

Urmila Devi Vs. the State of Jharkhand and Others

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Court : Jharkhand

Decided On : May-20-2011

Judge : Jaya Roy, J.

Acts : Indian Penal Code (IPC) - Section 302/34; Code of Criminal Procedure (CrPC) - Section 319

Appeal No. : Cr. Revision No 36 of 2011

Appellant : Urmila Devi

Respondent : The State of Jharkhand and Others

Advocate for Pet/Ap. : Mr. P.C. Tripathy Sr. Counsel

Judgement :

1. Heard the learned counsel for the petitioner, the learned counsel for the State and the learned counsel for the Opposite Parties nos.2 & 3.
2. The petitioner has filed the instant revision application against the order dated 18.11.2009 passed in S.T.No.110 of 2007 arising out of Chandan Keyari (Barmasia) P.S. Case No. 119 of 2006 vide G.R. case No.1146 of 2006 under Sections 302 / 34 of the Indian Penal Code by the Additional Sessions Judge, F.T.C.-II, Bokaro whereby the prayer for summoning the opposite party nos. 2 and 3 under Section 319 of the Cr.P.C. has been rejected.

3. The case of the prosecution based on Fard Beyan of Urmila Devi wife of Koka Manjhi @ Tulsi Manjhi recorded on 14.10.2006 before Barmasia O.P. is that she was married about three years before with her husband Tulsi Manjhi who was dumb. She has no child. Her husband has two elder brothers (Bhainsurs), namely, Sadhak Manjhi and Dubraj Manjhi who after partition live separately. However, her father-in-law and mother-in-law used to reside with her husband. The property of the family members of the Informant was partitioned into four parties which was not liked by the aforesaid elder brothers of her husband (Bhaisures) and they always used to quarrel with the petitioner's husband Tulsi Manjhi and they also used to threaten to kill them as they want to grab the share of the property of the Informant and her husband. On 13.10.2006 Sadhak Manjhi and Dubraj Manjhi who are Bhaisurs of the informant, quarreled with her husband and on the same day at about 7.00 P.M. while she was in her room along with her husband and her father-in-law and mother-in-law went to sleep to some other place, her aforesaid two brothers of her husband (Bhaisures), namely, Sadhak Manjhi and Dubraj Manjhi called her husband from the outside and told him to throw his wife (the informant) into the well. Thereafter, her husband and the aforesaid two persons (Bhaisures) tied her mouth and threw her into the well of Awani Manjhi.

4. It is further alleged on 14.10.2006 at hour 4.30 A.M. Awani Manjhi and Lambodhar Manjhi took her out from the well and as she was severing with cold, they saved her after burning the fire and took her near her house. On getting to her house, she was told by the wife of the Durjodhan Manjhi that her husband has died and she took her to the house where her mother-in-law and father-in-law and Jethani were sitting and all were weeping. She has further found that the dead body of her husband was lying on a bed and covered with a Chadar. She has further found there is mark of rope on the neck of her husband and further there was also abrasion on the ankle of both of his leg. She has claimed that her aforesaid two Bhaisurs, namely, Sadhak Manjhi and Dubraj Manjhi killed her husband in order to grab his property and she made the said persons as accused.

5. The police after investigation submitted the final report against the two accused who are opposite party no.2 and 3 in this revision application and submitted charge sheet under Section 302 / 34 I.P.C. against the present petitioner who is

the informant and against Gambhir Manjhi and Hanif Ansari for killing Tulsi Manjhi alias Koka. Thereafter, the petitioner who is the present petitioner who was informant of this case filed an application under Section 319 of the Cr.P.C. for summoning the Opposite party no.2 and 3 namely Sadhak Manjhi and Dubraj Manjhi who are the elder brother of her husband.

6. Mr. P.C. Tripathy Sr. Counsel appearing for the petitioner has stated that there is ample evidence and the case record and in the evidence of the prosecution witnesses against the Sadhak Manjhi and Dubraj Manjhi. Even the seizure list also shows that a rope which was used in throttling the victim, was recovered from the house of Sadhak Manjhi. Sadhak Manjhi and Dubraj Manjhi have committed murder of the husband of the informant in order to grab his share in the ancestral property. Therefore, the informant has filed the instant application under Section 319 of the Cr.P.C. for summoning aforesaid persons who are opposite party nos. 2 and 3 in this revision application.

