

(2013) 07 AHC CK 0240

Allahabad High Court

Case No: Criminal Revision No. 1431 of 2012

Mahesh Chandra Sharma

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: July 4, 2013

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 319
- Dowry Prohibition Act, 1961 - Section 3, 4
- Penal Code, 1860 (IPC) - Section 304B

Citation: (2013) 3 ACR 3454 : (2013) 6 ADJ 589 : (2014) 1 ALJ 41 : (2013) 82 ALLCC 860

Hon'ble Judges: S.C. Agarwal, J

Bench: Single Bench

Advocate: V.P. Srivastava and Akhilesh Srivastava, for the Appellant; A.P. Singh, Rajeev Tewari and Vijay Shanker Mishra, for the Respondent

Final Decision: Dismissed

Judgement

S.C. Agarwal, J.

This criminal revision is directed against the order dated 26.4.2012 passed by Additional Sessions Judge, Court No. 6, Aligarh in S.T. No. 131 of 2011, State v. Gagan Sharma and others, u/s 304B IPC and 3/4 D.P. Act, P.S. Aligarh, whereby the application 32-Kha filed by the complainant-revisionist Mahesh Chandra Sharma for summoning respondent Nos. 2 and 3, namely, Munna Lal @ Murari Lal Sharma and Ram Kumar Upadhyay for facing trial u/s 319 Cr.P.C. was rejected. Heard Sri V.P. Srivastava, Senior Advocate assisted by Sri Vijay Shankar Mishra, learned counsel for opposite party No. 2 as well as Sri Rajiv Tiwari, learned counsel for opposite party No. 3.

The revisionist is the complainant in aforesaid session trial. After statement of the revisionist as P.W. 1 was recorded, an application u/s 319 Cr.P.C. was moved on behalf of the revisionist before the trial Court stating that FIR was lodged against

Gagan Sharma, Pankaj Sharma, Smt. Bhanumati Sharma, Km. Nitin Sharma, Munna Lal @ Murari Lal Sharma and Ram Kumar Upadhyay but after investigation, Munna Lal @ Murari Lal Sharma and Ram Kumar Upadhyay were exonerated by the police and charge-sheet was filed against remaining person whereas there was sufficient evidence against them disclosing their involvement in the crime and, therefore, they be summoned to face trial u/s 319 Cr.P.C. Learned Additional Sessions Judge, after hearing parties, vide a detailed order dated 26.4.2012 rejected the application. Hence this revision.

2. The facts are that Raj Rani-the daughter of the revisionist, was married on 6.2.2010 with main accused Pankaj Sharma, resident of Aligarh. Her husband, in laws and other relatives including the respondent Nos. 2 and 3 were not happy with the dowry given at the time of marriage. The deceased used to live with her father in-law and mother in-law at Vishnupuri, Aligarh. About 15 days prior to the incident, the deceased was beaten by the accused persons and was turned out of the house and a sum of Rs. 50 lacs was demanded as dowry for constructing a school at Harduaganj. The complainant contacted the accused persons and also went to the house of respondent No. 3, who was mediator in the marriage and stated that he was unable to give a sum of Rs. 50 lacs but they did not pay any heed. On 25.7.2010, father in-law, mother in-law and Nanad came to the house of the complainant and promised not to demand any dowry in future and, thereafter, the deceased was sent with them. On the next day, i.e. 28.5.2010, Smt. Rajrani died in the mysterious circumstances.

3. It is submitted by learned counsel for the revisionist that respondent Nos. 2 and 3 also used to demand dowry as they were partners with husband of the deceased in constructing a school at Harduaganj and for this purpose, a sum of Rs. 50 lacs was being demanded from the complainant and, therefore, the respondent Nos. 2 and 3 are also responsible for the dowry death of Smt. Rajrani and there was sufficient evidence to warrant their conviction and, therefore, they should have been summoned to face trial u/s 319 Cr.P.C.

4. Per contra, learned counsel for respondent Nos. 2 and 3 submitted that there was no sufficient material on record to warrant summoning the respondent Nos. 2 and 3 to face trial. They are not members of the family of husband of the deceased. There is no illegality or lack of jurisdiction in the impugned order. Learned Additional Sessions Judge has properly appreciated the evidence and came to the conclusion that respondent Nos. 2 and 3 could not have benefited in any manner by demand of dowry and they were public servants and could not engage themselves in any business activity and, therefore, the story of demand of dowry on their part is entirely fictitious and the application u/s 319 Cr.P.C. was rightly rejected.

