

(1993) 01 AHC CK 0080

Allahabad High Court

Case No: Criminal Miscellaneous Application No. 922 of 1993

Maya Prakash and Others

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Jan. 12, 1993

Acts Referred:

- Constitution of India, 1950 - Article 15, 16, 21, 51A
- Criminal Procedure Code, 1973 (CrPC) - Section 100, 125
- Penal Code, 1860 (IPC) - Section 304, 323, 504

Citation: (1993) 17 ACR 51

Hon'ble Judges: M. Katju, J

Bench: Single Bench

Advocate: R.S. Yadav, for the Appellant;

Final Decision: Dismissed

Judgement

M. Katju, J.

This bail application relating to crime No. 353 of 1992 under Sections 323, 304 and 504 IPC of P.S. Puranpur, district Pilibhit reveals that a large section of our people are mentally still living in the middle ages and are feudal minded. They look upon women as chattel or inferiors. This state of affairs will no longer be tolerated by this Court.

2. The facts are that the Applicant No. 1 Maya Prakash was married to Guddi Devi, daughter of the first informant Jagannath. The allegations in the first information report are that Guddi Devi had come to her father's house. The Applicant No. 1 Maya Prakash (husband of Guddi Devi) along with the other co-accused came to the house of Jagannath, father of Guddi Devi on 26-8-1992 and demanded that Guddi be sent with them. When Jagannath said that they can take her after a few days, the Applicants started hurling abuses, and when Jagannath requested them to stop abusing the Applicants started beating Jagannath with Sariya, fists and legs. The

injured Jagannath (father of Guddi) subsequently died as a result of these injuries. A true copy of the post mortem report is annexure-3 to the affidavit filed in support of the application. There are injuries on the head of the deceased Jagannath, which shows the murderous intent of the Applicants.

3. The bail application of the Applicant has been rejected by the Sessions Judge, Pilibhit and now this bail application has been moved before me.

4. In my opinion, if the allegations in the first information report are correct the accused deserve harsh punishment. Under our Constitution a woman is not the private property of any man, not even her husband. If Guddi was unwilling to go to her husband, she had a perfect right not to go and she could not be forcibly taken away by the Applicant Maya Prakash and the other co-accused. A wife is not the slave of her husband in our country. If there are differences between husband and wife, it is open to the husband to get a divorce or other suitable remedy but he cannot forcibly take away the wife from her father's house. If her father was restraining Guddi then the remedy of the Applicant was to file a habeas corpus petition. It seems from the facts of the present case that the Applicants think that a woman is the private property of her husband. This mentality and thinking has to be condemned as backward and feudal. In modern times women are equal to men and they have to be treated with respect. Our Constitution gives equality to women, vide Articles 15 and 16 of the Constitution. Also, Article 51-A(e) of the Constitution states "It shall be the duty of every citizen of India...to renounce practices derogatory to the dignity of women" It is high time now that people who think that women are their private property are severely dealt with and given exemplary punishment.

5. Unfortunately a large of our people have the feudal mentality and they treat women as inferior beings. Feudal mentality is rampant in the minds of such people and women are often maltreated by them in a barbaric manner. It is the duty of the court to prevent this, and for this purpose the Court must take strong measures to oppose this social evil. In recent times the Supreme Court and the High Courts have been playing an important role in helping the country's progress towards modern times. The judiciary has been entrusted with the task of doing social justice, and must play a progressive and activist role. Several practices which are medieval and feudal in nature are still persisting in our society. For example, we often hear of the practice of sati even today. This is disgraceful. A practice which had been strongly opposed by enlightened social reformers like Raja Ram Mohan Roy and Ishwar Chandra Vidyasagar two centuries ago, and which had been legally forbidden in 1801 by Lord William Bentinck is regrettably still persisting today, and what is more unfortunate is that there are some people who even glorify it. This only reflects on the backwardness, inhumanity, and stupidity of such people. As the great Emperor Akbar ironically remarked "It is a strange comment on the magnanimity of men that they should seek their deliverance through the self sacrifice of their wives" (Feroz Ain-i-Akbari). The sati in Rajasthan some time back received adulation from some of

the so called defenders of our culture, instead of being condemned as a barbaric practice. A few years back it was reported that in Banda district a woman committed sati", and those who were responsible for persuading her or helping her to do so were not arrested and punished, and instead it is reported that even a high police Official came and offered prayer at the sati site. Thus a person responsible for enforcing the law, who should have booked all persons involved in this barbaric act for murder, in fact acted as a collaborator (if the version is true). This is abhorrent and repulsive to a modern mind. In future such practices will not be tolerated by this Court, and even high officials who do not take steps to prosecute offenders will be regarded as accessories to murder and shall be treated by the Court in accordance with law.

6. Similarly, the practice of parda is feudal and a sign of backwardness, and it violates Article 21 of the Constitution. One is reminded of the great Kemal Ataturk who suppressed this practice in Turkey.

7. For our nation to progress it is important that men must become modern minded and give due respect to women. A wife is an equal partner with her husband, and she is not Inferior to him but unfortunately many husbands still regard their wives as their personal property or as "domestic servants". This mentality is against Article 51-A(e) of the Constitution, and has to be strongly opposed. The Judiciary must play a role in stamping it out.

