
(1998) 07 AHC CK 0126

Allahabad High Court

Case No: Criminal Revision No. 999 of 1991

Govind Ram

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: July 22, 1998

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 311
- Dowry Prohibition Act, 1961 - Section 4
- Evidence Act, 1872 - Section 32(1)
- Penal Code, 1860 (IPC) - Section 201, 304B, 306, 311, 313

Citation: (1999) CriLJ 1955

Hon'ble Judges: B.K. Sharma, J

Bench: Single Bench

Advocate: S.D.N. Singh, for the Appellant; A.G.A. and K.S. Kishwaha, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

B.K. Sharma, J.

This is a revision against the judgment and order dated 21-7-1990 passed by Sri Akoluddin Khan, the then IInd Addl. Sessions Judge, Ballia, in S. T. No. 35 of 1990, State v. Amer Nath and Anr., whereby he acquitted the accused-opposite parties Nos. 2 and 3 Amar Nath and Smt. Lalita Devi of the offences under Sections 304-B 34 498-A 34 and 201 34, I.P.C. and u/s 4 of the Dowry Prohibition Act.

2. Sri S.D.N. Singh has appeared as counsel for the revisionist, Sri K.S. Kushwaha has appeared for the accused-opposite parties Nos. 2 and 3 Amar Nath and Smt. Lalita Devi and the learned Addl. Govt. Advocate has appeared for the State.

3. The learned counsel for the revisionist has argued that in this case gross miscarriage of justice has taken place on account of the omission of the prosecutor

(A.P.P.) to examine the material witnesses and to prove the material documentary evidence and equally gross failure on the part of the trial Judge to summon and examine those witnesses at the trial. He has further argued that it was a case of dowry death and even of murder pure and simple, as the deceased has been strangled to death by her husband Amar Nath and her mother-in-law Smt. Lalita Devi accused-opposite parties Nos. 2 and 3.

4. The learned Addl. Government Advocate has supported the submissions of the learned counsel for the revisionist.

5. The learned counsel for the opposite parties Nos. 2 and 3 (accused persons) has contested the revision and argued that the evidence led by the prosecution at the trial contained no material that could justify the conviction of the accused-persons (opposite parties Nos. 2 and 3) and consequently the order of acquittal was fully justified.

6. I have considered the submissions of the learned counsel for the parties and also gone through the record of this case including the case diary which was available with the record of the trial Court. There cannot be any doubt that there has been gross miscarriage of justice in this case and consequently this Court has no other option than to set aside the acquittal of the accused-opposite parties Nos. 2 and 3.

6A. Govind Ram revisionist, the father of the deceased, was resident of Kadam Chauraha (Bhrigu Ashram), police station Kotwali, district Ballia while the accused (opposite parties Nos. 2 and 3) Amar Nath and Smt. Lalita Devi are residents of village Garhwar, Police Station Garhwar, District Ballia. The marriage of the deceased Smt. Geeta Devi admittedly took place with Amar Nath, opposite party No. 2. According to the revisionist, the marriage took place on 6-2-88. On 3-6-88 the Village Chowkidar Hira Nath lodged F.I.R. at the police station at 2 P.M. about death of the deceased alleging that villagers say she has been killed and burnt. A case was registered under Sections 306 498, I.P.C. against the opposite parties Nos. 2 and 3. The post mortem report, the genuineness of which was admitted by the learned counsel for the accused-opposite parties Nos. 2 and 3 before the trial Court, indicated prima facie that it was a case of death due to asphyxia as a result of strangulation and not of suicide. During the investigation various witnesses were interrogated by the Investigation Officer and in the charge sheet submitted by him before the committing magistrate Govind Ram revisionist, father of the deceased was cited as a witness at serial No. 7, the wife of Govind Ram Smt. Bhagmani Devi was cited as a witness at serial No. 20, two sons of Govind Ram, namely Narain Gupta and Rajendra Gupta, were cited as witnesses at serial Nos. 23 and 24 and Smt. Pushpa Devi, w/o Narain, S/o Govind Ram, was cited as a witness at serial No. 31 in the charge sheet. The name of Km. Ranu, D/o Purshottam Gupta of the village Kadam Chauraha, was also cited as a witness on the back of the charge-sheet.

7. At the trial the prosecution examined Deena Nath (PW 1) (Chowkidar of the village), Om Prakash (PW 2) (r/o village Gudri Bazar, City Ballia), Smt. Sugia (PW 3), Smt. Piyari Devi (PW 4), Bhagwan Chaurasia (PW 5), Jalaluddin Khan (PW 6), Sugreev Prasad (PW 7) and Bhrigu Muni Ram (PW 8) who were all residents of village Garhwal, the village of the accused-opposite parties Nos. 2 and 3. Deena Nath (PW 1) was not an eyewitness in the case. The other witnesses who were examined by the side of the prosecution were hostile. In their statements u/s 313, Cr.P.C. Amar Nath accused-opposite party No. 1, husband of the deceased, made denial to the question about the dowry harassment and causing the death of the deceased by strangulation. He alleged that he was prosecuted as a result of Partibandi. He further stated that his accident had taken place a little before the date of occurrence and that being disgusted and annoyed by the same the deceased committed suicide. He stated that there was no matter of demand of dowry and that she (deceased) had never been harassed on account of dowry by him and her mother-in-law Smt. Lalita Devi. Smt. Lalita Devi, opposite party No. 3, Smt. Lalita Devi, the mother-in-law of the deceased, made a similar statement that the deceased secretly committed suicide by closing the door. None of the two opposite parties Nos. 2 and 3 claimed in their statements that they were not present at that time of occurrence. They also did not say as to what they did on seeing or hearing that she (the deceased) committed the alleged suicide. No defence witnesses were examined to show how the deceased died.

