

Shakeel and Others Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Feb-02-2011

Judge : Ashok Srivastava, J.

Acts : Code of Criminal Procedure (CrPC) (Cr. P.C) - Section 277; Indian Penal Code (IPC) - Sections 304B; D.P. Act.; Evidence Act - Section 8, 106

Appeal No. : CRIMINAL REVISION No. - 1613 of 2003

Appellant : Shakeel and Others

Respondent : State of U.P. and Others

Advocate for Def. : Government, Adv; Prahalad Khare, Advs

Advocate for Pet/Ap. : Prashant Kumar Singh; R.K. Singh , Advs

Judgement :

1. This revision has been directed against the order dated 7.5.2003 passed by Additional District & Sessions Judge, Kanpur Nagar in Session Trial No. 674 of 2002 (State v. Shakeel and others). Through this order the learned Addl. Sessions Judge has dismissed an application moved by the revisionists under Section 227 of Cr.P.C. wherein the revisionists had prayed that no charge under Section 304-B I.P.C. and 3 D.P. Act should be framed against them. After rejecting the application, the learned Sessions Judge framed charges against the revisionists.

2. The brief facts of the case are that an F.I.R. was lodged with the police of P.S. Swaroop Nagar, district Kanpur Nagar on 6.12.2001 at about 6.30 P.M. against the revisionists which was under Sections 498-A/304-B I.P.C. and of D.P. Act. The complainant of the case was Mohammad Alam, opposite party no. 2 of this revision.

3. According to the complainant he got his daughter Km. Shahnaz married to revisionist no. 1, Shakeel, on 29.1.2001 in accordance with Muslim customs and rites. He had given away sufficient dowry to the revisionists but they were not satisfied with the same. As a consequence immediately after Bidai of Smt. Shahnaz, all the revisionists started demanding more dowry from the complainant and after a few days they had started torturing Smt. Shahnaz physically as well as mentally so that she may pressurise her father to give the demanded dowry to the accused persons. The complainant visited the nuptial home of Smt. Shahnaz and requested the revisionists that he was not in a position to fulfil their demand of dowry and requested them that they should not misbehave and torture his daughter for the same, but all in vain. On 6.12.2001 at about 10.00 A.M. the revisionists killed Smt. Shahnaz but they did not inform the complainant or his family members. In the evening at about 5.00 P.M. some person from the locality where the nuptial home of Smt. Shahnaz is situated, informed the complainant that his daughter had died. After receiving the information, the complainant alongwith some of his family members and friends rushed to the residence of the revisionists where he found that her daughter had died and his dead body was lying on a cot unattended as all the revisionists had run away from their house. Immediately thereafter the complainant went to the police station and lodged an F.I.R. at 6.30 P.M. The police reached the spot of the incident, took the dead body in its custody, conducted the Panchayatnama and sent the dead body to mortuary. The post-mortem was conducted upon the body of the deceased and as per report of the Medical Officer, cause of death could not be ascertained and, therefore, viscera was preserved. The viscera was sent for its chemical examination and as per report of the chemical examiner dated 5.4.2002 it was found that no poison was there in the stomach. The I.O. of the case after recording the evidence of the eye witnesses and other witnesses related to the incident and after preparing site plan and after completing other formalities submitted a chargesheet against all the

revisionist in the court of learned Magistrate under Section 498-A/304-B I.P.C. and of D.P. Act. The case was ultimately committed to the court of sessions wherefrom it was transferred to the court of Addl. Sessions Judge, Court No. 9. On the date of framing of charge an application under Section 227 of Cr.P.C. was moved before the learned Addl. Sessions Judge and it was argued that since there was no material against the revisionists justifying the charge under Section 304-B I.P.C. and 3 D.P. Act, they should be discharged of these two offences. After hearing both the parties, learned Addl. Sessions Judge rejected the said application. As a consequence the revisionists have come up to this Court in the present revision.

4. This case was listed for hearing on 26.11.2011. On that date learned counsel for the revisionists was present and so was the learned A.G.A. but no one was present on behalf of opposite party no. 2. From the perusal of the records it is evident that opposite party no. 2 has been served sufficiently and so much so on 13.9.2010 his learned counsel appeared in the case and sought adjournment which was granted to him but on 26.11.2010 he was not present.

5. I have heard learned counsel for the revisionists and learned A.G.A. and perused the records.

6. My attention has been drawn by learned counsel for the revisionists towards the judgment reported in 2007 (1) JIC 83 (All.), Smt. Vimla Devi and another v. State of U.P. and another, and argued that the facts of the case in hand is similar to that of the case of Smt. Vimla Devi (supra) and, therefore, the law as laid down by learned Single Judge of this Court should be followed and as a consequence the revision should be allowed.

