

Peer Singh and ors. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-22-1993

Reported in : 1993WLN(UC)107

Judge : Rajendra Saxena, J.

Appeal No. : S.B. Criminal Revision Petition No. 34 of 1992

Appellant : Peer Singh and ors.

Respondent : State of Rajasthan

Disposition : Petition allowed

Judgement :

Rajendra Saxena, J.

1. This petition filed under Section 397(2)/401 read with Section 482 Cr.P.C. has been directed against the order dated 4.2.1992 passed by learned Sessions Judge Sirohi in Criminal Revision Petition No. 29/89 'State v. Peer Sing and Ors.', whereby he accepted the revision petition filed on behalf of the State and set aside the order of the learned Munsif & Judicial Magistrate, Shiv-Ganj dated 13.9.1989 discharging the petitioners of the offence under Section 498A I.P.C. and directed the learned Magistrate to pass orders in accordance with law after hearing the parties.

2. Succinctly stated the necessary facts for the disposal of this petition are that on 22.9.1986 Shri Kushal Singh, S.H.O., Police Station, Shivganj registered Crime No. 68/86 under Section 498A I.P.C. on the basis of a F.I.R. lodged by him, wherein, it was alleged that the deceased Smt. Antar Kanwar was married to petitioner Peer Singh about 10 years ago, that her 'Gauna' ceremony had taken place about 4 years back and that after the 'Gauna (Aana)' she lived for some times at her in-laws house and some time with her parents. It was alleged that Peer Singh used to mal-treat her and therefore she started living with her parents. On 12.2.1986 Smt. Antar Kanwar had lodged a report at Police Station, Shivganj to the effect that she had come from her husband's house at her own accord and started living with her parents. Again on 15.2.1986, Moti Singh, the uncle of Smt. Antar Kanwar got a report entered at Police Station, Shivganj to the effect that persons belonging to village Lakma i.e. her husband's village had come to forcibly take her away. Thereupon the S.H.O. Sumer Singh went to the village, where he found that near a temple petitioner Peer Singh and his 15-20 companions were sitting. There, Sardar Singh, the father of Smt. Antar Kanwar had informed the S.H.O. that a meeting of panchas of their community had been convened, that no body was forcibly taking away Smt. Antar Kanwar and that their dispute would be solved by the panchas. It is alleged that at the persuasion of the panchas, petitioner Peer Singh took his wife Smt. Antar Kanwar to his house. On 4.3.1986 at about 7-8 p.m. when Smt. Antar Kanwar was cooking food, she caught fire and was immediately rushed to Govt. Hospital, Sirohi. On 5.3.1986 at 1.30 p.m. the Assistant Collector & Executive Magistrate, Sirohi recorded the statement of Smt. Antar Kanwar, wherein she specifically deposed that she had accidentally caught fire when she was lighting the 'Chula' for preparing the food. On 7.3.1986 Ram Gopal Purohit, Dy. S.P. Sirohi also recorded her statement, wherein she repeated the same version and also stated that she wanted to go to her parent's house because her husband Peer Singh was a poor person and that she had to work at his house, which she did not like. She also stated that Peer Singh and her in-laws did not make any demand for dowry or committed cruelty towards her and that she did not attempt to commit suicide. It is the case of the prosecution that Smt. Antar Kanwar remained in the Govt. Hospital, Sirohi till 12.3.1986, when her mother took her away and got her admitted at General Hospital at Udiapur. She remained in the

said hospital till 30.4.86 from where she was discharged, and while she was being taken to her village she died in the way. On 1.5.1986, her dead body was cremated by her parents without getting her post-mortem examination conducted. The police initiated proceedings under Section 174 Cr.P.C. In the meanwhile, Moti Singh the uncle of the deceased went a letter to the I.G. Police Jaipur and prayed for a detailed inquiry. The said complaint was sent to the Dy. S.P., Sirohi and was ultimately handed over to Shri Kushal Singh, S.H.O., Police Station, Shivganj, who recorded the statement of Smt. Najo the mother of the deceased on 22.9.1986, Smt. Naju in her statement stated to the S.H.O. that her daughter Smt. Antar Kanwar had told her that petitioner Bhim Singh, his wife, Bahadur Singh and Devi Singh had collected the material for burning her and that they had thrown her in the fire. On the statement of Smt. Najo, the S.H.O. himself lodged a report and registered the case and after investigation submitted a charge-sheet against the present petitioners. It may be mentioned here that the wives of Bhim Singh and Bahadur Singh as well as Devi Singh were not challaned.

