
(2010) 05 AHC CK 0397
In the Allahabad High Court
Case No : Criminal Revision No. 597 of 1998

Sukkhū Raidas and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 13-05-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 319
Penal Code, 1860 (IPC) — Section 306, 498A

Citation : (2010) 05 AHC CK 0397

Hon'ble Judges : Ram Autar Singh, J

Bench : Single Bench

Advocate : Shree Ram Gupta, Abha Gupta and Syed Wajid Ali, for the Appellant;
M.A. Qadeer and A.G.A., for the Respondent

Judgement

Ram Autar Singh, J.—This revision has been directed against the order dated 24.3.1998, passed by Shri P.N. Rai, the then IVth Additional Sessions Judge, Banda in S.T. No. 155 of 1997 arising out of Case Crime No. 324 of 1996 under Sections 498A and 306, I.P.C., P.S. Mataundh, district Banda, whereby the revisionists have been summoned to face trial in above session trial.

2. I have heard Shri Ram Gupta, learned Counsel for the revisionists, learned A.G.A. for Respondent No. 1 on this revision and perused the record.

3. On perusal of record it transpires that S.T. No. 155 of 1997 under Sections 498A and 306, I.P.C. arising out of Case Crime No. 324 of 1996 of P.S. Mataundh, district Banda was pending in the court of Sessions Judge, Banda, in which an application was moved by the public prosecutor on 24.3.1998 u/s 319, Code of Criminal Procedure with prayer to summon the revisionists, namely, Sukkhū Raidas, Deena, Paan Kaur, Jasodiya and Kishora for trial, against which objections were also filed on behalf the accused Babbu. The learned Sessions Judge after having heard learned Counsel for the parties found that a prima facie case was made out against the revisionists for summoning them to face trial in view of the statement of prosecution witness, namely, P.W. 1 Bindra Prasad. The

learned court below on the basis of statement of above witness summoned the revisionists vide order dated 24.3.1998, aggrieved by which, the revisionists filed this revision.

4. The learned Counsel for the revisionists has contended that the learned Sessions Judge did not pass speaking order and he summoned the revisionists on the basis of statement of P.W. 1, Bindra Prasad, while he nowhere stated that there was demand of dowry from the side of revisionists, after the alleged panchayat was convened and thus no case u/s 498A, I.P.C. was made out against them. It is further contended that the deceased herself stated in her dying declaration that her husband was demanding Rs. 10,000 as dowry and when she refused to arrange the said amount, then her husband left the house and her mother-in-law set her on fire at about 4.00 p.m. and thus from her dying declaration no allegation of harassment was levelled against the revisionists and the police had legally filed final report against the revisionists. There was allegation against husband, who might be convicted on the basis of important piece of evidence, there could not be any possibility of conviction of the revisionists but the prosecution moved the said application on the basis of statement of P.W. 1, Bindra Prasad, who was not cross-examined by learned Counsel for the accused.

5. The learned Counsel for the revisionists has placed reliance on a decision of this Court in *Satendra Kumar v. State of U.P.* and Anr. 2010 (2) ADJ 185 : 2010 (1) ACR 991 (SC), in which this Court has held that the Hon'ble Apex Court in *Mohd. Shafi v. Mohd. Rafiq* and Anr. 2007(58) ACC 254 : 2007 (2) ACR 2268 (SC), has observed that before a Court exercises its discretionary jurisdiction in terms of Section 319, Code of Criminal Procedure, it must arrive at the satisfaction that there exists a possibility that the accused so summoned in all likelihood would be convicted. Such satisfaction can be arrived at inter alia upon completion of the cross-examination of the witnesses. Similar view has already been expressed by the Apex Court in *Krishnappa v. State of Karnataka* (2004) SCC 792, but the Hon'ble Apex Court in *Hardeep Singh v. State of Punjab* and Ors. 2009 (65) ACC 768, has referred the matter to the larger Bench for consideration of two questions. No subsequent principle has been laid down by the Hon'ble Apex Court nor above reference has been decided so far and thus the view expressed by the Hon'ble Apex Court in *Mohd. Shafi's* case is liable to be accepted at this stage, in which, it has been specifically observed that the application moved u/s 319, Code of Criminal Procedure should not be allowed on the basis of statement of prosecution witnesses without their being cross-examined.

