

Kunti Devi, Vs. the State of Bihar

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Court : Patna

Decided On : Jan-31-2007

Judge : Navin Sinha, J.

Acts : Explosive Substances Act - Sections 4 and 5; [Dowry Prohibition Act, 1961](#) - Sections 4; Indian Penal Code (IPC) - Sections 34, 120B, 304B, 307, 324, 406 and 498A; Code of Criminal Procedure (CrPC) - Sections 177, 178, 178(1), 220, 220(1), 407 and 407(4)

Appeal No. : Criminal Misc. No. 37889 of 2006

Appellant : Kunti Devi, Mukesh Pal Alias Guddu and Satya Narayan Pal Alias Satya Narayan Rajpali

Respondent : The State of Bihar

Advocate for Def. : P. Mehta, APP

Advocate for Pet/Ap. : Abhay Kumar Singh No. 1, Patmatma Singh and Bharat Bhushan, Advs.Gopal Govind Mishra, Adv.

Disposition : Application dismissed

Judgement :

Navin Sinha, J.

1. The petitioners are accused in Khagaul PS Case No. 11 of 2003 registered on 23.2.2003. Cognisance has been taken against them under Section 498A, 304B, 120B and other provisions of the Penal Code. The case has been committed to the Court of Sessions, Patna, registered as Sessions Trial No. 1022 of 2006 after commitment. The prayer in this application under Section 407 of the Code of Criminal procedure is for a direction for transfer of the Sessions Trial from Patna to the Sessions Court at Munger.

2. Learned Counsel for the petitioner urged that the deceased was married to petitioner No. 2 at Jamalpur in Munger. The alleged harassment and assault for purposes of dowry was made at Jamalpur. The deceased died at Jamalpur. The Post Mortem and cremation were also done at Jamalpur. On the admitted case of the prosecution no part of the cause of action arose within the territorial jurisdiction of the Courts at Patna. Placing reliance upon Section 177 of the Code of Criminal Procedure learned Counsel urged that the trial was required to be held at Munger within whose jurisdiction the offence was committed. Learned Counsel relied upon a judgment of the Supreme Court in the case of Y. Abraham Ajith and Ors. v. Inspector of Police Chennai and Anr. reported in : 2004 CriLJ4180 in support of the aforesaid submission to direct transfer of the Sessions Trial from Patna to Munger.

3. Counsel for the informant opposing the application submitted that the allegations were that the deceased was taken away from Patna on promise of being kept properly in the matrimonial home. The demands for dowry were made upon the family of the deceased by the accused from Jamalpur at Patna. The family of the deceased went from Patna to Jamalpur to bring her back when she was not allowed to come back till dowry be not paid. The deceased had written several letters to the informant and her family members at Patna of the harassment and the torture apart from telephone communication on 25.1.2003 made by her at Patna from Jamalpur when she was severely assaulted of the danger to her life. The accused had been so daring so as to threaten and assault the family members of the deceased in their house at Khagaul at Patna leading to the institution of Khagaul PS Case No. 66 of 2003 on 2.11.2003 under Sections 307, 324 of the Penal Code and Sections 4/5 of the Explosive Substances Act.

The informant was then compelled to file Cr.W.J.C. No. 199 of 2004 before this High Court for direction to the Police to provide protection. This Court while disposing of the writ petition on 17.1.2005 expressed its anxiety that despite warrants of arrest against accused No. 5 and his being a Police Officer was subverting the law with no consequences. The High Court further recorded its prima facie satisfaction that the absconding co-accused are posing threat to the life and liberty of the petitioner (informant) and his family members who are residing under Khagaul Police Station. Consequently directions were given to the Superintendent of Police, Patna, to ensure that the petitioner and his family is provided adequate security by the Police. Counsel thus submitted that it was not possible for the informant and other witnesses to safely go to Munger to depose and pursue the matter. There would be grave risk and threat to them. Both legally and factually there was therefore no justification for transfer of the case from Patna to Munger.

