
(2008) 09 AHC CK 0272
In the Allahabad High Court
Case No : Criminal Revision No. 2620 of 2004

Raj Kumar and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 30-09-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 209, 216, 319
Penal Code, 1860 (IPC) — Section 304B, 306, 498A

Citation : (2009) 1 ACR 151

Hon'ble Judges : S.N.H. Zaidi, J

Bench : Single Bench

Advocate : Nisaruddin, for the Appellant; Ramanand Pandey, Somil Srivastava, K.C. Shukla and A.G.A., for the Respondent

Judgement

S.N.H. Zaidi, J.—This is a revision against the order dated 3.6.2004, passed by Addl. Sessions Judge, F.T.C. No. 4, Kanpur Dehat summoning the revisionists for trial on the application moved u/s 216, Cr. P.C., in S.T. No. 454 of 2003, State v. Rati Ram and Anr.

2. The relevant facts which gave rise to this revision, in brief, are that two sons of accused Rati Ram ; namely, Raj Kumar and Mulayam Singh, were married to Nirmala and Anita respectively. Both Raj Kumar and Mulayam Singh were working in a garment factory in Gurgaon and as they were not allowed frequent leaves, they could occasionally visit their village. Nirmala and Anita, who were residing in their matrimonial home in village Bhau Singh Ka Purva within the Police Station Mangalpur of District Kanpur Dehat, used to go to Mangalpur to talk with their husbands on telephone. On 4.3.2003, both of them had gone to make telephone calls and when they returned from Mangalpur, they were rebuked by Rati Ram and his wife Ram Kali that it was not known whom they talk to on telephone and due to their activities they were being defamed in the society and asked them to die. On 5.3.2003, both the ladies committed suicide at about 10.00 a.m. by hanging themselves with the ceiling after bolting the room

from inside. The information of the incident was given to the concerned police, who forcibly opened the door of the room and put down the dead bodies and after preparing inquest report, the dead bodies were sent for post mortem examination. In their post mortem reports the cause of death was reported as "asphyxia as a result of hanging". The F.I.R. of the incident was lodged by Bhaiya Lal, father of deceased Anita on 30.3.2003, whereupon a case u/s 306, I.P.C. was registered against Rati Ram and his wife Ram Kali. The police, after investigation, submitted charge-sheet against both of them under the said section. The Magistrate took cognizance and committed the case for trial to the Court of Sessions. The case was transferred for disposal to Addl. Sessions Judge, F.T.C. No. 4 before whom P.W. 1 Suraj Prasad, the father of deceased Nirmala, has stated in his examination that after the marriage of Nirmala with Raj Kumar, at the time of chauth ceremony when he had gone to bring Nirmala back then Rati Ram, Smt. Ram Kali, Raj Kumar, Mulayam and Asha Devi (sister of Raj Kumar) demanded Rs. 12,000 and a golden chain, else refused to let Nirmala go with him and then a golden ring was given to them and Nirmala was allowed to go. He has also said that her daughter was subjected to mental and physical torture on account of demand of dowry. An application was then moved by him u/s 216, Cr. P.C. for alteration of charge under Sections 498A and 304B, I.P.C. The learned Addl. Sessions Judge allowed that application by the impugned order and ordered for framing of charges of the said sections against accused Rati Ram and Ram Kali in the alternative and also ordered for summoning Raj Kumar, Mulayam Singh and Asha Devi for trial with the observations that a prima facie case under Sections 498A and 304B, I.P.C. is made out against them.

3. Feeling aggrieved with the said order, this revision has been preferred by Raj Kumar, Mulayam Singh and Asha Devi only.

4. I have heard the learned A.G.A. for the State as nobody appeared either for the revisionists or for opposite party Nos. 3 and 4 and perused the materials on record.

5. The impugned order has been given on an application moved u/s 216, Cr. P.C. which deals with alteration of charge and empowers the Court to alter or add the charge during the trial at any time before the judgment is pronounced. It does not provide that the Court may summon any person as accused after the charge is altered or added. The trial Judge has, therefore, committed grave illegality in summoning the revisionists for trial under Sections 498A and 304B, I.P.C. in exercise of powers u/s 216, Cr. P.C. The Sessions Judge can take the cognizance of an offence against a person only on the committal of the case u/s 209, Cr. P.C. or can summon any person for trial with the accused in the given circumstances u/s 319, Cr. P.C. The circumstances, as mentioned above, do not warrant the summoning of the revisionist u/s 319, Cr. P.C. also. The impugned order is, thus, patently illegal and cannot be allowed to sustain.

6. Besides the illegality of the order as pointed out above, the impugned order can also not be allowed to stand in the light of the undisputed facts and

circumstances of the case. As described earlier, both the daughters-in-law of the accused Rati Ram and Ram Kali had committed suicide by hanging themselves after shutting the door from inside which was forcibly opened by the police. It has been admitted by P.W. 1 Suraj Prasad that the police had taken down the dead bodies from the ceiling. These facts are corroborated from the inquest reports of the dead bodies prepared by the Naib Tehsildar. In the post mortem reports the doctor has opined that the cause of death was asphyxia as a result of hanging. In view of this, it cannot be presumed that the ladies were killed and then their bodies were hanged, as has been stated by P.W. 1. This witness has not said a word that any of the revisionists was present in the village on the date of occurrence. In the F.I.R. Bhaiya Lal, the father of deceased Anita, had specifically mentioned that both Raj Kumar and Mulayam Singh were in Gurgaon. There is nothing on record which could show the presence of Asha Devi also on the date and place of occurrence. The presence of the revisionists at the place of occurrence, therefore, does not make out.

7. P.W. 1 has stated that one of the walls of the room in which both the ladies had died, was about 2 ft. lower than the ceiling and anybody could easily go in and come out of the room through it. In the site plan prepared by the Investigating Officer the said wall has been shown only 6 inches below the ceiling. No one can pass through such a space. Thus, it is highly improbable that any one would have gone into the room through that space and come out again after bolting the room from inside. The above circumstance, rules out the possibility of the killing of both the women by some one else.

8. P.W. 1 Suraj Prasad has also stated that at the time of the marriage of Nirmala, her husband Raj Kumar and his parents, brother and sister had demanded Rs. 12,000 and a golden chain at the time of chauth ceremony which had taken place in May, 2002. Even assuming the allegation as correct, yet it cannot be presumed that Nirmala would have been done to death on account of that demand in March, 2003 alongwith another lady Anita in respect of whom there is no such allegation on record. There is absolutely no reason as to why Anita would be killed alongwith Nirmala if the demand of dowry was made to the parents of Nirmala. The above circumstance shows that neither the two ladies were killed nor their death was related with any demand of dowry or harassment on account thereof.

9. In view of the above it is evident that the impugned order has not been passed on proper appraisal of the evidence on record as well as of the facts and circumstances of the case. The impugned order is suffering not only with the material irregularity and illegality but it has also been passed in utter disregard to the provisions of law and jurisdiction vested in the trial Judge.

10. Consequently, this revision is allowed. The impugned order dated 3.6.2004, so far as it relates to the revisionists, is quashed. The record of the lower court be sent back to it for proceeding with the trial in accordance with law. The trial has already been delayed. The trial court is, therefore, directed to dispose of the

case expeditiously, preferably within 6 months.

Office to send the record of the lower court immediately.