which he pleaded with her and left his daughter at the matrimonial home. On 8/9.12.2010, Shakti Kanwar called him on his mobile and complained that her husband, mother-in-law, sister-in-law and a neighbour named Bhanwari Baisa were harassing her and that she wanted to return to the paternal home. On inquiring about the father-in-law, she told that he was on duty at Sirohi in relation to his job in the forest department. On 15.12.2010, the complainant and one Ganpat Singh went to the office of Kishan Singh and requested that Shakti Kanwar wanted to return to his home and thus, she should be sent back. He was informed that Pradhuman Singh and Shakti Kanwar were scheduled to go to Udhampur and that railway tickets had already been booked

for their travel. Shakti Kanwar called the complainant twice and told him that she was being harassed for dowry and the accused were planning to take her to Udhampur and would probably do away with her. On 23.12.2010, one Mohan Singh of Godawas called and told him that Kishan Singh had sent a message that he should reach Jodhpur immediately. He called on Shakti Kanwar's mobile but nobody answered. He put a call to Pradhuman Singh. A lady attended the call and told him that the family members had gone to hospital. At 4:15 P.M., Kishan Singh called him and asked him to reach Jodhpur immediately. He reached to Kishan Singh's house at Jodhpur. Malam Singh, Kishan Singh, Pradhuman Singh and others were present there and told him that Shakti Kanwar had taken poison and had passed away. On the next morning, post mortem was conducted and thereafter the dead body was cremated. The complainant claims that he went into shock owing to his daughter's untimely death. The last rites were performed and thereafter, the FIR was lodged. The police thoroughly investigated the matter and came to the conclusion that the deceased Shakti Kanwar was kept by her in-laws in an absolutely free atmosphere at the matrimonial home. She was allowed to go to her father's house as and when she desired. She was also permitted to continue her higher education and appeared in the R.A.S. preliminary exams in which she failed. She became perturbed by the failure upon which, the in-laws prepared a tour programme so that her environment could be changed. 3 tier AC coach Railway tickets for going to Jammu were booked for Pradhuman Singh and Smt. Shakti Kanwar. On 23.12.2010, Shakti Kanwar talked to her parents. Her mother complained of ill health and told her not to go to Udhampur. Shakti Kanwar asked her husband Pradhuman Singh to cancel the tour on which he became enraged and abused her and pressurised her that she had to accompany him to Udhampur. Due to this, Shakti Kanwar became highly perturbed and consumed celphos tablets as a result whereof, she expired. Charge-sheet was filed against the husband Pradhuman Singh alone for the offences under Sections 498A and 306 IPC. The remaining persons arraigned in the FIR were found not responsible for the offences. The trial Court framed charges against Pradhuman Singh for the aforesaid offence by order dated 27.11.2014.

5. After examination of 9 witnesses at the trial, the prosecution filed an application under Section 319 Cr.P.C. for summoning the left out matrimonial relatives i.e. the petitioners herein as additional accused which was allowed by order dated 27.11.2014 as above. Being aggrieved by the said order, the petitioners have approached this Court by way of the instant revision.

6. Shri Vineet Jain, learned counsel for the petitioners, contended that, admittedly the petitioner Kishan Singh was not present in the house when Smt. Shakti Kanwar consumed poison. He was performing duties in the forest department at his posting place at Sirohi. He contended that so far as the petitioner no.2 Smt. Shilpa Kanwar is concerned, she is the married sister-in-law of the deceased. She was also not present in the house when the incident took place. Thus, as per him the trial Court was totally unjustified in summoning her to face trial as an additional accused in the case. He submitted that the trial

Court, while passing the impugned order has drawn distinction in the case of the freshly summoned petitioner Shilpa Kanwar but despite that, while passing the impugned order, Shilpa Kanwar the married sister-in-law who was not even present at the spot at the time of incident has without any reason been summoned as an additional accused. He thus urged that the impugned order is grossly illegal and deserves to be quashed and set aside.