4. This Court has considered the submissions on behalf of the parties and the materials on record. Section 177 of the Code of Criminal Procedure states that 'ordinarily' every offence shall be tried by the Court within whose local jurisdiction the offence was committed. Section 178 of the Code of Criminal Procedure provides for the place of trial where the offence is committed in more than one place. The words 'ordinarily' in Section 177 Cr.P.C. are of significance. The Apex Court in the case of Mohan Baitha v. State of Bihar reported in : 2001 CriLJ1738 , held that the provision is a general one and must be read subject to the special provisions contained in the Criminal Procedure Code. The aforesaid judgment also took note of the fact that the word 'ordinarily' need not be limited to those specially provided for by the law and exceptions may be provided by law on considerations of convenience or may be implied from other provisions of law permitting joint trial of offences. Upholding the judgment of this Court placing reliance on Section 220 of the Code of Criminal Procedure and considering the narration of events culminating in death constituting an offence under Section 304B their Lordships held that there was a continuity of action to attract Sub-section (1) of Section 220. The facts of the Mohan Baitha (Supra) case were strikingly similar. An FIR was lodged at Bhagalpur under Section 304B, 406, 34 of the Penal Code. A telephonic message was received at Bhagalpur by the father that the victim had died while

preparing milk for the child. The proceedings were challenged before the High Court on the ground that since the incident constituting the offence punishable under Section 304B had taken place at Jehanaganj in the State of Uttar Pradesh the Court at Bhagalpur lacked territorial jurisdiction to try the case. The High Court rejected the challenge. Their Lordships held that in a given case indicating proximity of time, unity of proximity of place, continuity of action, and community of purpose or design are the factors for deciding whether certain acts are part of the same transaction or not. A series of acts so connected together to form a part of a transaction is purely a question of fact. Section 177 Cr.P.C. is therefore not peremptory in nature nor a complete embargo.

5. In the case of Abdul Nazar Madani v. State of Tamilnadu and Anr. Reported in : 2000 CriLJ3480 , the Apex Court has held that the purpose of criminal trial is fair and impartial justice uninfluenced. An apprehension to the contrary is required to be real and not imaginary. If it appeared that dispensation of justice was not possible impartially and objectively at any place the appropriate Court may transfer the case to another Court where it feels it would be fair and conducive. The convenience of the parties means not only convenience of the party asking for transfer but even the convenience of the prosecution and the witnesses and the larger interest of society.

6. In the case of Y. Abraham Ajith (Supra) relied upon by the petitioners, the allegations were under Section 498A and 406 of the Penal Code only read with Section 4 of the [Dowry Prohibition Act, 1961](#). The victim left the house of the husband at Nagercoil after alleged dowry demands by the husband and his relations. There was not a whisper of allegations about any demand for dowry or commission of any act constituting an offence at Chennai. The victim left the matrimonial house, came back to Chennai and lodged the case there. The Apex Court held that on facts Section 177 Cr.P.C. relating to continuing offences had no application. In the aforesaid factual background their Lordships held that under Section 177 Cr.P.C. the trial court not be held at Chennai.

7. The facts in the present case are entirely different. Demands for dowry were made by the petitioners from Jamalpur at Patna. The deceased was not allowed to

come back to Patna till the dowry was not given. The deceased wrote several letters from Jamalpur in respect of the demands for dowry and the harassment to her for the same to the Informant and other family members at Patna. The deceased called on phone at Patna from Jamalpur days before her death when she was assaulted and apprehended danger to her life. In the aforesaid facts Section 178(1) Cr.P.C. is clearly applicable rendering jurisdiction in the Courts at Patna. Moreover, this Court dealing with the Criminal Writ Petition of the informant in the background of Khagaul PS Case No. 66 of 2003 instituted by the Informant had noticed how warrants for arrest of the accused were not being executed at Jamalpur. The Court further clearly recorded a threat perception to the informant and other family members from the petitioners and directed the City S.P. Patna to provide them adequate security. If the informant and his family members need protection from the petitioners when in their own house at Patna, it does not need a fertile imagination to imagine their predicament and the consequences of requiring them to go to Jamalpur to depose and pursue the trial. Objection to jurisdiction must be taken at the first instance. The matter has already been committed to the Sessions Court at Patna.

8. This Court on the basis of aforesaid discussion finds no merit in this application. The same is therefore dismissed.

9. The petitioners had been required to execute bond under Section 407(4) Cr.P.C. This Court awards compensation of Rs. One thousand to the Informant to be paid by the petitioners in two weeks and receipt filed in the Registry.

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