

Krishna Vs. State of Maharashtra

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Court : Mumbai

Decided On : Sep-11-2002

Reported in : 2003BomCR(Cri)456; II(2003)DMC199

Judge : R.S. Mohite, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 482

Appeal No. : Criminal Revision Application No. 76 of 2002

Appellant : Krishna

Respondent : State of Maharashtra

Advocate for Def. : S.G. Lonely, Spl. P.P.

Advocate for Pet/Ap. : Mahesh Singh and ;Girish Purohit, Advs.

Judgement :

R.S. Mohite, J.

1. Heard the learned Advocate and Special Public Prosecutor for the parties.
2. Rule. Rule is made returnable forthwith by consent of the parties.
3. This revision application seeks to quash and set aside the impugned order of the Trial Court passed by the 6th Additional Sessions Judge, Nagpur, in Sessions

Trial No, 212 of 2001 on 7.5.2002 during cross-examination of P.W. 2 - Nirmala by accused No. 5 after her re-examination by the prosecution.

4. I have perused the record. It appears from the record that it was the prosecution case that a golden necklace which was a part of the belongings of the deceased- Puja, was presented by her mother P.W. 2 on a demand made by the accused. During the examination-in-chief, the prosecution produced three photographs marked Articles A, B and C, which were photographs of deceased Puja and which showed her wearing the necklace in question along with other golden ornaments. It was the prosecution case that these photographs were taken during the marriage.

5. In the cross-examination of this witness, P.W. 2 admitted that she had purchased the said ornaments after the engagement ceremony of Puja. She also admitted that the full set of ornament to which she had referred to, was the same set which Puja was wearing in the photographs at Articles A, B and C. She admitted that the set was presented to Puja by her-in-laws. She admitted that at the time of engagement ceremony held at Hotel Hardeo, nothing was given to Puja from the side of groom. She has also admitted that nothing was given to Puja from her side.

6. This statement in cross-examination prima facie indicated that golden necklace was not given to Puja at the time of engagement. That at a further stage of cross-examination, the defence produced another photograph which was marked Article D. The said photograph indicated a display of articles, sweets and full gold ornament set including necklace. The witness admitted that the set of ornaments seen in Article D is the said article which Puja wearing in Articles A and B. This means that the full set shown in the photograph at Article D was the set worn by Puja at the time of marriage.

7. In the re-examination, the Public Prosecutor asked the pointed question to this witness making a query as to how ornaments could be seen in the photograph at Article D kept in blue box when the witness has stated that nothing is given to Puja. The answer given by witness was that the blue box contained the full set of ornament which was brought by her brother Sunil for the approval of in-laws of

Puja. It was not purchased at that time. To this question, the objections were raised by the defence Counsel but the said question was permitted with liberty to both the parties to argue at the time of final hearing.

8. In such circumstances, in the cross-examination, which ensued after the re-examination, the defence sought to introduce a photograph at Article F. The said photograph at Article F was introduced because it showed a blue box. After Article F was allowed to be introduced, the defence produced one more photograph which indicated the mother-in-law, who is an accused, putting a gold chain around the neck of the deceased Puja. The introduction of this photograph as article in the trial has been disallowed by the impugned order.

9. The reason given by the Court for disallowing this photograph is that the Court has perused the photograph and it does not appear that any fruitful purpose will be served by filing the said photograph looking to the nature of said photograph. Further, it will be like enlarging the scope of restricted cross-examination after re-examination. A look at the photograph indicates that the same show the mother-in-law, who is one of the accused, putting a gold chain around a girl who, according to the defence is deceased Puja. Special Public Prosecutor for the State states that the photograph does not carry the theory of defence any further because the face of the girl is partly obscured and that not much weight can be given to the photograph because the nature of ornament is not clear. '

10. In my opinion, these objections pertain to the weight that can be given to the articles sought to be introduced by way of evidence. It is clear that in the re-examination, material was brought to indicate that the gold ornament set was not purchased at the time of the display in Article D and had only been brought for approval. The photograph indicates one of the accused persons i.e. present applicant, who is mother-in-law of the deceased, putting a gold ornament on the deceased. In the circumstances, it cannot be said that the article sought to be introduced had no relevance whatsoever to the material brought on record in the re-examination.

11. It is contended by the Special Public Prosecutor that the Criminal Revision Application would not lie against the said order. In this regard, he has relied upon

the judgment of the Apex Court in the case of Munna Devi v. State of Rajasthan, reported in : 2002 CriLJ225 . In the said judgment, the Apex Court has held that the revision power under the Code of Criminal Procedure cannot be exercised in a routine and casual manner. While exercising such powers, the High Court has no authority to appreciate the evidence in the manner as the Trial and Appellate Courts are required to do.

12. As regards this, it is contended on behalf of the applicant that the shutting out of the evidence is in the nature of an intermediate order because the shutting of evidence would finally determine the right to produce such an article on record and would affect his defence. He also contends that the application is also filed Under Section 482 of the Criminal Procedure Code. I find that since the application is also filed Under Section 482 of the Criminal Procedure Code, it is not necessary for me to decide this question finally.

13. In the circumstances, Criminal Revision Application is allowed. The Trial Court will permit the production of all the photographs sought to be produced and will proceed with the trial expeditiously.

14. Rule is made absolute accordingly.

15. It is made clear that the facts, contentions and findings mentioned this judgment are restricted for the purpose of this judgment only and will not be taken into account in the trial.

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