

(2017) 12 AHC CK 0014
In the Allahabad High Court
Case No : 3566 of 2017

Thakurdeen & 2 Others

APPELLANT

Vs

State Of U.P. & Another

RESPONDENT

Date of Decision : 07-12-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 319](#), [Section 437\(1\)](#) - Power to proceed against other persons appearing to be guilty of offence - When bail may be taken in case of non-bailable offence
[Indian Penal Code, 1860](#), [Section 302](#), [Section 323](#), [Section 506](#), [Section 504](#), [Section 498-A](#) - Punishment for murder - Punishment for voluntarily causing hurt - Punishment for criminal intimidation - Intentional insult with intent to provoke breach of the peace
[Dowry Prohibition Act, 1961](#), [Section 3](#), [Section 4](#) - Penalty for giving or taking dowry - Penalty for demanding dowry

Citation : (2017) 12 AHC CK 0014

Hon'ble Judges : Vijay Lakshmi

Bench : Single Bench

Advocate : Rajiv Lochan Shukla, Om Prakash Singh, Sushil Kumar, Indra Pal Singh Rajpoot

Judgement

1. The present criminal revision has been preferred against the judgment and order dated 12.9.2017 passed by the learned Additional District and Sessions Judge/Fast Track Court No.I, District-Jalaun in Sessions Trial No.36 of 2016, (State Vs. Man Singh and others), arising out of Case Crime No.656 of 2015, under Sections 498-A, 302, 323, 504, 506 I.P.C. and Section ? of the Dowry Prohibition Act, 1961, P.S.-Aata, District-Jalaun.

2. Heard Shri Rajiv Lochan Shukla, Advocate on behalf of the revisionists and the learned A.G.A. appearing on behalf of State of U.P. on the point of admission and perused the record.

3. By the impugned order dated 12.9.2017, the court below has disposed of two applications together, the first being application number 36-Kha moved by the prosecution under Section 319 Cr.P.C. and the second being application number 37-Kha moved by the accused side for amendment of charge.

4. By application 36-Kha under Section 319 Cr.P.C., the prosecution had prayed to summon the revisionists to face trial along with the charge sheeted accused persons. The application 37-Kha was filed by those accused persons, who were already facing trial under Section 306 I.P.C. and Section 302 I.P.C. as alternative charge, with prayer to amend the charge on the ground that the charges under Sections 306 and 302 of I.P.C. cannot stand together in view of the law as laid down by Hon''ble Apex Court in Sangaraboina Sreenu Vs. State of A.P. (1997) 5 SCC 348. The court below allowed both the applications. Accordingly, while amending the charge, it struck out the charge under Section 306 I.P.C. and while allowing the application under Section 319 Cr.P.C., it summoned the revisionists to face trial under Sections 498-A,302/34 I.P.C. and 323/34 I.P.C.

5. The legality and correctness of the aforesaid order has been challenged by means of present revision interalia on the grounds that the court below has wrongly quashed the charge under Section 306 I.P.C. and has wrongly framed the charge under Section 302 I.P.C. despite the fact that the entire evidence clearly suggests that the deceased has committed suicide. The revisionists are in no way responsible for the alleged abetment of suicide because the revisionist no.1 is the Grand Father-in- law (Dadia Sasur) of the deceased and the revisionist nos.2 and 3 are the Devrani and Devar who are not the direct beneficiaries of the alleged dowry demand. Learned counsel for the revisionists has vehemently contended that while summoning the revisionists under Section 319 Cr.P.C., the court below has not mentioned anywhere about the degree of satisfaction required to summon a person under Section 319 Cr.P.C. despite the fact that the judgment passed by the Hon''ble Supreme Court in the case of Hardeep Singh Vs. State of Punjab, 2014 (2) SCC (Criminal) 87 has been referred by the court below in the impugned order.

6. The contention of learned counsel for the revisionists is that the law laid down by the Hon''ble Supreme Court in the Hardeep Singh's case has been totally ignored by the learned trial court as the learned trial court has neither discussed nor recorded any finding about the sufficiency of material and prima facie evidence attracting Section 302 I.P.C. against the revisionists in this case. Learned counsel for the revisionists has further contended that it appears that the learned court below has perused the case diary also before summoning the revisionists under Section 319 Cr.P.C. which is not permissible in law.

7. It is further contended that in the absence of any material to show that the offence under Section 302 I.P.C. has been committed by the revisionists, framing of charge under Section 302 I.P.C. against the revisionists directly, without even recording its satisfaction about the availability of prima facie evidence under Section 302 I.P.C. the summoning of the revisionists under Section 319 Cr.P.C. is

bad in law, therefore the impugned order cannot be sustained and is liable to be set-aside.

8. Reliance has been placed on the law laid down by the Hon''ble Apex Court in the case of Hardeep Singh Vs. State of Punjab, (2014)3 SCC 92 and also in the recent judgment rendered by the Hon''ble Apex Court in the case of Brijendra Singh and others Vs. State of Rajasthan, (2017)7 SCC 706.

9. Relying on the law laid down by Hon''ble Court in the case of Brijendra Singh (supra), learned counsel for the revisionists has contended that as the Hon''ble Apex Court in the aforesaid case has set aside the order, summoning the additional accused persons u/s 319 Cr.P.C., so the present revisionists are also entitled for the same treatment on the basis of the aforesaid law laid down by the Hon''ble Apex Court.