7. Mr. Jai Prakash Jha, learned Sr. Counsel appearing for the opposite party nos. 2 and 3 has submitted that though the prosecution has examined 14 witnesses but no material has come in the evidence of the prosecution witnesses against the opposite party no.2 and 3. No doubt in the seizure list it has been shown that the rope was recovered from the house of Sadhak Manjhi but the I.O. has made it clear in para-26 of his Cross-examination that as a matter of fact the rope was recovered near dead body of the victim which was lying in the room of the victim but as because the people told him that it is the house of Sadhak Manjhi, he (the I.O.) has mentioned in 2nd the seizure list that rope was recovered from the house of Sadhak Manjhi. Therefore, there is no material to array the opposite party no.2 and 3 as accused in the case.

8. Mr. Jha has further submitted that the informant in her confessional statement has accepted that she was not loyal to her husband Tulsi Manjhi and she was in collusion with Gambhir Manjhi and Hanif Manjhi for killing her husband. To support his contention, the confessional statement of the informant is annexed as Annexure-A in the counter affidavit filed by the Opposite party no.2 and 3 in this revision application.

9. Mr. Jha has further contended that admittedly after partition of the ancestral property, the opposite party no.2 and 3 who are elder brothers of the victim are living separately.

10. Mr. Jha has cited a decision to support his aforesaid contention reported in 2007(4)J.L.J.R(SC)187 in the case of Guriya @ Tabassum Tauquir & Ors -Vrs- State of Bihar & Anr, in which the Hon'ble Apex Court has held:-

“13. On a careful reading of Sec. 319 of the Code as well as the aforesaid two decisions, it becomes clear that the trial court has undoubted jurisdiction to add any person not being the accused before it to face the trial along with other accused persons, if the Court is satisfied at any stage of the proceeding on the evidence adduced that the persons who have not been arrayed as accused could face the trial. It is further evident that such person even though had initially been named in the F.I.R. as an accused, but not charge sheeted, can also be added to face the trial. The trial court can take such a step to add such persons as accused only on the basis of evidence adduced before it and not on the basis of materials available in the charge sheet or the case diary, because such materials contained in the charge sheet or the case diary does not constitute evidence.”

11. After considering the submission made by both the parties and considering the materials on record, I find that nothing has come against the opposite party no.2 and 3 in the evidence of the prosecution witnesses except the recovery of the rope from the house of the Sadhak Manjhi as mentioned by the I.O. in the seizure list. Even Mr. Tripathy could not point out any specific material against the opposite party nos.2 and 3 from the evidence of any of the prosecution witnesses. Therefore, the factual position is that only material about the place of recovery of the rope in question mentioned in the seizure list has come against the opposite party No.2, namely, Sadhak Manjhi. But the same is made clear in the Cross-examination of the I.O. that he (the I.O.) has mentioned in the seizure list that the rope was recovered from the house of Sadhak Manjhi as people told him that the

said house is of Sadhak Manjhi.

12. As held by the Hon'ble Apex Court in number of cases that the basic requirements for invoking the Section 319 of the Cr.P.C. is that it should appear to the court from the evidence collected during trial or in the inquiry that some other person, who is not arraigned as an accused in that case, has committed an offence for which that person could be tried together with the accused already arraigned. It is not enough that the court entertained some doubt from the evidence about the involvement of another person in the offence. In other words, the court must have reasonable satisfaction from the evidence already collected regarding two aspects. First is that the other person has committed an offence. Second is that for such offence that other person could as well be tried along with the already arraigned accused. In the present case, as stated above, there is no material/evidence available on record regarding involvement of the opposite party nos. 2 and 3 in the commission of the offence for impleading them in this case as accused. Therefore, I do not find any reason to interfere with the order impugned. Accordingly, this revision application is dismissed.

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