
(2018) 01 AHC CK 0066
In the Allahabad High Court
Case No : 2828 of 2012

Smt. Kalli & Others

APPELLANT

Vs

State Of U.P. & Another

RESPONDENT

Date of Decision : 12-01-2018

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 319](#) - Power to proceed against other persons appearing to be guilty of offence
[Indian Penal Code, 1860](#), [Section 498A](#)

Citation : (2018) 01 AHC CK 0066

Hon'ble Judges : Amar Singh Chauhan

Bench : Single Bench

Advocate : N.I. Jafri, B.B. Dubey

Final Decision : Allowed

Judgement

1. Heard Shri N.I. Jafri, learned counsel for the revisionists, learned A.G.A. for the State and perused the records of the case. None appears on behalf of opposite party no. 2.

2. The revisionists Smt. Kalli (now dead) and three others have preferred this revision against the judgement and order dated 18.7.2012 passed by the Additional District and Sessions Judge, Hamirpur in S.T. No. 1 of 2011 (State Vs. Naseer Uddin alias Bachcha), under Sections 498A, 304B I.P.C. and Section 3/4 of the Dowry Prohibition Act, Police Station Maudaha, District Hamirpur, whereby the application moved by the prosecution under Section 319 Cr.P.C. was allowed and revisionists were summoned to face the trial under Sections 498A, 304B I.P.C. and Section 3/4 of the Dowry Prohibition Act.

3. Brief facts which give rise to the revision are that first information report was lodged on 21.8.2010 with the allegation that the marriage of the granddaughter Shabnam Parveen alias Rani was performed with the Naseer Uddin alias Bachcha on 28.12.2008 in accordance with Muslim custom and rites and in the marriage

sufficient amount of dowry i.e. motorcycle, television, refrigerator, sofa set and other household items were given but the husband and inlaws were not satisfied, and by raising the demand of Maruti Car, they used to torture her. On 21.8.2010, his granddaughter was done to death after choking her neck by rope. After concluding the investigation, Investigating Officer submitted the chargesheet against husband of the deceased namely Naseer Uddin alias Bachcha and rest accused including revisionists were exonerated. During trial, application moved by the prosecution under Section 319 Cr.P.C. was allowed and revisionists were summoned to face the trial under Sections 498A, 304B I.P.C. and Section 3/4 of the Dowry Prohibition Act.

4. Feeling aggrieved, the revisionists came up before this court in this revision.

5. It is submitted by learned counsel for the revisionists that the main accused Naseer Uddin alias Bachcha who was the husband of the deceased Shabnam Parveen alias Rani has been acquitted of the charges by the Additional District and Sessions Judge, Hamirpur vide judgement and order dated 24.10.2017. The said judgement has become final and it has not been challenged before the Hon"ble Court, therefore, this revision may kindly be pleased to allow and set aside the impugned order dated 18.7.2012 on the basis of principle of "stare decisis". It is further submitted that the power under Section 319 Cr.P.C. is an extraordinary power and the said power should be exercised sparingly and cautiously when the evidence is such that will end into conviction but no such satisfaction was recorded by the trial court.

6. Per Contra, learned A.G.A. for the State concede that the main accused Naseer Uddin alias Bachcha who is the husband of the deceased has been acquitted of the charges leveled against him for the offence of dowry death but contends that acquittal of some accused is not a ground for acquitting others who did not face the trial. It is further contended that the father of the deceased and another witness did not support the prosecution case with the result that the main accused got scot free of the charges.

7. Before adverting to the claim of the parties, it is necessary to reproduce Section 319 Cr.P.C. "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 proceedings in respect of such person shall be commenced a fresh, and the witnesses reheard;

(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."

8. In the case of Hardeep Singh vs. State of Punjab and others, 2014 (1) JIC 539 (SC), it has been observed that "though only a prima facie case is to be established from the evidence led before the court not necessarily tested on the anvil of Cross Examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 Cr.P.C. In Section 319 Cr.P.C. the purpose of providing if ""it appears from the evidence that any person not being the accused has committed any offence" is clear from the words "for which such person could be tried together with the accused." The words used are not ""for which such person could be convicted". There is, therefore, no scope for the Court acting under Section 319 Cr.P.C. to form any opinion as to the guilt of the accused."

9. In the case is hand, first information report was lodged against the husband and inlaws but the Investigating Officer after concluding the investigation, submitted the chargesheet against the main accused Naseer Uddin alias Bachcha only, who is the husband of the deceased as there is no specific overt act levelled against the revisionists. As per postmortem report, cause of death was due to asphyxia as a result of antemortem hanging and ligature mark situated anterior on neck with oblique in position and noncontinuous; margins of ligature mark abraded which suggests that death was suicidal. The husband is responsible for security, maintenance and welfare of his wife in which he has been failed and his wife lost her life. No specific act is said to be assigned to the revisionists. Since the main accused Naseer Uddin alias Bachcha who is the husband of the deceased has been acquitted vide judgement and order dated 24.10.2017, the revisionists have got to claim that they should be given benefit of principle of "stare decisis" and impugned order should be quashed.

10. In the case of Diwan Singh Versus State, 1965 (2) SIC 118, wherein it has been held that if the two persons are prosecuted, though separately under the same charge of offence having been committed in the same prosecution and on the basis of the same evidence and if one of them is acquitted for whatever may be reason and, however, is convicted then it will create an anomalous position in

law and is likely to save the confidence of the people in the administration of justice.

11. The Full Bench of the Kerala High Court in the case of Moosa Vs. Sub Inspector of Police, 2006 (1) KLT 552, has held that acquittal of some of the accused is not a ground for acquitting other coaccused who did not face trial. But, if the foundation of the case itself has been shattered in the earlier case and no purpose will be served by allowing the accused who did not face trial to undergo the same trauma, then the acquittal of the coaccused can be taken as a ground for acquitting the accused who did not face trial. Applying that principle, it is seen from this case that the Court below, on appreciation of evidence in two trials, came to the conclusion that evidence adduced from the side of the prosecution is not sufficient to come to the conclusion that the accused have committed the offences alleged and on that ground acquitted the accused persons who faced trial. So, under the circumstances, no purpose will be served by allowing the case to proceed with, in view of the fact that it will only cause wastage of judicial time and so the petitioner is entitled to get the benefit of acquittal of coaccused and he is entitled to get acquittal.

12. In view of what has been discussed above, it is clear that there is no clinching evidence to presume that the proceeding would culminate into conviction. Moreover, the main accused has been acquitted on merit. The revisionists are also entitled to get benefit of "stare decisis". Therefore, the impugned order is not justified and is liable to be set aside.

13. In view of what has been discussed above, the submissions of the parties, legality, propriety and correctness of the order impugned, the revision is allowed and the impugned order by which the revisionists were summoned to face the trial under Sections 498A, 304B I.P.C. and Section 3/4 of the Dowry Prohibition Act is hereby set aside and the application under Section 319 Cr.P.C. is rendered as "non est".

14. There is no order for cost.