10. Per contra, learned A.G.A. has contended that the impugned order has been passed on the basis of the law as laid down by the Hon''ble Apex Court in the case of Hardeep Singh's case supra. The court below has summoned the revisionists after recording of the evidence of two witnesses of fact i.e. Malkhan Singh and Km.Sandhya Rathore. Learned A.G.A has further contended that Malkhan Singh has been cross-examined at length by the learned counsel appearing on behalf of the accused persons which is evident from the copy of his statement running into 33 pages and Km. Sandhya Rathore has also been cross-examined at length and a perusal of their statements clearly show that specific roles have been assigned to all the revisionists by both these witnesses. Learned A.G.A. has contended that as all the revisionists have been assigned some overt act in commission of crime, there was sufficient material before the trial court to summon the revisionists under Section 302 I.P.C. in exercise of its power under Section 319 Cr.P.C. and also for altering the charge from Section 306 to 302 I.P.C. On the aforesaid grounds, learned A.G.A. has contended that there is no illegality or irregularity in the order impugned, requiring any interference by this court and the revision is liable to be dismissed at the admission stage itself.

11. Considered the rival submission advanced by the learned counsel for the parties.

12. In the case of Hardeep Singh cited above, the Hon''ble Apex Court has observed that the court should proceed in order to ultimately find out the truth so that an innocent does not get punished but at the same time the guilty are brought to book under the law.

13. According to Hon''ble Apex Court Section 319 Cr.P.C. springs out of the doctrine *judex damnatur cum nocens absoluitur* (Judge is condemned when guilty is acquitted) and this doctrine must be used as a beacon light while explaining the ambit and the spirit underlying the enactment of Section 319 CrPC.

14. It is the duty of the court to do justice by punishing the real culprit. Where the investigating agency for any reason does not array one of the real culprits as

an accused, the court is not powerless in calling the said accused to face trial.

15. In Hardeep Singh's case (supra) the Hon''ble Apex Court has also clarified the meaning of "evidence" u/s 319 Cr.P.C. by holding that the court is not required to wait till such evidence is tested on crossexamination, as it is the satisfaction of the Court which can be gathered from the reasons recorded by the Court in respect of complicity of some other person(s) not facing trial in the offence.

16. The revisionists cannot be given any benefit out of the judgment of Brijendra Singh (supra) as the facts of the case before the Hon''ble Apex Court were entirely different from the facts of the present case. In the Brijendra Singh's case the Investigating Officer had found that the appellants were in Jaipur city at the time of occurrence whereas the occurrence had taken place at Kannaur City situated at a distance of 175 K.M. From Jaipur. The statements of the complainant and the other witnesses were also found doubtful and the appellants' plea of alibi was found to be correct. Under these circumstances the Hon''ble Apex Court held that despite the availability of a plethora of evidence collected by the Investigating officer during investigation suggesting otherwise, the trial court, without looking into the evidence regarding plea of alibi, summoned the appellants u/s 319 Cr.P.C.

17. The facts of the present case are entirely different from the facts of the case of Brijendra Singh's case (supra).

18. In the present case, both the witnesses have categorically stated about the specific roles played by the revisionists. Both the witnesses have been examined at length and the impugned order has been passed by the learned trial court with a clear finding that there is sufficient material on record to summon the additional accused persons under Sections 498-A,302,323,504, 506 I.P.C. and Section ? of the Dowry Prohibition Act, 1961.

19. At the most, only it can be said that while passing the impugned order, the learned trial court has not discussed in detail the statements of the witnesses, which in fact was not even required at the stage of framing of charge because at this stage, discussion of evidence in detail may reflect on the opinion of judge towards the merits of the case whereas no opinion can be expressed on the merits of the case at the stage of framing of charge or at the stage of summoning of an accused under Section 319 Cr.P.C.

20. Hon''ble Apex Court in Hardeep Singh's case (supra) has observed as under: "What is required is not to have a mini-trial at this stage by having examination and cross-examination and thereafter rendering a decision on the overt act of such person sought to be added. In fact it is this mini-trial that would affect the right of the person sought to be arraigned as an accused."

21. In view of the facts and circumstances of the case and the prima facie evidence available on record, the present case definitely comes under the

category where the degree of satisfaction for summoning an additional accused is higher than that as required for framing of charge. There does not appear any illegality or irregularity in the order impugned. Moreover, the revisionists have an opportunity to move a discharge application before the learned trial court at the appropriate stage of trial.

22. In view of the aforesaid discussion, this revision is liable to be dismissed at the admission stage itself and is accordingly dismissed.

23. At this juncture learned counsel for the revisionists prayed that the revisionists are ready to surrender before the court and to move bail applications, however, they may be granted a time of 30 days for surrender. Learned counsel for the revisionists has also prayed that the revisionist no.1, who is the Grand Father-in- law (Dadia Sasur) is an old and infirm person and the revisionist no.2 who is Devrani of the deceased is a lady and revisionist no.3 is Devar, the court below be directed to consider the bail applications of all the revisionists expeditiously in accordance with the law as laid down by this Court in the Full Bench decision of Amrawati and another Vs. State of U.P., 2005 CriLj 755 and affirmed by Hon"ble Supreme Court in the case of Lal Kamendra Pratap Singh Vs. State of U.P. 2009 (4) SCC, 437.

24. Learned A.G.A. has no objection against the aforesaid prayer.

25. In view of the facts and circumstances, it is directed that in case the revisionists surrender within 30 days from today and apply for bail, the court below may consider their bail applications in wake of the law provided under the proviso to Section 437(1) Cr.P.C. and also as laid down in the case of the Full Bench decision of Amrawati and another Vs. State of U.P., 2005 CriLj 755 and affirmed by Hon"ble Supreme Court in the case of Lal Kamendra Pratap Singh Vs. State of U.P. 2009 (4) SCC, 437.

26. For a period of 30 days from today which shall not be extended any further, no coercive action shall be taken against the revisionists, in the above mentioned case.