8. It is curious that the revisionist and the other aforesaid witnesses who were closely related to the deceased and could give evidence at the trial about the demand of dowry and harassment on account of the same and also could prove the various letters which were amongst the prosecution papers alleged to have been written by the deceased herself touching the question of harassment to her were not examined by the prosecution. No efforts were made by the learned A.P.P. conducting the trial for the prosecution to get the aforesaid witnesses summoned. Only those witnesses were examined who were convenient to the defence. There were copies of letters on the file which purported to be written by the deceased apparently containing material relating to the alleged harassment etc. So, it was the duty of the learned A.P.P. to have placed before the Court all the material collected during the investigation by the Investigating Officer. This included the examination of the witnesses interrogated by the Investigating Officer during the investigation and whose statements have been relied by the prosecution in the charge-sheet submitted before the Court and it was also the duty of the learned A.P.P. to place before the Court and to prove the documentary evidence collected during the investigation, according to law, so that the Court may have considered the same for what they were worth. If the alleged letters of the deceased were duly proved the Court could have come to the conclusion whether these letters would be admissible as dying declarations of the deceased u/s 32(1) of the Indian Evidence Act.

9. Then the examination of the Investigating Officer at the trial was also obligatory on the part of the learned prosecutor. In this particular case, the case diary contained the spot inspection made by the Investigating Officer during the investigation which disclosed that material evidence was found by him at the spot at the time of the spot inspection which showed the background of circumstances under which the death of the deceased took place at her in-laws house. It also fixed the place of death of the deceased. So the testimony of the Investigating Officer was a must from this angle also. The papers like Panchayatnama along with connected papers were also required to be proved and placed before the Court. But the learned A.P.P. carefully avoided the examination of the Investigating Officer at the trial, lest he may give material evidence before the Court.

10. Then the postmortem report was on the record and in such a case it was obligatory for the prosecutor to examine the doctor who performed the post-mortem and place on record the material observations made by him about the external condition and the facts revealed by the internal examination and his (doctor's) opinion about the cause of death of the deceased. It is true that the defence admitted the genuineness of this document. But even then it was the duty of the learned A.P.P. to get the doctor summoned and examined for all these aspects. In this case the cause of the death of the deceased was a very material fact to be determined by the Court as it would have direct bearing upon the fate of the case. Yet the prosecutor has sidetracked the postmortem report and the material observations made by the Investigating Officer at the time of the spot inspection. It is unnecessary to reproduce the material observations contained in the spot inspection in the case diary on the subject.

11. Thus the learned A.P.P. avoided the production of every material piece of prosecution evidence before the Court and placed on record only the routine evidence. Unfortunately, the Presiding Judge allowed all these omissions to be made by the learned A.P.P. It cannot be doubted that it was a gross neglect of his duty on the part of the Presiding judge. It is the duty of the Court to see that all the material witnesses are produced before it at the trial, whatever be their evidence, and also to see that material documentary evidence is also placed before the Court. The Code of Criminal Procedure contains a very important provision with regard to the powers and duties of the trial judge/court about the production of all the material evidence before the Court. Section 311 of the Code of Criminal Procedure runs as follows :

311. Power to summon material witness, or examine person present.-Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.

While in the first part of the Section the word used is "may", in the second part of the Section the word used is "shall". So in consequence, in the first part of the section there is discretion of the Court available at any stage of the trial to summon any one as a witness but the second part of the section is mandatory and puts the Court under obligation to summon any one as a witness if his evidence appears to be essential for a just decision of the case. Thus it is the obligatory duty of the trial Judge/Court to summon and examine any such person as a witness for doing justice. There is a duty cast on the Court to summon all the material witnesses and examine all such witnesses on its own if the prosecution fails to do so. The Court cannot evade its statutory responsibility in this regard. If the prosecution declines or fails to summon and examine such material witnesses, the Court could and must act on its own and cause them to be produced. Consequently, it cannot be said that the learned Sessions Judge who tried this case was conscious of its duty sitting as the trial Judge to summon and examine such material evidence in this case.

12. In view of the above discussion it is held that there is miscarriage of justice due to the acts and omissions of the prosecutor (A.P.P.) and the acts and omissions of the trial Judge. The order of acquittal passed by the trial Judge has, therefore, got vitiated.

13. The revision is consequently allowed. The judgment of acquittal dated 21-7-1990 passed by the learned Addl. Sessions Judge, Ballia is set aside and the Sessions Trial is remanded to the learned Sessions Judge, Ballia for retrial according to law in the light of the observations made in the body of this judgment. The learned Sessions Judge, Ballia shall try the case either himself or assign it to a senior Addl. Sessions Judge of his judgship other than Sri Akoluddin who tried the case and decided the same earlier, even if he be still posted in his judgship at Ballia.

14. Let a copy of this judgment be sent by the registry to the learned Sessions Judge, Ballia by special messenger along with the complete original record of the Sessions Trial within 2 weeks for information and compliance.

15. Let a copy of this judgment be also issued to the learned counsel for the revisionist on payment of usual copying charges.