

(2010) 11 AHC CK 0052

In the Allahabad High Court

Case No : Criminal M.W.P. No's. 15518 and 19885 of 2010

Smt. Ram Beti and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 18-11-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 306

Citation : (2011) 2 ACR 1639

Hon'ble Judges : Ravindra Singh, J;Arvind Kumar Tripathi, J

Bench : Division Bench

Advocate : Indra Mani Tripathi, for the Appellant; A.G.A., for the Respondent

Judgement

Ravindra Singh and Arvind Kumar Tripathi, JJ.—The Petitioners have preferred two writ petitions seeking the same relief. The Criminal Misc. Writ Petition No. 15518 of 2010 has been filed by the Petitioner Smt. Ram Beti and Anil Kumar, it has been filed by their Counsel Sri P.K. Singh, it has been reported on 17.8.2010, on 27.7.2010 it was ordered to be listed on 30.8.2010 at the request of Learned Counsel for the Petitioners. During pendency of the above mentioned writ petition, the Petitioners Om Vati and Anil Kumar filed another writ petition, it has been filed by their Counsel Sri Indra Mani Tripathi. The Petitioner Anil Kumar is common in both the above mentioned writ petitions. Both the writ petitions have been filed with a prayer:

1. Issue a writ, order or direction in the nature of certiorari quashing the F.I.R. dated 31.7.2010 (Annexure-I) as Case Crime No. 560 of 2010 u/s 302, I.P.C., Police Station Hathras Gate, district Mahamayanagar (Hathras).

2. Issue a writ, order or direction in the nature of mandamus directing the Respondents not to arrest the Petitioners in pursuance of the F.I.R. dated 31.7.2010 as Case Crime No. 560 of 2010 u/s 302, I.P.C., Police Station Hathras Gate, district Mahamayanagar (Hathras).

2. During pendency of the Writ Petition No. 15518 of 2010 the Petitioners Anil

Kumar and Om Vati filed the Writ Petition No. 16749 of 2010 with a prayer to quash the order dated 28.8.2010, passed by Learned C.J.M., Mahamaya Nagar where by application filed by the Petitioner to issue the certified copy of the dying declaration of the deceased was rejected and to direct the authority concerned to provide certified copy of the dying declaration of the deceased recorded on 28.7.2010 by Tahsildar, Kol, Aligarh and to direct not to take any coercive measures and not to harass the Petitioners in Case Crime No. 560 of 2010 under Sections 302 and 306, I.P.C., P.S. Hathras Gate, district Hathras (Maha Maya Nagar), this writ petition was disposed of by the another Bench of this Court on 8.9.2010 with a direction.

3. In above mentioned writ petitions the relief sought is common, therefore, both the writ petitions are being disposed of by a common order.

4. The facts in brief of this case are that F.I.R. has been lodged by Vishambhar Dayal on 31.7.2010 at 3.10 p.m. in respect of the alleged incident dated 27.7.2010. It is alleged that the marriage of the deceased Smt. Prem Lata was solemnized with the Petitioner Anil Kumar about 14 years prior the alleged incident. The Petitioner Anil Kumar and the Petitioner Ram Beti were mentally torturing the deceased since her marriage. In the night of 27.7.2010 by pouring petrol/ kerosene upon the deceased, she was set on fire. The villagers saw the smoke coming out from the house of the Petitioners, they shouted then the deceased was taken to Aligarh Medical College, one of the villagers gave the information to the first informant on 28.7.2010 that the deceased was burnt, she was admitted in medical college then he came to the medical college and saw the deceased in precarious condition. She told the first informant that some inflammable substance (kerosene) was poured upon her and ignition was made by the matchbox. After five minutes of her declaration she succumbed to her injuries. According to the statement of the deceased it was clear that in a pre-planned manner the deceased was done to death. According to the post-mortem examination report the deceased has sustained superficial to deep burn all over the body except both the soles. The cause of death was due to shock as a result of ante-mortem burn injuries. It is alleged that the dying declaration of the deceased was also recorded by Naib Tahsildar, Kol, Aligarh on 28.7.2010 at 9.45 a.m. to 10 a.m. in which she stated that she was caught by fire accidentally when she was going to cook the food.

