

Basanti and Another Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Nov-26-2010

Judge : Ashok Srivastava, J.

Appeal No. : CRIMINAL REVISION No. - 2632 of 2007

Appellant : Basanti and Another

Respondent : State of U.P. and Others

Advocate for Def. : Govt. Advocate; R.P. Maurya, Advs

Advocate for Pet/Ap. : Virendra Kumar Shukla, Adv

Judgement :

1. This criminal revision has been filed by the revisionists against the order dated 24.7.2007 passed by the learned Additional Sessions Judge, F.T.C.4, Jaunpur in S.T.No.304/05, State v. Ram Prasad under Section 302, 201 IPC, P.S. Sarai Khwaja, Jaunpur.

2. The brief facts of the case are that on 22.2.05 Smt. Chinta Devi wife of younger brother of the complainant Mool Chand had gone to the tube well of one Bahadur. She had gone to take water from the said tube well to irrigate her agricultural field. She had left her home for the said purpose at about 1 p.m. When she did not come back in the evening the complainant and his family members felt concerned and they went to the residence of Bahadur to enquire about Smt.Chinta Devi.

There they were informed that Smt.Chinta Devi had left tube well at about 3 p.m. The complainant again came back to his house but by that time Smt.Chinta Devi had not come back. At about 10.00 in the night the complainant again went to the residence of Bahadur where the revisionists met him. On enquiry they again told the complainant that Smt.Chinta Devi had already left for her home in the afternoon at about 3 p.m. A suspicious complainant again went to the tube well of Bahadur alongwith some persons where he saw that Bahdaur and his son Raj Nath alongwith another person were present inside the well which was close to the tube well and two unknown persons were standing outside the well and they were holding a rope in their hands. When those persons saw the complainant they came out of the well and thereafter all of them ran away. The complainant found that the dead body of Smt.Chinta Devi was floating inside the well. Thereafter he went to the police station and lodged an FIR, Police came to the well, took out the dead body, got Panchayatnama done and sent the body for post mortem.

3. During the course of investigation an application under Section 156(3) Cr.P.C. was moved before the learned C.J.M. in which four persons namely Ram Prasad, Ram Nath, Bahadur and Raj Nath were named. The matter was investigated and a charge sheet was submitted in the Court against only one person namely Ram Prasad s/o Bahadur under Sections 302, 201 IPC. Charges were framed and the trial reached the stage of examination of prosecution witnesses under Section 231 Cr.P.C. The prosecution examined P.W.1 Mool Chand and P.W.2 Km.Madhuri under Section 231 Cr.P.C. Thereafter an application under Section 319 Cr.P.C. was moved before the learned trial Judge, praying therein that Ram Bahadur, Ram Nath, Raj Nath, Smt. Basanti and Smt. Rekha should also be summoned to stand trial alongwith the charge sheeted accused Ram Prasad.

4. After hearing the parties the learned Additional Sessions Judge was of the opinion that there was sufficient material against these five persons also and therefore, he summoned all of them to stand trial for the offences punishable under Sections 302, 201 IPC.

5. Feeling aggrieved by the said order only Smt. Basanti & Smt. Rekha have filed this revision. It should be mentioned here that this revision has not been filed by

other summoned persons namely Ram Bahadur, Ram Nath and Raj Nath. From perusal of the records it also appears that Ram Bahadur and Bahadur are one and the same person.

6. I have heard learned counsel for the parties and perused the records. I have also gone through the case laws filed in the case. Learned counsel for the revisionists has drawn attention of this Court towards the last but one paragraph above the operative portion of the order impugned herein. From perusal of this portion of the order it is evident that the learned Judge was of the opinion that it appeared to him that the revisionists had deliberately given false information to the complainant about Smt. Chinta Devi's whereabouts and only on the basis of this fact the learned Judge was of the opinion that prima facie evidence was there against them and they could be convicted under Section 302, 201 I.P.C.

7. In my opinion this finding and conclusion is totally perverse, illegal and immature. If a person gives certain wrong information to any person in order to save a culprit, no offence under Section 302, 201 I.P.C. is made out against him. I have perused the F.I.R., the statements of P.W.1 & P.W.2 recorded under Section 231 Cr.P.C. and the application moved by the complainant before the learned C.J.M. under Section 156(3) Cr.P.C. There is not a whisper which may indicate that the revisionists were involved in any way either in committing the murder of Smt. Chinta Devi or in disposal of her dead body. There is nothing on record which may indicate that there has been a conspiracy of these two revisionists in the matter.

8. In 2009 (66) ACC 32 SC Sarabjit Singh and other v. State of Punjab and other it has been held in paras 17 & 18 that an exercise of jurisdiction under Section 319 Cr.P.C. is an extra-ordinary jurisdiction and to exercise such jurisdiction the Court must be satisfied that there was strong suspicion against the persons sought to be summoned to stand trial. Mere ipse dixit would not serve the purpose. An order under Section 319 of the Code, therefore, should not be passed only because the first informant or one of the witnesses seeks to implicate other person(s). Sufficient and cogent reasons are required to be assigned by the Court so as to satisfy the ingredients of the provisions. Such an evidence must be convincing one at least

for the purpose of exercise of the extra-ordinary jurisdiction.

9. The Apex Court has further held that the Courts are required to apply stringent tests; one of the tests being whether evidence on record is such which would reasonably lead to conviction of the person sought to be summoned.

10. In para 18 of the judgment the Apex Court has given clear cut guidelines which must be followed while summoning a person under Section 319 Cr.P.C. in the case in hand nothing is there which may indicate that there has been any involvement of these two lady revisionists in the entire matter. Their names have been mentioned in the FIR, statements under Section 231 Cr.P.C. and the application under Section 156(3) Cr.P.C. just in a cursory way and the facts mentioned about them does not disclose commission of any offence.

11. On the basis of the above discussions, I am of the view that the revision has got force and it should be allowed.

12. The revision is allowed. The impugned order is quashed and set aside as far as the case related to the revisionists namely Smt. Basanti & Rekha is concerned. It is made clear that Raj Bahadur, Ram Nath and Raj Nath have not come before this Court to challenge the order impugned. This Court has not examined their cases in this revision. Therefore, the order impugned is not disturbed as far as Raj Bahadur, Ram Nath & Raj Nath are concerned. The lower Court is at liberty to proceed against them in accordance with law. Just by way of reference it is mentioned here that the sole charge sheeted accused Ram Prasad has been found guilty and convicted by the learned trial Court on 12.1.2010 as is evident from the judgment passed in S.T.No.304/05, State v. Ram Prasad, filed in this case.

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