

(2017) 01 OHC CK 0069
In the Orissa High Court
Case No : CRL REV NO. 312 of 2011

Trilochan Rout

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 04-01-2017

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 319
Dowry Prohibition Act, 1961 — Section 4
Penal Code, 1860 (IPC) — Section 302, Section 304B, Section 34, Section 498A

Citation : (2017) CriLJ 1880 : (2017) sup1 CutLTCriminal 594 : (2017) 1 DMC 859 : (2017) 66 OrissaCriR 554

Hon'ble Judges : Mr. S.K. Sahoo, J.

Bench : Single Bench

Advocate : Mr. Sangram ku. Das, Advocate,, for the Petitioner; Mr. Deepak Kumar, Addl. Standing Counsel, for the Opposite Party No. 1; Mr. Alok Samantaray, Advocate, for the Opposite Parties Nos. 2 to 4

Final Decision : Allowed

Judgement

S.K. Sahoo, J.— Heard Mr. Sangram Ku. Das, learned counsel for the petitioner and learned counsel for the State and Mr. Alok Samantaray, learned counsel for the opposite parties Nos. 2 to 4.

2. The petitioner Trilochan Rout who is the informant in Khurda Mahila P.S. Case No.111 of 2006 which corresponds to Criminal Trial No.14/89 of 2007 pending in the Court of learned Adhoc Addl. Sessions Judge, Fast Track Court No.III, Bhubaneswar, has filed the revision petition challenging the impugned order dated 30.03.2011 passed by the learned Trial Court in rejecting the petition filed by the prosecution under section 319 of Cr.P.C. to implead Reba Martha (opposite party No.2), Smt. Nirupama Sundar Ray (opposite party No.3) and Golakh Martha (opposite party No.4) as accused who are the mother-in-law, sister-in-law and father-in-law of the deceased Ranjita Martha respectively.

3. It appears that on the First Information Report submitted by the petitioner on

23.7.2006 before the Inspector-incharge of Khurda Mahila Police Station, Khurda Mahila P.S. Case No.111 of 2006 was registered under sections 498-A, 302, 304-B read with section 34 of the Indian Penal Code and section 4 of the Dowry Prohibition Act against one Dillip Kumar Martha, who is the husband of the deceased and also against the mother-in-law and sister-in-law of the deceased. After completion of investigation, charge sheet was submitted on 15.03.2007 under sections 498-A, 304-B of the Indian Penal Code and section 4 of the Dowry Prohibition Act only against the accused Dillip Kumar Martha who faced trial in the Court of learned Adhoc Addl. Sessions Judge, Fast Track Court No.III, Bhubaneswar in Criminal Trial Case No.14/89 of 2007.

4. During course of trial, the prosecution examined eight witnesses and thereafter, the Addl. Public Prosecutor filed a petition under section 319 of Cr.P.C. to implead the opposite parties nos. 2 to 4 as accused.

5. Considering the materials available on record as well as the provision under section 319 of Cr.P.C., the learned Trial Court came to hold that the petitioner Trilochan Rout, his sons Chandan Kumar Rout, Ranjan Kumar Rout and daughter-in-law Rasmita Rout have stated that they came to know from the deceased that the father, mother and sister of the accused Dillip Kumar Martha were also subjecting her to cruelty and torturing her in their house but no such statements have been made before the police of Chandrasekharpur Police Station or in the U.D. Case or before the Investigating Officer of Khurda Mahila Police Station and therefore, such statements implicating the opposite parties Nos.2, 3 and 4 are subsequent development to falsely entangle them as accused in the case. The learned Trial Court further held that there is no allegation against the opposite parties nos.2 to 4 to have tortured the deceased in any manner in their house and therefore, he did not find any merit in the petition filed by the Addl. Public Prosecutor under section 319 of Cr.P.C. and accordingly rejected the same.

6. Learned counsel for the petitioner Mr. Sangram Kumar Das contended that P.W.3, P.W.4, P.W.5 and P.W.6 have attributed specific overtacts against the opposite party Nos. 2, 3 and 4 and therefore, it was not proper on the part of the learned Trial Court to reject the petition under section 319 of Cr.P.C. filed by the learned Addl. Public Prosecutor and therefore, it is a fit case where the impugned order should be set aside and direction be issued to the learned Trial Court to implead the opposite parties Nos. 2 to 4 as accused to face trial along with accused Dillip Martha.

