

Ashu Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Aug-03-1989

Reported in : 1990(2)WLN186

Judge : A.K. Mathur, J.

Appeal No. : S.B. Cr. Revision Petition No. 96 of 1987

Appellant : Ashu

Respondent : State of Rajasthan

Advocate for Def. : Mr. M.M. Singbvi

Advocate for Pet/Ap. : Mr. R.K. Charan

Disposition : Petition allowed

Judgement :

A.K. Mathur, J.

1. This is a revision petition filed against the order pasted by the Munsif and Judicial Magistrate, Sanchoe dated 24-1-1987, whereby the learned Magistrate has accepted the final report submitted by the Police in FIR No. 3/86 Under Sections 326, 342 and 307, IPC.

2. Brief facts giving rise to this revision petition are that a First Information report was filed on 6th January, 1986 at police station Cheetalwana by Ashu that his daughter Nenu was married to the non-petitioner Khetaram four years ago and thereafter she remained at her father in law's house. On 16th August, 1985, non-petitioner Nos. 2 to 6 conspired and set her on fire after throwing kerosene on her. Thereafter, she was taken to Dhanera Hospital (Gujarat) by her husband's elder brother for treatment. When Ashu father of Mst. Nenu came to know about the whole incident, he immediately rushed to the hospital and found that Mst. Nenu had a number of burn injuries on her body, at that time she refrained from telling anything as she was under the fear of her in-law. After two months Nenu was discharged from the hospital and she was taken to the house of her father-in-law. After that her husband left for Bombay and she was again maltreated by her mother-in-law and thrown out. She came to her father's house and narrated the whole story to her father, Ashu father of Mst. Nenu thereafter requested her in-laws for amicable settlement but without any result. Thereafter, a First Information Report was filed at Police Station Cheetalwana on 6th January, 1986. During the course of investigation, the police recorded the statements of Mst. Nenu, her father Ashu, Thakra and Achla. The statement of Mst. Nenu was also recorded Under Section 164, Cr.PC on 4th February, 1986. After close of investigation the police filed report and did not believe the story given out by Mst. Nenu and supported by Thakra, Achla, Police submitted the final report and the learned Magistrate accepted the same and discharged the accused. Hence the present revision petition by complainant.

3. I have heard Mr. R.K. Charan, learned Counsel for the petitioner, Mr. M.M. Singbvi learned Counsel for the respondent and Mr. S.M. Singhvi, learned Public Prosecutor, for the State and have also gone through the record. I am constrained to say that the action of the Magistrate in accepting the final report in the present circumstances was wholly unwarranted, casual and without application of mind. The only reason given by the learned Magistrate while accepting the final report was delay in filing the First Information Report at Police Station Cheetalwana. The delay has been explained by Mst. Nenu and Ashu. Mst. Nenu in her statement has deposed that she was kept in the Hospital at Dhanera as an in-door patient for two months and thereafter, she was discharged from the hospital and brought back to

her in-laws house at Halibab. Thereafter, her husband left for Bombay and her mother-in-law again started maltreating her and threw her out and then she came to her father's house. Ashu, father of Mst. Nenu also tried to bring about any amicable settlement and sent the messages to her daughter's-in-law's house and consulted the person of community so that the matter can be settled down amicably but this could not be done. Therefore, he filed the FIR at Police Station Cheetalwana.

4. I have gone through the statement of Mst. Nenu injured, Ashu father Thakra, Achla and some more witnesses and have also gone through the injury report of Mst. Nenu. In her earlier statement, she has stated that while she was preparing the food, some kerosene sprinkled on her body and caught fire. But in her subsequent statement, she has deposed that in the morning of 6th August, 1985, she was taken by her mother-in-law for easing out and when she was in the field her husband Khafaram, her Jeth Bhagwana Jethani Dami wife of Bhagwana came there and her husband Kbeta Ram and Mst. Dami tied 'odani' on her mouth and her hands were also tied with a Lathi. Thereafter Dami sprinkled kerosene oil and her Jeth Bhagwana set fire by match and she started burning, as a result of burning she became unconscious after some time when 'odani' tied on her mouth loosen she shouted for help and on hearing her cries Thakra Bisnoi and Achla Jeth came there and it is stated that thereafter she lost her consciousness. It is alleged that she got consciousness after five days at the hospital at Dhanera. This version of Mst. Netm has been supported by Thakra and Achla in their statements Under Section 161. The Police has summarily discharged these statements while giving the final report. In this state of affairs, I am constrained to hold that the learned Magistrate did not apply his mind properly, while accepting the final report. More so, looking to the present situation, the charge Under Section 498A, IPC is also prima facie made out in the present case. But unfortunately the learned Magistrate did not care to look into the matter from that angle also. It is true that while accepting the final report, the learned Magistrate has directed, but he has to exercise that discretion independently on the basis of the evidence on record and should not swayed away with the finding of the police. In the present case on narration of the facts, as mentioned above, the learned Magistrate even did not care to appreciate a plausible explanation submitted by Ashu for the delay in filing

the first information report. He has also not carefully examined the statement of Mst. Nenu recorded Under Section 161, 164 Cr. PC and also did not look into the statements of Thakra and Achla recorded Under Section 161 Cr. PC. Thus, I am constraint to say that the learned Magistrate has not properly applied his mind. Therefore, the order of the learned Magistrate, accepting the final report, dated 24-1-87 is set aside. The learned Magistrate should take cognizance and proceed with the trial of the case in accordance with law.

5. The revision petition is allowed. The record, which has been received, be sent back to the trial court forthwith.

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