

Mst. Moti Bai Vs. Mohammed Shafi and ors.

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Court : Rajasthan

Decided On : Aug-22-1974

Reported in : 1974WLN(UC)348

Judge : B.P. Beri, C.J.

Appeal No. : S.B. Criminal Revision No. 332 of 1971

Appellant : Mst. Moti Bai

Respondent : Mohammed Shafi and ors.

Disposition : Application dismissed

Judgement :

B.P. Beri, C.J.

1. By his order dated March 31, 1970 learned Magistrate First Class, Bhilwara discharged Mohammed Shafi and 4 others of the offences Under Section 302 read with Section 34 and 201 of the Indian Penal Code. The revisional-application against that order was dismissed by the learned Sessions Judge, Bhilwara by his order dated March 22, 1971 and that has brought the applicant Smt. Moti Bai before me for revision of the orders.

2. Smt. Moti Bai, the applicant before me, filed a complaint on Aug. 30, 1967 before the Magistrate First Class that her husband was murdered on May 28, 1967

when he travelled in a jeep with accused Mohammed Shafi, Bashir Mohammad, Mohinuddin and Mohammed on Bhilwara-Hamirgarh road and the transaction was given the colour of a motor accident. The learned Magistral forwarded the complaint to the police Under Section 156(3) of the Code of Criminal Procedure Extensive inquiries were made by the police & it submitted a final report on July 20, 1968 But on 8-12-1867 Smt. Moti Bai presented another private complaint in the Court of the Munsiff-Magistrate complaining against the inaction of the police and the learned Magistrate inquired into the complaint himself He recorded the statement of four witnesses produced by complainant Moti Bai and 6 witnesses by the accused, and he came to the conclusion that it was not a case of murder and hence he did not consider it worthwhile to commit the accused to the court if sessions & discharged the accused. Against this order of discharge Smt. Moti Bai presented a revision application before the learned Sessions Judge and urged that the learned Magistrate had exceeded his authority and held a regular trial, for which he had no jurisdiction. His functions were merely to record the evidence, to find out if a prima facie case was established and to commit the accused to the court of sessions. The learned Sessions Judge examined the Provisions of Section 207 & 209 of the Code of Criminal Procedure analysed the judgment of the Supreme Court reported in AIR, 1962 S.C. 1195 that the underlying principle of both these Sections notwithstanding the variation in the language largely speaking was the same and that a Magistrate must find a stronger case for discharging the accused Under Section 207 and then Under Section 209 Cr.P.C. The learned Sessions Judge came to the conclusion that the learned Magistrate was entitled to sift and weigh the material on record whether there was sufficient evidence for commitment. If the evidence did not disclose a prima facie case the Magistrate was entitled to discharge the accused. The allegation levelled in the complaint was that her husband was crushed under the front left wheel of the jeep by putting it in reverse gear but the post mortem report did not reveal it There was a fracture of frontal bone and 'he Doctor did not say that he was crushed. The so called eyewitnesses' evidence was not consistent with the post mortem report. Devilal's evidence was again contrary to the medical report, The learned Sessions Judge came to the conclusion, after going through the entire evidence recorded by the learned Magistrate, that there was not even the remotest chance of conviction and

hence the Magistrate was right in not finding a prima facie case. He also took two factors: (1) that the complaint was filed after 2 or 3 months of the incident and (2) that Smt Moti Bai also filed a claim before the Motor Accident Claims Tribunal, where in para 9 it was alleged that 'he driver drove the jeep rashly and negligently causing the death of her husband. This was on 18-7-67. Thus upto that date even Smt. Moti Bai believed that her husband had not been murdered. The learned Sessions Judge, therefore, dismissed the revision application.

3. As laid down by their Lordships of the Supreme Court in Amar Chand Agarwala v. Shanti Bose and Anr : 1973 CriLJ577 the test for the maintainability of a criminal revision should be whether there is flagrant miscarriage of justice. On hearing the arguments of the learned Deputy Government this much is certain that Ex. D/13, the application for compensation claim was filed on July 18, 1967. At least within this period even the complainant did not believe that her husband was intentionally killed P.W. 1 Kalla appears to be a chance witness and so also Mangu (PW/2). P.W. 4 Devilal clearly contradicts the medical report and I think that the learned Sessions Judge was right in coming to the conclusion which he reached.

4. This revision-application, therefore, calls for no interference and is dismissed

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