

Smt. Kali Vs. the State

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Court : Himachal Pradesh

Decided On : May-20-1965

Reported in : AIR1966HP11,1966CriLJ20

Judge : Om Parkash, C.J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 161, 162, 207A, 207A(4) and 207A(10)

Appeal No. : Criminal Reference No. 3 of 1965

Appellant : Smt. Kali

Respondent : The State

Advocate for Def. : Hira Lal and; Inder Singh, Advs.

Advocate for Pet/Ap. : Party in person

Disposition : Reference accepted

Judgement :

ORDER

Om Parkash, J.

1. This is a reference, made by the learned Sessions Judge, Mandi and Chamba, Sessions Division.

2. The petitioner was hauled up, under Section 302 I. P. C., for Ac murder of Smt. Parvati. The prosecution case, against the petitioner, was that she nursed a grudge, against Smt. Parvati, as the latter used to call her a woman of loose character and that the petitioner had taken revenge by murdering Smt. Parvati on the 9th May, 1964, in Domedhi Nal, when Smt. Parvati had gone to graze cattle, in the morning. As Smt. Parvati did not return home for her lunch, her husband, Brij Lal, along with others, had gone in search of her. The dead body of Smt. Parvati was spotted by one Smt. Ganeshu. The dead body was naked. There were blood stains on the vagina, thighs and abdomen. There were injuries on the head and face of the dead body. Three long bloodstained hair were found in the half closed fists fit the dead body

3. The report, about the murder, was lodged at the Police Station Goher on the 10th May, 1964. During the course of investigation, the petitioner was arrested and certain recoveries and discoveries of blood-stained articles were made. The dead body of Smt. Parvati was sent to the Civil Hospital, Mandi, for postmortem examination. Doctor Rajan Dev had performed the postmortem, examination He had found injuries on the head and face of the dead body and was of the opinion that death was due to hemorrhage and shock.

4. The petitioner was challaned, under Section 302 I.P.C., in the Court of the Magistrate, First Class, Mandi. There were no eyewitnesses to the commission of the offence. The case depended on circumstantial evidence. The Magistrate examined seven witnesses and committed the petitioner to the Court of Session to stand her trial, under Section 302 I. P. C.

5. The petitioner filed a revision-petition, against her commitment before the learned Sessions Judge, praying that the commitment may be quashed. Many grounds were taken up in the revision-petition for quashing the commitment. But the learned Sessions Judge has recommended the quashing of the committal order on two grounds, namely, firstly, that the committal order was not a legal order as the Magistrate had neither discussed evidence, nor given reasons in support of the committal, and, secondly, that the Magistrate failed to exercise his discretion judicially in not examining Suit. Souji, a prosecution witness, to whom

the petitioner was alleged to have made an extra-judicial confession. The counsel for the petitioner had confined his arguments, in this Court, to the aforesaid two grounds only

6. A perusal of the committal order shows that the committing Magistrate did not discuss evidence nor gave any reason in support of the commitment. After giving a resume of the statements of the witnesses examined, the Magistrate observed, 'after perusal of the police challan and the oral and documentary evidence on the record, I have come to the conclusion that there exists a prima facie case against the accused and she is, therefore, hereby committed to stand her trial under Section 302 I. P. C., in the Court of the Session Mandi.' The learned Magistrate did not disclose, in the committal order, what documentary evidence he had in mind when committing the petitioner. The case depended on circumstantial evidence. The learned Magistrate should have discussed the evidence and indicated the links connecting the petitioner with the crime. He should have also given reasons for believing the evidence forming the various links. Of course, the Magistrate was not required to write a judgment, dealing exhaustively with evidence, holding whether the petitioner was guilty or not. But it was obligatory for him to briefly discuss evidence and to give reasons for accepting or rejecting it. According to Sub-section (10) of Section 207A Cr. P. C. the Magistrate was bound to record briefly the reasons for commitment. A committal order, which does not discuss evidence and does not state reasons for commitment, is bad in law. In the instant case, the committing Magistrate did not discuss the evidence nor gave reasons for commitment. The committal order is bad in law.

7. The Magistrate should have, in the exercise of his discretion, examined Smt. Souji to whom the petitioner was alleged to have made an extra-judicial confession. The case entirely depended upon circumstantial evidence. The evidence of Smt. Souji constituted an important link in the chain of circumstantial evidence. It would have been, in the interest of justice, if Smt. Souji would have been examined. The learned Government Advocate contended that the Magistrate had perused the statement of Smt. Souji recorded under Section 161 Cr. P. C. There is no indication in the committal order that the learned Magistrate had considered the statement of Smt. Souji recorded under Section 161 Cr. P. C. The