5. Heard Sri Indra Mani Tripathi, Learned Counsel for the Petitioners and Learned A.G.A. for the State of U.P.

6. It is contended by Learned Counsel for the Petitioners that the marriage of the deceased was solemnized with the Petitioner Anil Kumar on 19.6.1995, from their wedlock two children namely Shiwang Kaushik aged about 13 years and Gaurang Kaushik aged about seven years have been born. Both the children are studying in Sikseria Sushila Devi Public School, Hathras. The Petitioner Ram Beti is mother-in-law of the deceased. But in CrI. Misc. Writ Petition No. 19885 of 2010 the Petitioner Om Vati is mentioned as mother-in-law of the deceased

where as the name of Om Vati is not mentioned in F.I.R. The husband's name of both the Petitioners Om Vati and Ram Beti is the same, i.e., late Rajendra Prasad. The allegation made in F.I.R. that the deceased was mentally tortured by her husband and mother-in-law since her marriage is absolutely false, in support of this allegation there is no material. There is no motive or intention to commit the alleged offence. The deceased sustained burn injuries accidentally when she was cooking the food, she was admitted to the hospital immediately to provide medical aid, she was referred to District Hospital, Aligarh where she was taken to proper medical aid but unfortunately, she succumbed to her injuries on 28.7.2010. The dying declaration of the deceased has been recorded on 28.7.2010 at 9.45 a.m. to 10 a.m. by Naib Tahsildar, Kol, district Aligarh in which she clearly stated that she was aged about 32 years. On 27.7.2010 at about 10 a.m. she ignited the gas chulha by the matchbox but gas pipe was burst, the kitchen was caught by fire, due to that fire her clothes and body were burnt. The fire was spread due to her negligence, for it no family member was responsible, she was beloved by her husband and mother-in-law. She was brought for medical treatment by her husband Sushil Sharma and other family members. According to the dying declaration of the deceased recorded by Learned Naib Tahsildar, all the allegations made in F.I.R. have become false, in such circumstances no offence is made out against the Petitioners. Therefore, the impugned F.I.R. dated 31.7.2010 may be quashed and the Respondent No. 2 may be directed not to arrest the Petitioners and not to take any coercive measures against them.

7. In reply of the above contention, it is submitted by Learned A.G.A. that the allegation made in the F.I.R. dated 31.7.2010 the deceased was married with Petitioner Anil Kumar about 14 years prior to the alleged incident, she was tortured by her husband and mother-in-law from the date of her marriage. In the night of 27.7.2010 after pouring the kerosene she was set on fire. According to the post-mortem examination report the deceased has sustained superficial to deep burn injury all over the body except soles. The allegations are prima facie disclosing the cognizable offence. So far as the dying declaration is concerned, it is a piece of evidence, it is not conclusive in nature, it may be proved at the stage of the trial. On the basis of this dying declaration the F.I.R. may not be quashed. The dying declaration itself is not reliable because the certificate has not been issued by C.M.O., simply it has been certified that patient was fully conscious during declaration, it does not mean that the patient was in fit condition to give the declaration. It is an admitted case of the Petitioners as well as the prosecution that Petitioner Anil Kumar is the husband of the deceased but in dying declaration the deceased disclosed Sunil Sharma as husband where as Sunil Sharma is not husband of the deceased. The dying declaration dated 28.7.2010 is wholly unreliable. The present petition is devoid of merits, the same may be dismissed.

8. Considering the facts, circumstances of the case, impugned F.I.R. dated 31.7.2010 and dying declaration of the deceased dated 28.7.2010 it appears that

the allegation made in F.I.R. prima facie disclosing the commission of cognizable offence. The declaration dated 28.7.2010 contradicting the version of the F.I.R. may be piece of the evidence, it requires proof at the stage of the trial. It is not of conclusive in nature for the purpose of quashing the F.I.R. The Learned A.G.A. has submitted that the dying declaration dated 28.7.2010 is not reliable because the proper certificate to show that the patient was in fit condition to record her declaration is not issued by the doctor and the name of the husband of the deceased as mentioned therein Sunil Sharma whereas according to the prosecution and petition filed by Anil Kumar the name of her husband is Anil Kumar. We do not feel it proper to express any opinion on the genuineness of the dying declaration, but we are of the view that at this stage we have to consider the allegation made in F.I.R. as true at this stage, for the purpose of constitution of the offence. The allegations are prima facie constituting the cognizable offence. There is No. good ground to quash the impugned F.I.R. dated 31.7.2010. Prayer for quashing the impugned F.I.R. dated 31.7.2010 in Case Crime No. 560 of 2010 under Sections 302 and 306, I.P.C., P.S. Hathras Gate, district Mahamaya Nagar is hereby refused.

9. However, it is directed that in case the Petitioners appear before the courts below within 30 days from today and apply for bail, the same shall be heard and disposed of expeditiously by the courts below in accordance with law.

10. With this direction, both the writ petitions are disposed of.