

Subhash Chander and anr. Vs. State

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Court : Delhi

Decided On : Dec-16-1991

Reported in : 46(1992)DLT366

Judge : V.B. Bansal, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 227

Appeal No. : Criminal Revision Appeal No. 111 of 1991

Appellant : Subhash Chander and anr.

Respondent : State

Advocate for Pet/Ap. : B.S.C. Singh,; B.K. Verma,; P.K. Dey and;

Judgement :

V.B. Bansal, J.

(1) This order is to dispose of the criminal revision filed by Subhash Chander and his mother Smt. Krishna Wanti thereby challenging the order dated 8th January, 1991 directing the framing of the charge under Sec. 306 read with Sec. 34 Indian Penal Code against them and the charge framed against them on the same day.

(2) Briefly stated the facts leading to the filing of the present petition are as under:

(3) Smt. Shashi Bala @ Kanchan Rani was the daughter of Smt. Satya Rani Chadha and Suraj Parkash Chadha. Smt. Kunan Devi and Shri S.S. Kohli are the mother and brother respectively of Satya Rani Chadha.

(4) Shashi Bala @ Kanchan Rani was married to Subhash Chander on 4th May, 1978 and thereafter she started residing with her in-laws. Subhash Chander petitioner is the husband and Smt. Krishnawanti is the mother-in law of Kanchan Rani. Naresh is the brother while Chanchal and Aruna are the sisters of Subhash Chander.

(5) On 17th March, 1979 Smt. Kanchan Rani died at the house of her in-laws of burn injuries. Information in this regard was conveyed to police and also to Smt. Satya Rani Chadha. Case Fir No. 443 was recorded in P.S. Gandhi Nagar on 17.3.1979 under Sec. 302 read with Sec. 34 IPC. on the basis of statement of Smt. Satya Rani Chadha.

(6) It was, inter alia, stated by her that there was no demand of dowry when the marriage was settled but a few days prior to the marriage there was a demand of fridge, T.V., Scooter and ornaments. It was also stated that they could give a fridge and Rs. 500.00 in lieu of Tv and that the husband In-laws continued harassing her. It was also stated that on 15th March, 1979, Smt. Kanchan Rani came to the house of her parents while accompanied by Subhash Chander and a demand of scooter was repeated when Subhash was informed that the said demand could not be fulfilled at that time but a scooter would be given at the time of birth of a child since Kanchan Rani was carrying six months pregnancy.

(7) The matter was investigated by the local police, Crime Branch as also the CBI. However, the conclusion arrived at by the investigating agency was that no case was made out and a proposal was made for cancellation of the case.

(8) Smt. Satya Rani filed a complaint under Sec. 200 of the Code of Criminal Procedure in Court for the offence under Sec. 302 read with Sec. 34 IPC. An enquiry was made and 11 witnesses were examined.

(9) After hearing Counsel for Smt. Satya Rani Chadha Subhash Chander and Smt. Krishna wanti were summoned for the offence under Sec. 306 Ipc while no case was found against Naresh, Chanchal and Aruna by Metropolitan Magistrate, Shahdara vide order dated 10th January, 1985.

(10) After furnishing relevant copies to the petitioners the case was committed to Sessions Court for trial by Metropolitan Magistrate Shahdara vide order dated 3rd December, 1989.

(11) The matter came up before Shri S.M. Aggarwal, Addl. Sessions Judge, Shahdara who vide impugned order found a prima facie case under Sec. 306 read with Sec. 34 Indian Penal Code against the petitioners and so charge was framed against them accordingly.

(12) Smt. Satya Rani Chadha made an application being Criminal Misc. 242 of 1991 praying that she may be imp led as a respondent and granted an opportunity of addressing arguments a final hearing. Vide order dated 1st August, 1991 the applicant was not joined as a party but permission was granted to her Counsel to address the Court at the time of hearing.

(13) I have heard Bawa Shiv Charan Singh learned Counsel for the petitioners and Shri P.K. Dev learned Counsel for Smt. Satya Rani Chadha. No one has appeared for respondent No.1.

(14) Learned Counsel for the petitioners has submitted that the impugned order was challenged by the petitioners on two counts, namely, that Sec. 113A of the Evidence Act came into force much after the incident and this provision could be applicable to the facts of the present case and secondly that even if evidence produced by the complainant is accepted on face value ingredients of provisions contained in Sec. 306 Indian Penal Code are not fulfilled and so no case is made out.

(15) As regards the first objection learned Counsel for the petitioners has been very fair and submitted that in view of the judgment of the Supreme Court on the subject this ground is not available to him and so being not pressed. In case

Gurbachan Singh v. Satpal Singh & Ors. 1990 Sc 209, it has been held that the provisions contained in Sec. 113A of the Evidence Act as inserted in the Statute Book by Act 46 of 1983 did not create any new offence and as such it does not create any substantial right but it is merely a matter of procedure of evidence and so retrospective in its application. Thus, this ground is not available to the petitioners.

