

Court No. - 81

Case :- MATTERS UNDER ARTICLE 227 No. - 9232 of 2023

Petitioner :- Rakesh Chandra @ Rakesh Chandra Yadav

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Shesh Narain Mishra, Sudhanshu Pratap Singh

Counsel for Respondent :- G.A.

Hon'ble Mrs. Jyotsna Sharma, J.

1. Heard Sri Shesh Narain Mishra, learned counsel for the petitioner and Sri L.D. Rajbhar, learned A.G.A. for the State.

2. This petition has been filed challenging the order dated 19.11.2021 passed by C.J.M. Auraiya in Case Crime No. 513 of 2016 under sections 498A, 304-B, 302 I.P.C. and section 3/4 of D.P. Act by which the final report was accepted and the order dated 14.02.2023, passed by Additional Session Judge in Criminal Revision No. 5 of 2022, whereby the order of the trial court accepting the final report was not interfered at and the criminal revision was dismissed.

3. From the submissions of both the sides and the material on record, following relevant facts emerge.

(i) The first informant Rakesh Chandra Yadav (the petitioner herein) lodged an F.I.R. with the imputations in nutshell that his daughter was married off to Rupendra Singh Yadav and that he was often told by his daughter that her *jeth* Bhupendra @ Aakash, mother-in-law Kishna Devi, sister-in-law Hemlata and Hemlata's husband used to visit her house asking for money as dowry. On 02.11.2016, all the accused persons came and snatched the jewellery from her daughter and son-in-law. When the couple protested, Bhupendra @ Aakash took out his licensed revolver and shot on his daughter's head and thereafter, also shot on the head of his younger brother, killing both of them. The incident took place in the evening of 2.11.2016 at Kanpur.

(ii) The first informant was informed of the incident by his younger brother Girjesh Yadav, who used to reside at Kanpur. The first informant rushed from Ghaziabad to her daughter's house. By then, the inquest and post mortem on the dead bodies was already done.

(iii) On the basis of this, F.I.R. case was registered and investigated upon. The statements of the witness were recorded. The documentary evidence collected and the I.O. closed the matter by filing a final report, giving an opinion that both the husband and wife committed suicide and that evidence was not adequate against the accused persons.

(iv) The first informant filed a protest petition alleging that his daughter and son-in-law were murdered by Bhupendra Singh @ Aakash and that other members of her son-in-law's family were also involved.

(v) The learned trial court heard both the sides and found no adequate evidence to reject the final report and accepted the same. The first informant preferred a revision, the same was also dismissed. Now, the first informant is before this Court in this petition filed under Article 227 of Constitution of India.

4. The petitioner contends that he, in his statement recorded under section 161 Cr.P.C., supported the F.I.R. version. Except him, none of the family member of the first informant was examined by the I.O. under section 161 Cr.P.C. instead, the I.O. recorded statements of the members of the family of his son-in-law. It is contended that the main accused Bhupendra Singh, though, was the real brother of the deceased- son-in-law, but they did not enjoy good relationship and therefore, there was strong motive to commit the murder. The learned trial court did not peruse the evidence on record and accepted the final report in an arbitrary manner.

5. Before I proceed to go through the impugned orders, it is appropriate to refer to certain facts as emerging from the papers on record. Shweta Yadav and her husband Rupendra Yadav were found dead with close range gun shot injury one each on their heads. Aakash Yadav informed the police about death by suicide. The postmortem report showed fire arm entry wound on left side of head and corresponding exit wound with blackening and synging on deceased Shweta, likewise on deceased Rupendra, the fire arm entry wound on right side of head and corresponding exit wound. Except the first informant, no other statements, if any, given by any other witness has been filed on record. In short there is no evidence of murder except one statement given by the first informant under section 161 Cr.P.C. Admittedly, he came on the scene of crime after being informed of the incident by others.

6. The learned trial court found that there was no evidence to take cognizance on the basis of police report and accepted the same. The learned court of revision noted down ante mortem injuries found on the heads of the deceased persons. It also noted down that the incident occurred on 02.11.2016 and the matter was reported by the first informant after delay of 15 days on 17.11.2016. The revisional court also observed that except complainant, all other witnesses of fact, did not support the story of demand of dowry. None attributed any motive to the accused persons for killing the deceased persons. The Court found it rather unusual that real brother shall kill his brother and sister in law for the demand of dowry. The court also noticed that all the witnesses of inquest have said that Rupendra committed suicide after killing his wife.

7. In the background of above facts noticed by the court concerned, the impugned orders have been passed. I do not find any good reason to interfere in the impugned orders, therefore, the petition is hereby **dismissed**.

Order Date :- 8.12.2023

Sumit Kumar