

(2005) 03 AHC CK 0094
In the Allahabad High Court
Case No : Criminal Revision No. 770 of 2005

Umesh Chandra Verma and Others

APPELLANT

Vs

State of U.P. and Arun Kumar Verma

RESPONDENT

Date of Decision : 02-03-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 193, 319
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 304B, 307, 498A

Citation : (2005) 2 DMC 126 : (2005) 2 UPLBEC 1893

Hon'ble Judges : K.N. Ojha, J

Bench : Single Bench

Advocate : G.S. Chaturvedi, Nikhil Chaturvedi and S.B. Kochar, for the Appellant; D.N. Wali and Praveen Shukla, A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

K.N. Ojha, J.—Heard Sri G.S. Chaturvedi learned Senior Counsel assisted by Sri Nikhil Chaturvedi for the applicants, Smt. Praveen Shukla learned AGA for opposite party No. 1 State of U.P. and Sri D.N.Wali learned counsel for opposite party No. 2 Arun Kumar Verma and have gone through the record.

2. Instant criminal revision has been filed against order dated 10.2.05 passed by learned Addl. Sessions Judge, Fast Track Court No. 3 Agra in Sessions Trial No. 455 of 2004 State v. Shyam Verma whereby the applicants Umesh Chandra Verma, Smt. Laxmi Verma, Smt. Mohini Verma, Rishi Verma and Chanchal Verma have been summoned u/s 319 Cr.PC to face trial in Sessions Trial No. 455 of 2004 u/s 498A/304B IPC and Section 3/4 Dowry Prohibition Act, Police Station Bah, district Agra. This Sessions Trial is already pending against Shyam Verma.

3. According to the prosecution opposite party No. 2 complainant Arun Kumar Verma lodged FIR against applicants and Shyam Verma u/s 498A/307 IPC and Section 3/4 Dowry Prohibition Act on 6.4.2004. Later on the death of Priti Verma daughter of Arun Kumar Verma took place. After investigation the charge sheet

was submitted u/s 498A/304B IPC against Shyam Verma the husband only but final report was submitted in respect of father-in-law Umesh Chand Verma, mother-in-law Smt. Laxmi Verma, Jeth Rishi Verma, Jethani Smt. Mohini Verma and Nanand Chanchal Verma on 22.4.2002. One son was born from the wedlock of Priti Verma and Shyam Verma in January, 2003 but demand for Maruti car being not satisfied husband and applicants used to cause torture to her and they set her on fire on 5.4.2004 and ultimately she died on 8.6.2004 from the burn injuries received on 5.4.2004 at the residence of applicants in Mohalla Sarai, Town Bah, district Agra. After the charge was framed against Shyam Verma the husband, the case proceeded and PW 1 Arun Kumar Verma father of the victim made statement that applicants also used to cause torture to her and set her on fire therefore they also be summoned and direction be made to face the trial. The application moved u/s 319 Cr.PC was allowed and a direction was made to issue non-bailable warrant against the applicants to face trial u/s 498A/304B IPC and Section 4 of Dowry Prohibition Act.

4. It is submitted by learned counsel for the applicants that in dying declaration Smt. Priti Verma had stated that husband Shyam Verma had suspicion about her character and therefore he set her on fire. Only in statement recorded later on u/s 161 Cr.PC she stated that through the applicants were present when she was set on fire but she was not saved and her dying declaration was made only against husband because other family members who carried her to hospital threatened her not to carry her to hospital for medical treatment in case she made statement against the applicants. It is also submitted that in evidence u/s 161 Cr.PC the witnesses have stated that due to dispute between victim Smt. Priti Verma and her husband Shyam Verma her-in-laws Jeth, Jethani and Nanand started to live in Gwalior and they were present at the time in Gwalior.

5. Section 319 of Cr.PC contemplates: -

"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."

6. In Joginder Singh and Another Vs. State of Punjab and Another, it has been held by Hon. Apex Court that even the persons who have been dropped by the Police during investigation but against whom evidence showing their involvement in the offence comes before the criminal court are included in the list of the persons who can be summoned to face the trial and once the case in respect of offence is committed the cognizance of the offence is taken and any person who is involved in the crime even though charge sheet has not been submitted can be summoned u/s 319 Cr.PC to face the trial with the accused already facing the trial.

