

Shipra Rastogi Vs. State and anr

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Court : Delhi

Decided On : Jan-03-2012

Appellant : Shipra Rastogi

Respondent : State and anr

Advocate for Def. : Mr. Mukesh Gupta, Mr. Satish Tamta, Ms. Ruchi Kapoor

Advocate for Pet/Ap. : Ms. Meenakshi Lekhi, Ms. Srishti Saxena

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + CrI. Rev.P. 391/2009 %
Reserved on: 15th December, 2011 Decided on: 3rd January, 2012 SHIPRA
RASTOGI Petitioner Through: Ms. Meenakshi Lekhi, Ms. Srishti Saxena, Advs.
versus STATE and ANR. Respondents Through: Mr. Mukesh Gupta, APP for
State with SI Sushil Kumar Crime Br. Mr. Satish Tamta, Ms. Ruchi Kapoor, Advs.
For R-2. Coram: HON'BLE MS. JUSTICE MUKTA GUPTA.

1. By the present revision petition, the Petitioner lays a challenge to the order dated 28th March, 2009 passed by the learned Additional Sessions Judge whereby he did not frame a charge under Section 307 IPC against Respondent No.

2. and remanded the matter back to the learned Metropolitan Magistrate as all other charges if made out were triable by a Magistrate..

2. The learned Counsel for the Petitioner contends that the learned Additional Sessions Judge failed to appreciate that there was sufficient evidence to show that a prima facie case under Section 307 IPC was made out. The Petitioner had made specific averments regarding thinner being poured in her statement under Section 161 Cr PC. The plea of the Respondent No.2 about the statement recorded before the SDM does not merit consideration, since after receiving 40% thermal burn injuries, the *Crl. Rev.P. 391/2009 Page 1 of 4* Petitioner was not even in a position to speak. It is further contended that the observation of the learned Additional Sessions Judge regarding there being no evidence for use of thinner as per the CFSL report is perverse. The report only states that the presence of thinner could not be ascertained. Reliance is placed on *Madan Lal Kapoor vs. Rajiv Thapar and Ors.* 2008 (3) JCC 1626, *Raghubir Singh and Ors. vs. State (NCT of Delhi)* I (2007) DMC 594, *Abhishek Verma vs. Enforcement Directorate* 145 (2007) DLT 504, *Subhash Chand Gupta vs. State of Delhi and Ors.* I (2007) DMC.

394. 3. Per Contra learned Counsel for the Respondent No.2 contends that the Petitioner is residing in his house and he is out of his own house. The Petitioner has concocted false and fabricated case against the Respondent No.2 and his family members and the said story about thinner being poured is an afterthought. Learned Counsel further contends that the Petitioner did not report the said incident for 6 months and has not even been able to give a plausible reason for the delay. The statement recorded by the SDM is genuine and the Petitioner could definitely speak but she could not speak aloud. Therefore the averment made by the Petitioner is incorrect. Further the SDM had no reason to note down a false statement of the Petitioner..

4. I have heard learned Counsels for the parties and perused the record. The facts in nutshell are that the Petitioner and the Respondent No.2 got married on 16th February, 2002. From that very day there were demands for dowry. Initially Respondent No.2 was a mute spectator to the mistreatments but after a few days he too started beating the Petitioner. On 22 nd February, 2005 the Respondent No.2 was upset with her about a purchase she made. He then started fighting, beat her and pushed her out of the house. When she *Crl. Rev.P. 391/2009 Page 2 of 4* came back, she saw that the Respondent No.2 was not in the drawing room,

so she went to the kitchen to turn off the gas. Suddenly the Respondent No.2 came from behind the Petitioner and poured thinner on her because of which she caught fire as the gas was still on. She had burns on her chest, stomach and face. When the Petitioner begged her husband to save her, he said that he would do it only if the Petitioner promised not to tell anybody about the said incident. He then purposely put his synthetic jacket on her face and then poured water from the filter on her..

5. The Petitioner took six months before she actually filed a complaint about this incident. She states that she was under constant threat from her in laws and her husband about getting her killed if she tried to tell anyone about the said incident. The Petitioner also states that her statement was not recorded by the SDM in the hospital. Further there are various specific allegations made by the Petitioner against the Respondent No.2 and his family members. The credibility of these allegations can only be determined during trial when evidence is led by the prosecution/ defence and the examination and cross examination of witnesses is conducted. At this stage the only thing that has to be seen is whether the uncontroverted allegations of the Petitioner raise a grave suspicion of commission of the offence by the Respondent No.2..

6. The MLC of the Petitioner shows that the Petitioner suffered 40% thermal burns with respiratory burns. From the statement of the Petitioner there is a strong suspicion that the Respondent No.2 committed the offence punishable under Section 307 IPC. Whether the delay in lodging the complaint warrants the statement of the Petitioner as not reliable and *Crl. Rev.P. 391/2009 Page 3 of 4* afterthought, is in the realm of appreciation of evidence, which can be decided after examination of the witnesses. The fact that CFSL report could not give any opinion regarding presence of thinner, is no reason to discharge the Respondent No.2 at this stage..

7. In *Indu Jain vs. State of Madhya Pradesh* 2008 (15) SCC 341 the Hon'ble Supreme Court held:.

39. As has been observed in *Kewal Krishan's case* , at the stage of framing of charge, the Court is not required to go into the details of the investigation but to

only arrive at a prima facie finding on the materials made available as to whether a charge could be sustained as recommended in the charge sheet. The same view has been subsequently reiterated in Devendra Padhi's case and in the case of Bharat Parikh v. CBI wherein the holding of a mini trial at the time of framing of charge has been deprecated..

8. Considering the facts on record a case for framing of charge against the Respondent No.2 for offence punishable under Section 307 IPC is prima facie made out. Accordingly, it is directed that the case be sent back to the learned Additional Sessions Judge for framing of charge under Section 307 IPC. All other charges will be framed in accordance with law, if made out..

9. Petition is disposed of. Trial Court Record be sent back. (MUKTA GUPTA)
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