7. Learned counsel for the opposite parties Nos. 2 to 4 Mr. Alok Samantaray on the other hand supported the impugned order and submitted that since the power under section 319 of Cr.P.C. is to be exercised very sparingly and for compelling reasons, in absence of any clinching materials against opposite parties Nos.2 to 4, the learned Trial Court was justified in rejecting the petition under section 319 of Cr.P.C.

8. Learned counsel for the petitioner Mr. Deepak Kumar produced the case diary

and supported the learned counsel for the petitioner.

9. Learned counsel for the petitioner placed the evidence of the material witnesses recorded during trial. P.W.3 Trilochan Rout (petitioner) who is the informant in the case has stated that the deceased was subjected to cruelty by the accused (Dillip Martha) and his relations in their house and she was also tortured both mentally and physically. He further stated that his daughter told him that the accused (Dillip Martha) along with his family members were torturing her for more money for business of the accused (Dillip Martha). He further stated that she suspected from the conduct of accused (Dillip Martha) that he had killed the deceased in the house at Sailasreevihar. It has been confronted to P.W.3 that he has not stated before the Investigating Officer or to the police officer of Chandrasekharpur Police Station or mentioned in the First Information Report that the deceased was subjected to cruelty and torture by the accused Dillip Martha and his relations in his house. P.W.3 admits that whatever he stated in the Court, he has not stated before the Chandrasekharpur Police Station.

10. P.W. 4 Chandan Kumar Rout who is the brother of the deceased has stated that the deceased told him that the accused (Dillip Martha) and other relations of her husband were torturing her in their house both mentally and physically and that the accused Dillip Martha along with his father, mother and sister were demanding further dowry. It has been confronted to him that whatever he has stated in Court has not stated by him before Chandrasekharpur Police Station in the U.D. Case. It has also been confronted that he has not stated before the Investigating Officer that the deceased told him that accused (Dillip Martha) along with his father, mother and sister were demanding more dowry for construction of his house.

11. P.W.5 Rasmita Rout who is the sister-in-law of the deceased has stated that as per the demand of accused (Dillip Martha) and his father, mother and sister, a cash of Rs.70,000/-, golden ornaments and other articles were given at the time of the marriage and in the cross-examination, it has been confronted to her that she has not stated before the Investigating Officer that the deceased was tortured by the accused (Dillip Martha), his parents and sister.

12. P.W.6 Ranjan Rout who is the another brother of the deceased has stated in his evidence that the deceased told him that the father, mother and sister of the accused (Dillip Martha) are always subjecting her to cruelty and torturing her both physically and mentally in their house and also not supplying her adequate food and that the deceased further told him that whenever the father and mother of accused were coming to Asansol, they were persuading her to bring money from P.W.3. It has been confronted to him in the cross examination that he has not stated before the police that the deceased told him that parents and sister of the accused (Dillip Martha) were subjecting her to physical and mental torture and not supplying her adequate food and whenever the parents of the accused were coming to Asansol, they were forcing her to bring money from P.W.3.

13. In view of the available materials on record, it appears that whatever statements have been made by P.W.3, P.W.4, P.W.5 and P.W.6 implicating the opposite parties nos.2 to 4 are full of material contradictions and they have not stated so before the police during investigation and they are attributing overtacts against the opposite parties nos. 2 to 4 for the first time in Court.

14. Law is well settled that the power under section 319 of Cr.P.C. is not to be exercised in a routine and mechanical manner. It is an extraordinary power which should be used with caution and only if compelling reasons exist for proceeding against whom action has not been taken. The learned Trial Court has undoubted jurisdiction to add any person not being the accused before it to face the trial along with other accused persons, if the Court is satisfied at any stage of proceeding on the evidence adduced that the persons who have not been arrayed as accused should face the trial. While exercising the power, the Court has to take the materials placed by the investigating agency in order to assess the prospect of conviction. The word "evidence" in section 319 of Cr.P.C. has to be broadly understood and not literally i.e. as evidence brought during a trial as held by the Hon"ble Supreme Court in case of Hardeep Singh v. State of Punjab reported in (2014) 57 Orissa Criminal Reports (SC) 455.

15. Since the provision is a discretionary one and is to be used sparingly and that to only on the existence of compelling reasons, as the learned Trial Court after assessing the evidence adduced on behalf of the prosecution was of the view that witnesses have made subsequent development in their deposition to falsely implicate the opposite parties Nos.2 to 4 as accused in the case and there is no allegation against them to have tortured the deceased in any manner in their house, I am not inclined to differ from the observation made by the learned Trial Court in the impugned order. Therefore, I do not find any infirmity and impropriety in the impugned order.

16. Accordingly, the CRLREV petition stands dismissed.