7. In 1993 SCC Cri. 470 Kishun Singh v. State of Bihar it has been laid down that Section 319 Cr.PC can be invoked by the court even though a person is not named as offender in FIR or charge sheet but whose complicity in the crime comes to light from the evidence and he can be summoned. When the offence of the cognizance is taken summoning any other accused involved in the crime is part of the process of taking cognizance. It was held that once the case has been committed the bar of Section 193 Cr.PC was removed and the court of Sessions is vested with the fullest jurisdiction to summon any individual accused of the crime.

8. In 1994 Cri.LJ 3330 Dr. J. Jacob and Ors. v. State it has been held by Hon. Delhi High Court that evidence u/s 319 Cr.PC means evidence recorded during enquiry or trial and not during investigation by the Police. Sanjay Gandhi Vs. Union of India (UOI) and Others, was relied on while laying down the law.

9. In instant case after the charge was framed, the complainant stated that demand for dowry was made and his daughter used to inform him that she was being harassed because demand for dowry was not satisfied and she apprehended that her life was in danger and any happening could take place with her. He also stated that cruelty was exercised not only by husband but by applicants also. In view of this statement which the court below recorded after the charge was framed, there appears prima facie evidence to summon the accused. Contradiction if any, in dying declaration of the victim and her statement u/s 161 Cr.PC while lying in the hospital or present residence of the applicants at Gwalior are the circumstances which are to be considered at final stage of the case when both parties are allowed to adduce evidence but any such infirmity in the prosecution evidence cannot be taken to be sufficient at this stage to exclude the evidence recorded after the charge is framed wherein it has been stated that cruelty was exercised by applicants also on the victim.

10. Other witnesses of the family of victim have also to make statement. It is not evidence or infirmity of evidence during the investigation which is the basis to decide as to whether the case is to be proceeded against the applicants or not, but it is the evidence or statement made after the charge is framed, which is the basis for proceeding against those accused against whom charge sheet has not been submitted and final report was submitted. Therefore when there is clear statement of the complainant prima facie there is sufficient evidence to summon the accused person to face the trial.

11. It has been held by Full bench of this Court in ALR 2004 (57) 390 Smt. Amrawati and Anr. v. State of U.P. that even if cognizable offence is disclosed the arrest of the accused is not must and it is at the discretion of the Sessions Judge or the Magistrate to consider as what process would be suitable to procure the attendance of the accused. In instant case when 3 out of 5 applicants are ladies and their case is that due to dispute between husband and wife applicants started to live in Gwalior and it was proper that when application u/s 319 Cr.PC moved by the complainant was allowed the attendance of the applicants was to

be procured by summoning them rather than directly issuing non-bailable warrant against them and in case reasonable opportunity was given to them to appear in court they would have appeared, if they would have not appeared then coercive process in the nature of warrant can be issued but the learned Addl.Sessions Judge while allowing the application u/s 319 Cr.PC passed orders for issuing of non-bailable warrant against the applicants. In the circumstances of the case issue of summon was the proper remedy rather than non-bailable warrant and upto this extent impugned order deserves to be modified.

12. Revision is dismissed with the modification that orders passed for issuing of non-bailable warrant against applicants Umesh Verma, Smt. Laxmi Verma, Smt. Mohini Verma, Rishi Verma and Chanchal Verma is set aside. They are directed to appear in court of Addl.Sessions Judge, Fast Track Court No. 3, Agra within a month and in case they appear they will be given opportunity to file bail bonds to the satisfaction of the trial court to proceed with the case. In case they do not appear only thereafter coercive process may be issued against them. If the court of Addl.Sessions Judge, Fast Track Court No. 3, Agra is not in existence the applicants have to appear in court where the Sessions Trial No. 455 of 2004 State v. Shayam Verma as mentioned above is transferred by learned Sessions Judge, Agra.