8. In my opinion the main goal before the country is modernization and scientific thinking, and our main enemy is feudalism and feudal practices. In modern times the feudal concept that a woman loses her legal identity on marriage, and it merges in the identity of her husband, is no longer acceptable. It has been found that whenever women got the opportunity they have performed as well as men. For example, Madame Curie was the first person in the world to win two Nobel prizes (in physics and in Chemistry). Elizabeth I of England and Catherine the Great of Russia were great rulers. The Bronte sisters were great novelists. The Rani of Jhansi won immortal fame by putting up a heroic though unequal, fight against the British. Mira was a great social rebel and poet (like Kabir). Begum Akhtar was the greatest ghazal singer ever. Sappho's love poetry has few equals. Similarly, many other examples can be given of great achievements by women. It is only because women were earlier not given education and were confined to the houses and not given suitable opportunities that they could not display their potential talents, but there is nothing inherently inferior in them. In fact I.Q. tests have revealed that the intelligence of women (on the average) is the same as that of men. In modern times women have become doctors, teachers, scientists, politicians, artists, lawyers, judges etc. They can no longer be treated as subordinates, and men must change their mentality towards them.

9. In slave owning and feudal societies women were regarded as inferior to men. Thus even against philosopher like Plato remarked that he was fortunate that he was

not born a slave or a woman. In other words, women were treated as slaves in his time. In feudal societies the legal personality of the wife got merged into the personality of the husband on marriage in such societies women had a very limited right, if at all, to own property, and they were rarely given education. Thus in Ellen Bronte's novel "Wuthering Heights" the property of Catherine became that of her beastly husband on marriage, and she was confined to his house. In Sharat Chandra Chattopadhyay's novels the degraded position of our women was clearly revealed. Thus, in "Shrikant" Annada goes to live with her husband although he had murdered her sister, since the feudal concept was that a woman must live with her husband even if he was a beast or a Scoundrel.

10. Against this degraded condition of women great struggles for social reform had to be waged before women could get equality. Thus, the suffragette movement in England had to overcome bitter hostility before the right to vote could be won by women. The feminist movement had to counter male chauvinism. In India Raja Ram Mohan Roy and others waged a great struggle to oppose child marriage, female infanticide, and to gain approval for remarriage of widows.

11. It was ultimately industrialization which gave social emancipation and equality to women in the West since by entering industry women had to come out of their homes. However, the role of the women's emancipation movements and the writings of novelists like Sharat Babu are not to be underestimated in this connection.

12. In our country, due to our semi-feudal economy, a large section of our people are still mentally living in the 15th Century. A great effort has to be made to bring such people into the modern age, and part of this effort is to educate our men to treat women as their equals and with respect. In modern society the wife is not an extension of the husband's personality or property. She has her own separate, individual identity in the eye of Law. The Law recognizes her right to live separately from her husband. In fact Section 125 of the Code of Criminal Procedure recognizes her right not only to live separately but also to claim maintenance while living separately (if she can justify her act of living separately). All this was inconceivable in medieval times.

13. Today in our country a large number of women have become educated. They demand, and are justified in so demanding, respect and equal treatment from men. However, many men are still mentally backward and they treat their wives as inferior, and oppress and harass them. Some even resort to physical violence. They wish women to be obedient to them and do only household chores. An educated woman rightly rebels against this attitude, as she is not a domestic servant.

14. Many of the problems arising in our social life today are due to this backward mentality of men. Until the self-respecting, dignified existence of women is recognized there will be tensions in the family, and this will be bad not only for the

husband and wife but also for the children.

15. The law must give a helping hand to the modernizations of the country and favour social progress. The feudal practices of wife-beating or wife-killing must be put down with an iron hand. The killing of the wife is not an ordinary culpable homicide like killing a man for his property or in a fit of anger. It is an act which outrages the modern conscience. Hence it calls for exemplary punishment.

16. In the present case what do we find? The wife Guddi was staying with her father at his home. If she was not willing to go with her husband she had a perfect right not to go, and she could not be forcibly taken away. On the other hand, if it was Jagannath who was restraining her the Applicants should have informed the police or filed a habeas corpus petition or application u/s 100 Code of Criminal Procedure. The Applicants had no right to take the Law into their own hands and behave like goondas. It seems that Maya Prakash and the other co-accused think that Guddi became Maya Prakash's private property after their marriage, and hence they had the right to take her away forcibly from her father's house. The Applicants have behaved like ruffians. Their conduct in beating Jagannath shows that they are cruel feudal-minded persons who would have maltreated Guddi had they taken her away. I am not inclined to grant bail to such persons. Hence I reject the bail application of Applicant No 1 Maya Prakash and Applicant No. 3 Ramesh Chand. However, I grant bail to Applicant No. 2 Smt. Shiv Rani W/o Tirmal in view of her age and the possibility that she may have been falsely implicated,

17. The observations made above will not prejudice the trial of the accused, and shall not be taken as binding on the Trial Court.