3. The learned Munsif & Judicial Magistrate, Shivganj after giving a detailed chronicle account of the events held that prima facie no case under Section 498 I.P.C. was made out and accordingly by his order dated 13.9.1989 discharged the petitioners. However, the State filed a revision petition before the learned Sessions Judge, Sirohi, who solely replying on the Statement of Smt. Najo dated 22.9.1986 held that offences under Section 306 & 498A I.P.C. were prima facie made out. He, therefore, by his impugned order dated 4.2.1992 set aside the order of the learned Magistrate dated 13.9.1989 and directed him to pass necessary orders after hearing the parties. Hence this revision petition.

4. I have heard the learned Counsel for the petitioner and learned Public Prosecutor at length and very carefully perused the record of the lower courts in extenso.

5. Since the dying declaration dated 5.3.1986, recorded by the Assistant Collector & Executive Magistrate Sirohi was not sent to the Munsif & Judicial Magistrate Sirohi, the same was sent for by this court. The executive Magistrate reported that the original file was not traceable. However, he sent the carbon copy of the

statement of Smt. Antar Kanwar dated 5.3.1986, which was recorded by the them Executive Magistrate in presence of Dr. S.M. Purohit.

6. A perusal of the said dying declaration dated 5.3.1986 of Smt. Antar Kanwar reveals that it was recorded in presence of doctor, who had certified that she was in a fit state and condition to give statement. In that statement Smt. Antar Kanwar had stated in unambiguous and clear terms that she had caught the fire accidentally. She had not make allegation against the petitioner or any other person. She had also stated therein that she did not want to go to her in-laws house, but since the panchas had asked her father to pay Rs. 50,000/- which he was unable to pay, therefore, she was taken to her husband's house. She had also stated therein that her husband Peer Singh was unemployed and a poor person and was not in a position to feed her. She has also stated that when she was lighting the 'Chula' for making meals, she fainted and fell down thereon and caught fire. It is also fully borne but from the record of this case that she was immediately rushed to the Government Hospital, Sirohi. There also Smt. Antar Kanwar in her statement dated 7.3.1986 recorded by the Dy. S.P., Sirohi had disclosed the same version of the incident and did not make any allegation against the petitioners about cruelty or demand of dowry. Her statement dated 7.3.1986 has been submitted by the S.H.O. along with the charge-sheet. Prima facie, there appears no reason to disbelieve the dying declaration dated 5.3.1986 recorded by the Executive Magistrate as well as her statement dated 7.3.1986 recorded by the Dy. S.P. immediately after the occurrence. Smt. Antar Kanwar remained as an in door patient in the General Hospital, Udaipur from 12.3.1986 to 30.4.1986 as is from the certificate issued by the Medical Officer Incharge dated 12.6.1986. It is also an admitted fact that while Smt. Antar Kanwar was being brought from Udaipur she died in the way and that her dead body was cremated by her parents without getting her post-mortem examination. It appears that after her death during the course of an inquiry under Section 174 Cr. P.C, a complaint was lodged by Moti Singh, the uncle of the deceased, which was sent by the I.G. Police to the Dy. S.P., Sirohi. The S.H.O. recorded the statement of Smt. Najo on 22.9.1986 i.e. after 6-months of the alleged occurrence and about 4 months and 20 days after the death of Smt. Antar Kanwar, wherein for the first time she stated that Bhim Singh, his wife, Bahadur Singh etc. had forcibly burnt Smt. Antar Kanwar. Smt.

Najo's statement does not find any corroboration. The learned Magistrate has discussed, analysed and evaluated the evidence collected by the Investigation Officer and after giving convincing and cogent reasons had rightly held that prima facie offence under Section 498A I.P.C. was not made out. In view of the dying declaration of Smt. Antar Kanwar dated 5.3.1986 and her statement dated 7.3.1986, there is no reliable evidence to show that the petitioners had subjected her to cruelty or had made any demand of dowry or committed any wilful conduct of such a nature which was likely to drive her to commit suicide or to cause grave injury or danger to her life. The learned Sessions Judge has, thus, clearly committed an error of fact as well as an error of law in holding that Smt. Antar Kanwar was forced to commit suicide due to the ill-treatment or cruelty of her in-laws or the petitioners. The statement of Smt. Najo, the mother of the deceased, which was recorded as late as on 22.9.1986, prima facie can not be relied upon to neutralise the effect of dying declaration of the deceased dated 5.3.1986 recorded by the Executive Magistrate and her subsequent statement dated 7.3.86 recorded by the Dy. S.P., Sirohi. Therefore the inference drawn by the learned Sessions Judge is apparently based on mere surmises and conjectures and as such the impugned order can not be sustained.

7. Hence, for the reasons mentioned above, I allow this petition and set aside the order of the learned Sessions Judge dated 4.2.1992 and confirm the order dated 13.9.1989 passed by the learned Munsif and Judicial Magistrate, Shivganj.

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