

Om Prakash Vs. State and ors

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Court : Rajasthan Jodhpur

Decided On : Mar-03-2013

Appellant : Om Prakash

Respondent : State and ors

Judgement :

1 S.B. CRIMINAL REVISION PETITION NO. 1364/2011 (Omprakash Vs. The State of Rajasthan & Ors.) DATE OF ORDER :

03. March, 2012 HONBLE MR. JUSTICE SANDEEP MEHTA Mr. Pankaj Sharma, for the petitioner. Mrs. Chandralekha, Public Prosecutor. Dr. S.S. Jodha, for the respondents Nos.2 and 3. The present revision petition has been filed on behalf of the petitioner (complainant) challenging the order dated 25.11.2011 passed by the learned Special Judge, SC/ST (Prevention of Atrocities) Cases, Merta in Sessions Case No.23/2008 arising out of FIR No.161/2007, registered at Police Station Degana at the instance of petitioner complainant. The grievance which has been raised is with regard to non framing of the charges for the offences under Sections 302 and 120-B IPC against the accused respondents Nos.2 and 3. Briefly stated the facts necessary for the disposal of this revision petition are that the petitioner complainant filed a complaint in the concerned court, which was sent to the police for investigation under Section 156(3) Cr.P.C. The allegations as per the FIR were that Rameshwari Devi was married to Sheodan, the elder brother of the petitioner. It is alleged that Kailash and Rameshwari Devi, the accused respondents Nos.2 and 3 respectively developed illicit relationship and after hatching a conspiracy,

they administered poison to Sheodan in his meal on 19.08.2007. Resultantly, Sheodan was admitted in the hospital where he passed away on 20.08.2007. A complaint 2 with these allegations filed by the petitioner was sent to the police for investigation, whereupon, the police registered a case being FIR No.161/2007 and on the conclusion of the investigation, filed a charge-sheet against the accused respondents Kailash and Rameshwari Devi for the offences under Sections 306 and 497 IPC. The counsel for the petitioner complainant argued before the learned trial court that charges deserved to be framed against the accused respondents for the offences under Sections 302 and 120-B IPC but the learned trial Judge by the impugned order rejected the said prayer, on which, the instant revision petition has been filed for framing charges against the accused respondents for the offences under Sections 302 and 120-B IPC. Learned counsel for the petitioner submits that the learned trial Judge has framed the charges for the offences under Sections 306 and 497 IPC against the accused respondents but refused to frame charges for the offences under Sections 302 and 120-B IPC without any justification whatsoever. Learned counsel submits that the learned trial Judge has completely ignored the viscera examination report of the deceased, as per which, the poison Aluminium Phosphide has been found to be present in the organs of the deceased and that the presence of poison in the viscera leads to an irrefutable conclusion that the death of the deceased was as a result of poison being administered to him. As per the learned counsel for the petitioner, the learned trial Judge has completely ignored the well settled principles of medical jurisprudence, as per which, the Aluminium Phosphide is a poison, which is sufficient to kill a human being and, thus, he submits that the order of the learned 3 trial Judge deserves to be set aside. Referring to the statement of Smt. Jamna recorded under Section 161 Cr.P.C., learned counsel for the petitioner submits that Smt. Jamna has specifically stated that the accused respondents were having illicit relationship amongst themselves and that the deceased before his death told her that the accused respondents had connived together and administered poison to him after mixing the same in the food. This statement, as per the learned counsel for the petitioner amounts to an oral dying declaration. Thus, learned counsel for the petitioner argued that there is no reason for the learned trial court not to have framed charges against the accused respondents for the offences under Sections

302 and 120-B IPC. Per contra, learned Public Prosecutor and learned counsel for the accused respondents have supported the order of the learned trial court and submit that since the viscera of the deceased particularly the blood sample has not been found to be contaminated with the Aluminium Phosphide poison, as such, the learned trial Judge has committed no error in not framing the charges for the offences under Sections 302 and 120-B IPC against the accused respondents. I have heard learned counsel for the parties, perused the order impugned, as well as the documents collected by the police during the course of investigation and have given thoughtful consideration to the arguments advanced at the bar. In the opinion of this Court, there is direct evidence available on the record of the case by virtue of the statement of Smt. Jamna recorded under Section 161 Cr.P.C., in which, she has made allegation against the accused respondents Nos.2 and

3. regarding their being involved in an illicit relationship. That apart, it has also been stated that the deceased made an oral dying declaration to the witness Smt. Jamna regarding him having been administered poison in the food by the accused respondents. Thus, in the opinion of this Court, if there is an oral dying declaration made by the deceased to the witness Smt. Jamna regarding having been administered poison in the food by the accused respondents, then, there could not have been any justification for the learned trial Judge to have refrained from framing of charges against the accused respondents for the offences under Sections 302 and 120-B IPC. The observation of the learned trial Judge that the poison has not been found in the blood sample of the deceased and, therefore, the charge for offence under Section 302 IPC could not be framed against the accused respondents appears to be absolutely unjust and illegal. In the opinion of this Court, simply, the non presence of the poison in the blood sample cannot be a reason to hold that the poison was not administered to the deceased. The presence of the poison in the organs of the deceased is clearly indicative of the fact that the same was administered to the deceased leading to his death. Thus, the order of the learned trial Judge, whereby, he has refused to frame charges for the offences under Sections 302 and 120-B IPC against the accused respondents is absolutely illegal. Resultantly, this revision petition succeeds. The order impugned passed by the learned trial Judge refusing to frame charges against the accused respondents for the offences under Sections 302 and 120-B IPC and

framing a charge for the offence 5 under Section 306 IPC is hereby quashed. The learned trial court is now directed to frame charges against the accused respondents Nos.2 and 3 for the offences under Sections 302/120-B and 497 IPC and thereafter to proceed with the trial of the case in accordance with law. (SANDEEP MEHTA), J.

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