learned counsel for the petitioner argued that the Magistrate had no jurisdiction to consider the statements of witnesses recorded, under Section 161 Cr. P. C., for committing an accused, under Section 207A Cr. P. C., as Section 162 Cr. P. C. created an absolute bar against the use of those statements, except for the purpose of contradicting a witness, as laid down in the proviso, to that section. The argument of the learned counsel is not sound. The argument stands negated by the pronouncement of their Lordships of the Supreme Court in *Shri Ram v. State of Maharashtra*, AIR 1961 SC 674, wherein it was held that a Magistrate had jurisdiction to discharge or commit an accused to sessions, under Section 207A Cr. P. C., merely on the basis of documents referred to in Section 173 Cr. P. C. Those documents include statements, recorded under Section 161 Cr. P. C. The point was discussed, at length, in *Arunachalam Swami v. State of Bombay*, AIR 1956 Bom 695. It was held that the Magistrate had jurisdiction to consider and use the statements, recorded by the police, under Section 161 Cr. P. C., for committing or discharging an accused under Section 207A Cr. P. C. It was, further, held that Section 207A Cr. P. C., constituted an exception to Section 162 Cr. P. C., and was saved by the words, 'save as hereinafter provided' in Section 162 Cr. P. C. In their Lordships' view, the words, 'hereinafter provided' meant provided either, in the later part of Section 162 Cr. P. C., or anywhere else in the Code. The above Bombay authority was followed in *Serivett Kotiswamy v. State of Andhra*, AIR 1958 Andh Pra 90.

8. It was within the competence of the committing Magistrate to make use of the statement of Smt. Souji, recorded under Section 161 Cr. P. C., for committing the petitioner. Further, there was no obligation, on his part, to record the statement of Smt. Souji, under Section 207A Cr. P. C., as she was not a witness to the actual commission of the crime. But Smt. Souji was a material witness in the case and it was necessary in the interest of justice to record her statement under the second part of Sub-section (4) of Section 207A Cr. P. C. It has been laid down, by their Lordships of the Supreme Court, in *Kirpal Singh v. State of Uttar Pradesh*, AIR 1965 SC 712, that the Magistrate has in the inquiries relating to charges for serious offences like murder, the power, and indeed a duty, in the interest of the accused as well as in the larger interest of the public, to record the evidence of witnesses who throw light on the case. There may be a case, as was pointed out,

in AIR 1961 SC 674, supra, where the Magistrate can make up his mind definitely on the documents, referred to in Section 173 Cr. P. C., without the aid of any oral evidence and in that event he would be within his rights to discharge or commit the accused, as the case may be. But, normally material witnesses should be examined by the Magistrate.

9. The committing Magistrates, while dealing with cases, depending upon circumstantial evidence, will do well to keep in mind the following observations made in *Mohammad v. The State*, AIR 1961 Raj 174:

'It is true that Sub-section (4) of Section 207-A does not expressly lay down that in cases depending upon circumstantial evidence the Magistrate has to examine a particular type or number of witnesses. It is only the second part of the said sub-section which applies to such cases and it is left to the Magistrate to form an opinion whether it is accessory in the interests of justice to take the evidence of any one or more of the other witnesses for the prosecution.

If the Magistrate is of judicial frame of mind, he is bound to form an opinion in all cases depending upon circumstantial evidence that it would be necessary in the interests of justice to take the evidence of a few material witnesses. No hard and fast rule can be laid down as to what type or what number of witnesses he should examine in such cases

The proper course to be followed by the Magistrate is that he should first see at the commencement of the enquiry and after going through all the documents forwarded to him under Section 173 Cr. P. C. as to what are the main circumstances whereby the prosecution wants to connect the accused with the crime. In other words, he should apply his mind and after analysing the evidence on which the prosecution wants to rely, he should find out those links of circumstantial evidence whereby the crime is sought to be fastened upon the accused, Thereafter, he should record the evidence of important witnesses in order to examine the strength of the said links.'

10. In the instant case, as stated already, the committing Magistrate did not apply his mind to, and analyse, the evidence, against the petitioner. He did not discuss

the circumstances, connecting the petitioner with the crime, and failed to assign any reasons for commitment. The Magistrate did not exercise his discretion properly in not examining Smt. Souji, a material witness. The order of commitment is bad in law and is liable to be quashed.

11. The reference is accepted. The charge, framed against the petitioner, and the order of commitment are quashed. The case is remanded to the committing Magistrate for holding an enquiry, in the light of observations, made above. If, after considering the documents, referred to in Section 17. Cr. P. C., and examining material witnesses and giving the prosecution and the petitioner an opportunity of being heard, the Magistrate comes to the conclusion that a prima facie case is made out against the petitioner, he shall frame a charge and commit the petitioner in accordance with the provisions of Section 207-A Cr. P. C., but discharge her, if he is of opinion that there are no grounds for committing her. The evidence, already recorded, will be treated as evidence in the case.

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