5. In [Sarojben Ashwinkumar Shah etc. Vs. State of Gujarat and Another](#), the Apex Court has held as under:

16(iv) The power to proceed against any person, not being the accused before the Court, must be exercised only where there appears during inquiry or trial sufficient evidence indicating his involvement in the offence as an accused and not otherwise. The word "evidence" in Section 319 contemplates the evidence of witnesses given in Court in the inquiry or trial. The Court cannot add persons as accused on the basis of materials available in the charge-sheet or the case diary but must be based on the evidence adduced before it. In other words, the Court must be satisfied that a case for addition of persons as accused, not being the accused before it, has been made out on the additional evidence let in before it

(v) The power conferred upon the Court is although discretionary but is not to be exercised in a routine manner. In a sense, it is an extraordinary power which should be used very sparingly and only if evidence has come on record which sufficiently establishes that the other person has committed an offence. A mere doubt about involvement of the other person on the basis of the evidence let in before the Court is not enough. The Court must also be satisfied that circumstances justify and warrant that other person be tried with the already arraigned accused.

6. In [Harbhajan Singh and Another Vs. State of Punjab and Another](#), the Apex Court has held that if the trial Court had taken all material, which was available on record while passing the order rejecting the application u/s 319 Cr.P.C., there was no ground for interference.

7. In [Sarabjit Singh and Another Vs. State of Punjab and Another](#), the Apex Court has held that for passing an order summoning the accused u/s 319 Cr.P.C., the Courts are required to apply stringent tests; one of the tests being whether evidence on record is such which would reasonably lead to conviction of the person sought to be summoned.

8. In *Kailash v. State of Rajasthan and another*, 2008 (63) ACC 194, the Apex Court has held that power u/s 319 Cr.P.C. should be exercised by the Court very sparingly and with caution.

9. The legal position is well established. Powers u/s 319 Cr.P.C. are to be exercised very sparingly and in exceptional cases and only where evidence available on record is very strong and there is a strong possibility of a conviction of the person sought to be summoned.

10. As far as the facts of this case are concerned, the complainant, in his deposition before the trial Court, stated that the respondent No. 3-Ram Kumar was the mediator of the marriage and it is also an admitted fact that respondent No. 2 is the Phupha of husband of the deceased. Respondent Nos. 2 and 3 may be distant relatives of husband of the deceased but they cannot be said to be the family members of the husband of the deceased. Respondent No. 2 is the public servant and is working as Superintendent Engineer in the Electricity Distribution Division, Varanasi whereas respondent No. 3 is also a public servant and is working as

Ameen. Respondent Nos. 2 and 3 are married and have their own families and live separately. Respondent No. 2 is living at Varanasi whereas respondent No. 2 is living in the area of police station-Quarsi, District-Aligarh whereas husband of the deceased used to live with his wife at the area of police station-Civil Lines, District-Aligarh. Respondent Nos. 2 and 3 could not have benefited in any manner by demand of dowry.

11. It was alleged on behalf of complainant-revisionist that respondent Nos. 2 and 3 were partners in a school to be constructed at Harduaganj but there is no documentary or other satisfactory evidence to this effect. The complainant, in his deposition, has stated that respondent No. 3 had told him that they are going to construct a school at Harduaganj and also asked to arrange money. This statement is hardly sufficient to show any involvement of respondent Nos. 2 and 3 in construction of a school at Harduaganj. On 27.5.2010, the deceased was taken from the house of the complainant by her father in-law, mother in-law and Km. Neetu and they promised that no further demand of dowry will be made. The next day, the victim died. There is no evidence to suggest that respondent Nos. 2 and 3 had any role in the death of daughter of the revisionist. I agree with the finding recorded by Additional Sessions Judge that respondent Nos. 2 and 3 are distant relatives of husband of the deceased and they could not have benefited in any manner by demand of dowry. They are public servants and could not involve themselves in any business activity like opening of a school. The involvement of respondent Nos. 2 and 3 in the crime was not possible. The said finding is based on proper appreciation of evidence of P.W.-1 as well as the other material available on record and does not suffer from any error or illegality. In my considered opinion, the application u/s 319 Cr.P.C. has rightly been rejected by Additional Sessions Judge and the impugned order does not require any interference by this Court. The revision is accordingly dismissed.