7. Learned A.G.A. has opposed this contention and has said that Smt. Vimla Devi's case (supra) was passed in a case which was under Section 482 Cr.P.C. and it was not a case of revision. He has further contended that a court of revision has got limited powers and, therefore, it has only to see whether some illegality has been committed by the learned lower court while disposing of the application under Section 227 Cr.P.C. or not.

8. The purpose of Sections 227 and 228 is to ensure that the accusation made against the accused is not frivolous. In Section 227 Cr.P.C., the legislature has used the words "not sufficient". In 2008 AIR SC 5043 the Apex Court has said that the words "not sufficient ground for proceeding against accused" appearing in Section 227 Cr.P.C. postulates exercise of judicial manner on part of judge to the facts of case in order to determine whether a case for trial has been made out by the prosecution or not. At this stage the judge is not to see as to whether the trial will end in conviction or not.

9. In a catena of judgments ranging from 1973 to 2008, the Apex Court has said that truth, veracity and effect of evidence cannot be judged at initial stage of trial. Standard of test and judgment regarding guilt or otherwise of the accused is not to be applied at the stage of deciding the matter under Section 227 Cr.P.C. In this regard, some of the references are AIR 1977 S.C. 2018 (State of Bihar v. Ramesh Singh), AIR 1980 SC 1780 (Kewal Krishan v. Suraj Bhan and another), AIR 2001 SC 1507 (Smt. Om Wati and another v. State, through Delhi Admn. and others) and 2008 AIR S.C.W. 5043.

10. In the instant case much stress has been laid on the post-mortem and viscera reports. It should be mentioned here that the post-mortem and viscera reports are not substantive piece of evidence and they have got only corroborative or supportive evidence. They are always open to challenge by the prosecution or the complainant despite the fact that they are on the prosecution's papers. In the instant case the conduct of the revisionists is also relevant and admissible under Section 8 of Indian Evidence Act as is evident from the evidence of the prosecution witnesses that when the complainant and his family members reached the nuptial home of the deceased, they found that all the revisionists and other family members had run away from their house. Had it been a case of heart attack as has been alleged by the revisionists they would have remained present in their house or they would have taken the deceased to the hospital immediately after the attack. The age of the deceased was about 21-22 years and normally in this age the death due to heart attack is definitely very rare. Nothing has been pleaded from the side of the revisionists that the deceased was suffering from some heart disease and as a consequence she had died. It has also not been pleaded that she was ever got

medically examined either before her marriage or after her marriage for an ailment of her heart.

11. In the instant case admittedly the death had occurred at the residence of the revisionist. Therefore, they are under an obligation under Section 106 of Indian Evidence Act to explain the death of the deceased. It is only possible at the time of their trial. Similarly, they will be in a position to explain as to under what circumstances they had left their home leaving a dead body all alone in their residential house.

12. A viscera report can not be taken as a gospel truth on the basis of which the accused may be discharged. In AIR 2000 SC 665 (State of M.P. v. S.B. Johari and others), it has been held that observations and opinions not corroborated in post mortem report cannot be a ground to deprive the prosecution from proving that the accused was guilty of the alleged offence. It has further been held in this case that placing reliance on the post-mortem report an order of discharge of the accused in respect of the offence by appreciation of evidence is illegal. Even for a moment if it is assumed that this case is a case of circumstantial evidence, even then, keeping in view the circumstances of the entire case, discharge is not desirable.

13. Above I have referred to a number of case laws, opinion and observations of the Apex Court and keeping in view the law as laid down by it with profound respect I fail myself to agree with the opinion as given by the Hon'ble Single judge of this Court in Vimla Devi case as the opinion of the Apex Court shall prevail over the opinion of a High Court. Moreso that order was passed in a case under Section 482 Cr.P.C. and was not a case of revision.

14. I have considered the statements of the witnesses recorded under Section 161 Cr.P.C. by the I.O. and I have given serious consideration to them.

15. Considering all the aspects of the case and without expressing any opinion as to the merits of the case, I am of the view that there is no force in this revision and accordingly it is dismissed. Stay order, if any, stands vacated.

16. The proceeding of the case has been stayed since last more than 7 years. The learned lower court is directed to proceed with the matter and dispose of the same at the earliest possible.

17. Let a copy of this order be sent to the learned Sessions Judge, Kanpur Nagar for its onward transmission to the court concerned.

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