6. The learned Counsel for the revisionists has further contended that because of torture of the deceased's husband, namely, Babbu, she committed suicide by setting herself on fire and a case under Sections 498A and 306, I.P.C. was made out against her husband Babbu.

7. The learned Counsel for the revisionists has further contended that the power

to summon an accused is an extraordinary power conferred on the Court. It is discretionary and should be used very sparingly and only if compelling reasons exist for taking cognizance against the other person against whom action has not been taken. Though an order u/s 319, Code of Criminal Procedure summoning a person can be made on fulfilment of the conditions stipulated therein even when the proceedings had earlier been quashed.

8. In the present case, P.W. 1, Bindra Prasad was not cross-examined and no opportunity to cross-examine this witness was afforded by the learned court below to the defence counsel as in view of statement nothing was mentioned by the court below to this effect that an opportunity was afforded to cross-examine this witness. This witness, in his statement, stated that the victim disclosed before him that on account of non-fulfilment of demand of dowry her husband, father-in-law, mother-in-law and other family members used to harass and belabour her, but this witness was not afforded an opportunity to be cross-examined by the court below, due to which these revisionists could not be summoned to face trial in exercise of power u/s 319, Code of Criminal Procedure in view of above propositions of law laid down by the Hon'ble Apex Court. Moreover, the learned Additional Sessions Judge passed cryptic order dated 24.3.1998 without mentioning the averments made by witness in his statement and reasons for summoning the revisionists, the victim in her dying declaration levelled allegations of harassment against the husband only and the police had legally and rightly filed final report against the revisionists.

9. The learned court below should have considered her dying declaration because the same was very important piece of evidence, upon which her husband might be convicted but the court below merely summoned the revisionists to face trial without mentioning proper grounds. The learned court below also failed to mention in the impugned order as to whether the offences against the revisionists was made out and the evidence adduced on behalf of the prosecution was sufficient to convict the revisionists. In the absence of such findings the impugned order suffers from illegality and infirmity.

10. The learned Counsel for the revisionists has further contended that had the revisionists set the deceased on fire then they would not have taken her to the Hospital for treatment and would not have informed the Respondent No. 2. The revisionists tried their best to save her life but unfortunately she could not be saved and after her death Respondent No. 2 alongwith parent and other persons participated in the cremation but after sometime with due consultation deliberately roped the entire family in this case, while the revisionists used to live at distance from the place of occurrence and they had nothing to do with the demand of dowry.

11. The learned Counsel for the revisionists has further contended that the prosecution witnesses in their statements u/s 161, Code of Criminal Procedure did not level any allegation against the revisionists and thus there was no material evidence available on record to proceed against the revisionists and no

prima facie case was made out against the revisionists.

12. From perusal of entire material available on record as well as statement of P.W. 1, Bindra Prasad, the learned court below committed gross illegality and material irregularity in passing the order under revision and no reason was mentioned therein to proceed against the revisionists. P.W. 1, Bindra Prasad was not cross-examined by the defence counsel and in absence of the same his bald statement was not sufficient for summoning the revisionists in exercise of power u/s 319, Code of Criminal Procedure in view of above proposition of law.

13. Under these circumstances, this revision deserves to be allowed and the impugned order is liable to be set aside.

14. Consequently, this revision succeeds and is allowed as well as the order dated 24.3.1998, passed by the learned Additional Sessions Judge on application moved u/s 319, Code of Criminal Procedure in S.T. No. 155 of 1997 is set aside. The learned Additional Sessions Judge is directed to get P.W. 1, Bindra Prasad cross-examined by the accused persons and thereafter he may further proceed in this regard, however, the court below will not be debarred from passing any order in exercise of power u/s 319, Code of Criminal Procedure in the light of above propositions of law laid down by the Hon"ble Apex Court.