

Annapurna Jena Vs. State

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Court : Orissa

Decided On : Apr-04-1990

Reported in : 70(1990)CLT194; 1990CriLJ1577

Judge : K.P. Mohapatra, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 161, 190, 207A, 319 and 482; ;Indian Penal Code (IPC) - Sections 34, 109, 201, 202, 302 and 323

Appeal No. : Criminal Misc. No. 152 of 1990

Appellant : Annapurna Jena

Respondent : State

Advocate for Def. : S.K. Das, Addl. Govt. Adv.

Advocate for Pet/Ap. : G.D. Tripathy, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

K.P. Mohapatra, J.

1. This criminal Misc. case filed under Section 482 of the Code of Criminal Procedure ('Code' for short) is directed against the order passed by the learned

Judicial Magistrate, Kodala on 30-9-1989 taking cognizance of an offence under Section 302 read with Section 34, I.P.C. against Annapurna Jena, wife of accused Dayanidhi Jena.

2. Facts of this case are like these. Accused Dayanidhi Jena is the elder brother and accused Satrughna Jena is the younger brother of deceased Abhi Jena, husband of the informant. The occurrence took place on 18-6-1989 at about 8 a.m. and it started from the courtyard of the houses of the above named accused and the deceased which are clustered around it. In the morning, Basanti the wife of accused Satrughna Jena began abusing the deceased. When the deceased drew the attention of her husband, accused Satrughna Jena gave a slap to his wife Basanti. At that time Annapurna Jena, wife of accused Dayanidhi Jena appeared at the scene and pointing at her husband Dayanidhi and brother-in-law Satrughna said that they were women and saying so brought a crowbar (Sabala) from the house and handed it over to her husband and instigated him to assault the deceased. At this, accused Satrughna put a Napkin around the neck of the deceased and restrained him. Accused Dayanidhi Jena assaulted him by means of the crow-bar as a result of which he sustained serious bleeding injuries and died on the spot itself. The informant was also assaulted by accused Dayanidhi Jena. The dead body of the deceased was cremated by some villagers.

3. Charge-sheet was submitted against 15 accused persons except Annapurna Jena for offences under Sections 302, 201, 202 and 323 read with Section 34, I.P.C. Cognizance of the offences was taken by the learned Judicial Magistrate by order dated 22-9-1989.

4. On 30-9-1989 while disposing of a bail petition filed by two of the accused persons, the learned Judicial Magistrate had occasion to go through the case diary in detail and found that there was a prima facie case against Annapurna Jena under Section 302 read with Section 34, I.P.C. because she had instigated her husband to commit the murder of the deceased by handing over a crow-bar. Therefore, acting under the provisions of Section 190 of the Code, he took cognizance of the offence against her under Section 302 read with Section 34, I.P.C.

5. The occurrence commenced inside the courtyard within the premises of the houses of the three brothers two of whom are accused and the other was the deceased. So, when the occurrence commenced there were no outsiders present. The informant has clearly stated in the F.I.R. that Annapurna Jena pointing out at her husband Dayanidhi and brother-in-law Satrughna insinuated that they were women and saying so brought out a crow-bar from inside the house, handed it over to her husband accused Dayanidhi and instigated him to assault the deceased. She has repeated this fact in her statement under Section 161 of the Code. Whether these statements are true or not have to be tested during trial. But at this preliminary stage it cannot be totally possible to say that there are no materials against Annapurna Jena. Thus on the materials on record there appears to be a prima facie case against her either under Section 302 read with Section 34 or Section 302 read with Section 109, I.P.C. This fact has to be determined . at a later stage at the time of commitment of the case to the Court of session.

6. The only question that falls for consideration on the arguments advanced by Mr. Tripathy is whether under Section 190 of the Code the Judicial Magistrate had jurisdiction to take cognizance of an offence against Annapurna Jena in a case exclusively triable by the court of session although on charge-sheet was submitted against her. In support of his contention Mr. Tripathy cited a few decisions of this Court with regard to powers under Section 319 of the Code. But these decisions are not relevant for the purpose of this case because applicability of the provisions of Section 319 of the Code arises only during trial of a criminal case. That stage has not arrived yet. He cited another decision of the Supreme Court reported in, AIR 1978 SC 514 : (1978 Cri LJ 642), Sanjay Gandhi v. Union of India, in which it was held that it is not open to the committal court to launch on a process of satisfying itself that a prima facie case has been made out on the merits. The jurisdiction once vested in him under the earlier Code but has been eliminated now under the present Code. Therefore, to hold that he can go in to the merits even for a prima facie satisfaction is to frustrate the Parliament's purpose in remoulding, Section 207-A (old Code) into its present non-discretionary shape. This decision was, however rendered on completely different facts. In that case one of the accused wanted to cross-examine the witnesses for the prosecution and to argue that no prima facie case had been made out for commitment. In that context the

Supreme Court held that the committing Magistrate had no jurisdiction to launch a process of satisfying itself that a prima facie case had been made out on merits. But the present case is completely different. Here the materials disclosed prima facie case against Annapurna Jena and so it was open to the learned Judicial Magistrate to take cognizance of an offence against her under the provisions of Section 190 of the Code. A plain reading of Section 190 of the Code shows that a Magistrate may take cognizance of any offence upon a police report. The police report here consists of the charge-sheet which is supported by the case diary. If, on consideration of the case diary and the police report, the Judicial Magistrate found that there was a prima facie case against Annapurna Jena, no exception could be taken to such a view. There are innumerable cases of this Court and of other High Courts laying down the principle that even if a final report is submitted against an accused, yet on consideration of the materials appearing in the case diary the Magistrate can lawfully take cognizance of an offence against him. In this case, in the F.I.R. the name of Annapurna Jena was mentioned as an instigator to the crime. In her statement the informant repeated the allegation against her. Yet, the investigating officer did not include her name as an accused in the charge-sheet. So virtually a final report was submitted so far as she was concerned. Therefore, on consideration of the case diary it was open for the learned Judicial Magistrate to take cognizance of an offence against her on the basis of the materials which have been referred to above.

7. For the aforesaid reasons, I find no irregularity or illegality in the impugned order so as to exercise inherent powers in favour of the petitioner. I would, however, observe that neither in committal proceeding nor during trial of the case any of the observations made in this order shall have any binding effect. Subject to the above observation the criminal misc. case is dismissed. The lower Court records be sent back forthwith.