7. Per contra, learned P.P. as well as learned counsel for the complainant respondent no.2 vehemently opposed the submissions advanced by the learned counsel for the petitioner and urged that in his FIR as well as in the testimony given before the trial Court, the complainant has clearly alleged that the accused petitioners also indulged in meting out harassment to the deceased in relation to demand of dowry. The mother-in-law Smt. Pushpa Kanwar @ Usha went to the extent of getting the ornaments given at the time of marriage checked by a goldsmith. The evidence of the prosecution witnesses is consistent so as to establish complicity of the petitioners who have been summoned as additional accused for the offences. They thus contended that the impugned order is perfectly just and legal and does not call for any interference whatsoever.

8. Heard learned counsel for the parties and perused the material available on record.

9. So far as the petitioner no.3 Kishan Singh is concerned, two allegations levelled against him as disclosed from the prosecution evidence are (a) that he remained indifferent when Malam Singh demanded dowry from the complainant at the time of marriage and (b) He became annoyed when the demand of a car made by Pradhuman Singh at the time of marriage of Shivdutt Singh was not acceded to. Other than these two allegations, the petitioner Kishan Singh has not been alleged to have participated in the so-called cruelty meted out to the deceased on account of demand of dowry in the entire prosecution evidence. Admittedly, Kishan Singh was working in the forest department and was posted at Sirohi. He was not present at his house on the fateful day when Shakti Kanwar committed suicide. The complainant himself stated that whenever Shakti Kanwar complained to him about anything, he would contact Kishan Singh and things would be sorted out thereafter. Thus, the status of Kishan Singh in the case is definitely distinguishable from that of the other co-accused.

10. So far as the petitioner no.2 Smt. Shilpa Kanwar is concerned, she is the married sister-in-law (nanad) of the deceased and lives with her husband at Village Ransi. It is a common knowledge that the entire families are roped into cases of dowry harassment without any distinction whatsoever. On going through the entire prosecution evidence, this Court is satisfied that the main thrust of the prosecution allegations regarding the harassment meted out to the deceased on account of demand of dowry is against the mother-in-law Smt.Pushpa Kanwar @ Usha and the uncle-in-law Malam Singh. This Court is of the firm opinion that participation of Smt.Shilpa Kanwar, married sister-in-law and Kishan Singh, the father-in-law of the deceased, in the alleged cruelty meted out to her on account

of demand of dowry is not even remotely established so as to justify their inclusion to face trial in the case as additional accused. However, there is ample evidence available on record so as to justify the summoning of the petitioners Malam Singh and Pushpa Kanwar to face trial along with the charge-sheeted accused Pradhuman Singh.

11. In this background and keeping in view the ratio laid down by the Hon"ble Supreme Court in the cases of (1) AIR 2009 SC (Supp) 2950 "Neelu Chopra v. Bharti", (2) AIR 2010 S.C. 3363 "Preeti Gupta v. State of Jharkhand" and (3) AIR 2013 SC 181 "Geeta Mehrotra v. State of U.P.", this Court is of the firm opinion that the trial Court was not justified in directing summoning of the petitioner no.2 Smt. Shilpa Kanwar and petitioner no.3 Kishan Singh as additional accused in the case for facing trial with the charge-sheeted accused Pradhuman Singh while exercising powers under Section 319 Cr.P.C. However, the order is totally justified to the extent of the accused petitioners Malam Singh & Smt. Pushpa Kanwar @ Usha.

12. Resultantly, the instant revision deserves to be and is allowed in part. The order dated 27.11.2014 passed by learned Additional Sessions Judge (Women Atrocities Cases), Jodhpur is maintained to the extent of the petitioner no.1 Malam Singh & petitioner no.4 Smt. Pushpa Kanwar @ Usha. However, the same is quashed to the extent whereby, the petitioners no.2 & 3 ? Smt. Shilpa Kanwar and Kishan Singh were directed to face trial for the offence under Section 498A IPC.

13. Stay petition also stands disposed of.