

Badri Das Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : May-06-1976

Reported in : 1976WLN218

Judge : K.D. Sharma, J.

Appeal No. : S.B. Criminal Revision No. 5 of 1975

Appellant : Badri Das

Respondent : The State of Rajasthan

Disposition : Petition dismissed

Judgement :

K.D. Sharma, J.

1. Badri Das has come up in revision to this Court against an order of the Sessions Judge, Partabgath, dated 28th January, 1975, by which he was ordered to be committed to the Court of Session for trial under Section 304, IPC.

2. The incident that led to the arrest and prosecution of Badri Das petitioner may be shortly described as followed:

Badri Das was married to a girl Shyam Kunwar by name. The relations between the wife and the husband gradually became striated after their marriage. Shyam

Kunwar left her matrimonial home and went to her father's house. She was however, persuaded by her grand uncle Purshottam Das to go back to her husband's home. On her return to her husband's house she was again maltreated by her husband and in laws. Her husband Badri Das subjected her body to electric stocks by forcibly causing her feet to come into contact or touch with live wires. Kanhiaya Das and Birdhi Chand were the two eye-witnesses who saw Badri Das petitioner charging the body of Mst. Shyam Kunwar with electric current. As a result of electric shocks given to her by Badri Das her physical condition deteriorated day by day. She was medically examined by Dr. Ratanchand of Choti Sadri and, thereafter, was taken to Mission Hospital, Neemuch, by the petitioner and was admitted therein as an indoor patient in the fictitious name of Ram Kunwar Shyam Kunwar, however, did not survive and breathed her last in the hospital on 23rd October, 1971, on account of tetanus caused by burns which she had received on account of her feet being brought in touch with live-wires. After her death, Badri Das removed her dead body to his village Chohan Kheda without loss of time and cremated it. A report of this incident was lodged with the police on 9th November, 1971, but no action was taken on it. Purshottam Das sent representations to higher police authorities for taking action in the matter. The higher authorities ordered investigation into the case. The police made the usual investigation into the case, and eventually submitted a challan against Badridas under Section 324 IPC only in the court of the Judicial Magistrate, Choti Sadri. Purshottam Das then filed a private complaint under Section 302, IPC against the petitioner in the same court but the complaint was dismissed for want of his appearance in the court on the date fixed in the case. The Judicial Magistrate proceeded to try the petitioner upon the police challan for the offence under Section 324, IPC and recorded the prosecution witnesses. In the course of trial an application was filed on behalf of the prosecution for alteration of the charge to one under Section 304, IPC. The learned Judicial Magistrate heard arguments on the application for alteration of the charge and rejected it on 22nd November, 1973, Aggrieved by the order of rejection, Purshottam Das filed revision petition in the court of the Sessions Judge Partabgarh, who, after persuing the record and bearing the parties, came to a conclusion upon evidence that an order under Section 437 of the old Criminal Procedure Code for commitment of the petitioner

to the Sessions Court should be made in this case. He accordingly directed the learned Judicial Magistrate to commit the petitioner to the Sessions Court for trial under Section 304, IPC. As against this order, Badri Das petitioner has come up to this Court in revision.

3. I have carefully gone through the record and heard the argument advanced by Mr. N.P. Gupta for the petitioner, Mr. R.L. Purohit for the non-petitioner and Mr. S.B. Mathur for the State. A preliminary objection has been raised before me by Mr. R.L. Purohit learned Counsel for the non-petitioner that the powers of revision against an interlocutory order are taken away by the new Code of Criminal Procedure and that the impugned order passed by the Sessions Judge, Partabgarh, being an order of interlocutory nature, cannot be revised by this Court under Section 401, Cr. P.C. 1973. The learned Counsel for the petitioner, on the other hand, contended that the order does not fall outside the purview of final orders and that it can be challenged in this Court by way of revision petition. It was further argued by him that even if the impugned order is considered to be an interlocutory order, such orders were revisable under Section 439 of the old Criminal Procedure Code at in this case the revision petition was pending in the court of the Sessions Judge, Partabgarh, on the date when the new Code of Criminal Procedure came into force and that the impugned order was passed in revision by the Sessions Judge, Partabgarh, in accordance with the provisions of the Code of Criminal Procedure, 1898, as if the new Code had not come into force.

4. I have given my anxious consideration to the rival contentions. It is undoubtedly true that Section 439 of the old Code empowered this Court to revise interlocutory orders also, although powers of revision in such cases were sparingly exercised with great care and caution. After coming into force of the new Code of Criminal Procedure, the powers of revision against orders of interlocutory nature were taken away as is evident from the provisions contained in Sub-section (2) of Section 397, which read as follows:

The powers of revision conferred by Sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other

proceeding.