(16) SEC. 227 of the Code of Criminal Procedure is the relevant provision which would be relevant to determine whether it was case for discharge of the petitioners by the learned Additional Sessions Judge. The said Section reads as under: Sec. 227 Cr. P.C. If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.'

(17) A bare perusal of the Section makes it abundantly clear that a person facing prosecution shall be discharge if the Court does not find sufficient ground for proceeding against him. It is, thus. clear that at that stage the Court is not consider as to whether there is sufficient evidence for conviction or not. All that is required to be considered by the Court is as to whether there is evidence for proceeding further. It would, thus, mean that if there is strong suspicion Court has necessarily to frame the charge. All that is required to be considered is as to whether the evidence relied upon by the prosecution would reasonable connect the accused with a crime. However, if accepting the evidence on its face value without even cross-examination Court finds that there is no sufficient ground for proceeding further it would be a fit case for discharge of the accused. Reference in this regard can be made to the cases Stree Atyachar Virodhi.Parishad v. Dilip Nathumal Chordia and Another 1989 Scc CrI. 285 and Niranjn Singh Karam Singh Punjab v Jitendra Bhimraj Bijja and Others : 1990 CriLJ1869 .

(18) I would now be discussing the submissions and the material on record keeping in view the aforesaid legal propositions.

(19) Learned Counsel for the petitioners has submitted that it was an accidental fire in which Smt. Kanchan Rani sustained burn injuries resulting in her death and there has not been any demand of dowry. He has also submitted that the petitioner Subhash was posted at Mathura and was not in a position to take his wife Smt. Kanchan Rani (deceased) to Mathura immediately but otherwise there was no ill-will and they were having cordial relations. He has also submitted that letters produced on record is a clear indication on this point and, thus, submitted that there was no material at all against the petitioners.

(20) This submission has been controverted by learned Counsel for the complainant Smt. Satya Rani Chadha.

(21) A perusal of the record indicates that Smt. Kanchan Rani sustained burn injuries inside the Kitchen which was broken open. It is also on record that Kerosene oil was found in the scalp of the deceased as is stated by Dr. L.T. Ramani who conducted the post-mortem examination. It is also in evidence that lid of the stove was found opened and there was some kerosene oil in the stove. These facts would primarily be sufficient at this stage to hold prima facie that it was not a case of accidental fire but it was suicide by the deceased.

(22) The next question is as to whether there has been any demand for dowry and harassment by the petitioners.

(23) As regards Subhash Chander petitioner no. 1 it has been so stated by Smt. Satya Rani Chadha in the Fir as also in her statement recorded by the Magistrate asPW1. She has also made a categorical statement that even on 15th March, 1978 Subhash visited her along with Kanchan Rani and at that time a demand was made of scooter when she expressed her inability to provide the same at that time. It was further stated by her that they would arrange to give a scooter at the time of birth of a child to Kanchan Rani and that Subhash was in angry temper at the time he left her house.

(24) Smt Kundan Devi (Public Witness 6), Suraj Parkash (Public Witness 7) and S.S. Kohli (PW9) have also made statements with regard to the harassment of Kanchan Rani by Subhash Chander. In these circumstances, I am clearly of the

view that It cannot be said that there is no evidence against him to proceed further in the matter as required by Sec. 227 of the Code of Criminal Procedure.

(25) As regards Smt. Krishnawanti petitioner no. 2, there is clear statement of Smt. Kundan Devi (Public Witness 7) that Smt. Kanchan Rani used to Inform her about the harassment by her in-laws including mother-in-law (Smt. Krishnawanti). Similar has been the statement of S.S. Kohli (Public Witness 9).

(26) As already referred to it is not the stage to appreciate and scrutinise the evidence thoroughly to find out as to whether it is a fit case for conviction or not. Even subsequent events cannot be taken note of to find out as to whether there was sufficient material before the learned Addl. Sessions Judge for coming to the conclusion as to whether there was sufficient cause to proceed further by way of framing of charge against the petitioners.

(27) Leamed Counsel for the petitioners had also made a submission that it is a fit case which could be quashed on account of delay.

(28) This plea was not taken up in the revision and in these circumstances learned Counsel for the petitioners submitted that this plea may not be discussed while disposing of this petition.

(29) In view of my aforesaid discussion, I am clearly of the view that no case has been made out by the petitioners for interference in the discretion exercised by the learned trial Court in framing charge against the petitioners which Is based on cogent material available on record. The revision petition, therefore, stands dismissed.

(30) The petitioners would appear before the trial Court on 7th January, 1992. Petition dismissed.

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