The pertinent question that arises for determination, therefore, is whether the revision petition filed by Badri Das against the order of the Sessions Judge, Partabgarh, dated 28th January, 1975. can be treated to have been filed under Section 439 of the Code of Criminal Procedure and should be disposed of in accordance with the provisions of the old Code. In this connection, I may observe that the present revision petition filed by Badri Das was not pending in this Court on the date on which the new Code of Criminal Procedure came into force. It was filed in this Court on 24th February, 1975, after the commencement of the new Code. Hence, the contention of the learned Counsel for the petitioner that the present revision petition may be treated to have been filed under Section 489 of the old Code of Criminal Procedure and should be disposed of in accordance with the provisions of the old Code is not well founded because from a bare reading of Section 484 of the new Code of Criminal Procedure it is abundantly clear that the provisions of the Code of Criminal Procedure, 1899 shall be applicable to these appeals, applications, trials, inquiries or investigations only which were pending immediately before the date on which the new Code came into force. It can neither be safely held that the present proceedings in revision are in continuation the original criminal proceedings instituted in the court of the Judicial Magistrate, nor can it be laid down that the remedy by way of revision is really a step forward in continuation of the first revision petition filled by Purshottam Das before the Sessions Judge. The original criminal proceedings against the petitioner instituted on a police challan before the Judicial Magistrate and the subsequent proceeding in revision instituted before the Sessions Judge, Parabgarh, and then before this Court cannot be regarded as one legal proceeding. The simple reason for not holding all these proceedings as one legal proceeding is that the remedy by way of revision is not a vested right like a right of appeal. An appeal may be considered to be a step in continuation of the suit but this analogy is clearly inapplicable to special remedy of criminal revision provided under the Code of Criminal Procedure, Reliance in this connection may be placed on *Surinder Singh v. Indersain* 1974 (2) Cr LJ 1361 & *Har Prasad v. Radheyilal* 1975 RLW 305 wherein a similar view was taken on this point of law. Consequently, I am of the view that the present revision-petition having been filled on 24th February, 1975, after the

commencement of the new Code of Criminal Procedure cannot be treated to have been filed under Section 439 of the old Code of Criminal Procedure and must be disposed of in accordance with the provisions of the new Code of Criminal Procedure,

5. The next question that remains to be decided is whether the impugned order is an interlocutory order and the present revision-petition against such order is not entertainable. There is no definition of the expression 'interlocutory order' in the Code of Criminal Procedure. The test for determining whether an order is interlocutory or final is whether the order has the effect of finally disposing of the rights of the parties. In the present case, the learned Judicial Magistrate, Choti Sadri, proceeded to try the petitioner for a minor offence under Section 324, IPC, as no challan for a major offence under Section 302, or Section 304, IPC was put up against him by the police, It was only in the course of trial that an application was presented to the trial court from the side of the prosecution that the petitioner should be tried for a major offence under Section 304, I.P.C. The learned Magistrate rejected the application for framing a charge for major offence. That order was challenged by Purshottam Das in the court of Sessions Judge, Pratabgarh, by way of a revision-petition. The Sessions Judge, Pratabgarh, passed the impugned order for committal of the petitioner to the court of Sessions Judge for trial under Section 304, IPC. This order of the Sessions Judge is not an interlocutory order, because, unless it is set aside by the High Court in exercise of its revisional jurisdiction, it has the effect of finally terminating the proceedings against the petitioner in the court of the Judicial Magistrate. In this view of the matter, I cannot persuade myself to hold that the order of commitment passed under Section 437 of the old Criminal Procedure Code is an interlocutory order cannot be challenged in revision.

6. Now it has to be seen whether the order of commitment was passed by the Sessions Judge under Section. 437, old Criminal Procedure Code upon sufficient and reliable evidence, because such an order can be quashed by the High Court, if there is no evidence in support of the offence and if it is manifest that the order is highly illegal, improper or unreasonable. From a bare reading of the impugned order passed by the Sessions Judge, Partabgarh, it appears that be passed the

order of commitment upon consideration of the evidence of Kanhaiya-Das, PW. 5 and Bardhi Chand, PW. 6 eye-witnesses, who claimed to have seen the petitioner charging the body of Shyam Kunwar with electric current through live wires. It is not desirable for me at this stage to express any opinion on the merits and demerits of the evidence of these eye-witnesses, be cause such an appraisal or evaluation of their evidence would cause prejudice to the case of either party. Suffice it to say, that I agree with the Sessions Judge that there is prima facie evidence available in this case on the basis of which a charge under Section 304, IPC could be framed against the petitioner It will be the function of the trial court to weigh and assess the evidence before it and conclusively determine whether mine whether it is proved beyond reasonable doubt that the petitioner subjected his wife to electric shocks by causing live-wires to come into contact or touch with her feet with necessary intent or knowledge specified in Section 299, IPC and whether his such act resulted in her death.

7. The result of the above discussion, therefore, is that this revision-petitions has no force and is hereby dismissed.

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