

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Revision Case No.404 of 2018

ORDER:

The challenge in this Criminal Revision Case at the instance of petitioners/proposed accused Nos.2 and 3, is the order dated 14.12.2017 in CrI.M.P.No.1024 of 2017 in S.C.No.53 of 2014 passed by the Sessions Judge, Mahila Court, Vijayawada.

2) The facts which lead to file the instant revision are as under:

a) A1 faces the charges under Sections 498A and 302 IPC for the death of his wife—Hymavathi. Their marriage was held on 18.02.2011 and they lived happily for some time. Thereafter, it is alleged, A1 used to come home in a drunken state and harassed his wife both mentally and physically. The deceased was suffering with irregular menstrual periods due to some gynaec problem for which she was taking treatment. On that count A1 abused her. On 27.01.2012, the deceased made a phone call to the accused and reminded him about their hospital appointment. However, A1 came to the home late at about 21.30 hours in a drunken state, picked up quarrel with her by abusing her “*Nuvvu Chaste Peeda Vadulutundi*” and with a view to do away with her life, he poured kerosene and when she raised alarms and ran towards bathroom to escape from him, he followed her and set fire with match stick. As a result, she sustained burn injuries. She was admitted in Government General Hospital, Vijayawada. On 26.03.2012 she was discharged from hospital. As the burn injuries were not healed, again she was admitted in NRI

Hospital, Mangalagiri on 25.05.2012 and she succumbed to burn injuries on 07.06.2012.

b) Earlier, the police of Machavaram registered a case in Cr.No.60 of 2012 under Section 307 IPC against A1 and after the death of deceased the section of law was altered to Section 302 IPC and after investigation charge sheet was filed against him which was taken into cognizance and registered as S.C.No.53 of 2014. While the trial was proceeding, the learned Public Prosecutor filed a petition under Section 319 Cr.P.C. with a prayer to add the present petitioners who are the elder sister and brother-in-law of A1 as accused Nos.2 and 3 on the plea that from the evidence their complicity was also revealed.

c) Petitioners herein opposed the said petition by filing counter.

d) The Trial Court allowed the petition on the observation that in the evidence of PWs.1 to 3, they deposed about the harassment allegedly caused by the petitioners apart from A1.

Hence the present Crl.R.C.

3) Heard learned counsel for petitioners and learned Assistant Public Prosecutor for the State (AP).

4) While fulminating the order of the trial Court, the main plank of argument of learned counsel for petitioners is that in 161 Cr.P.C. statements as well as statements recorded by Executive Magistrate, none of the witnesses including the parents and brother of the deceased, have

hurled any allegations against the petitioners. Even in the statement of the deceased also she did not state any harassment meted out to her by the petitioners except stating that due to her gynaec problem, mother-in-law and sister-in-law were causing some inconvenience to her. Learned counsel for petitioners vehemently argued that absolutely there is no material against the petitioners warranting their arraying as accused after mid trial. Though this aspect was brought to the notice of the trial Court during their arguments, unfortunately the trial Court did not consider it in proper perspective. He thus prayed to allow the CrI.R.C.

5) Per contra, learned Assistant Public Prosecutor opposed the revision stating that there was ample material to implead the petitioners.

6) In the light of above rival arguments, the point for determination is:

“Whether there are merits in this Criminal Revision Case to allow?”

7) **POINT**: I have gone through the impugned order. It would show the trial Court having regard to the evidence of PWs.1 and 2 held that along with husband, sister-in-law and her husband used to dispute with deceased and therefore they have to be added as A2 and A3 as there was sufficient evidence against them.

8) In this context, I perused the evidence of PWs.1 and 2. PW1—D.Durga Vara Prasad who is the father of the deceased *inter alia* deposed that marriage of his second daughter—Hymavathi with accused was

solemnised on 18.02.2011 and on the date of marriage itself accused, his mother, sister and her husband disputed with bride party on the ground that lanchanams were not done properly. He further deposed 10 days after marriage, accused, his father, mother and sister started harassing his daughter. He further stated that 40 days after the marriage his daughter made a phone call and informed by weeping that accused and her mother-in-law, sister-in-law were harassing her in every aspect. On getting this information, he (PW1) went to the house of accused. Then, accused and his brother-in-law beat him and thereafter, he brought back the deceased unable to see her plight. This is the evidence regarding the complicity of petitioners apart from A1.

a) It is pertinent to note that none of the above facts were spoken by him in his 161 Cr.P.C. statement. His 161 Cr.P.C. statement was recorded by the police on 28.04.2012. In his statement he only stated that once himself and his wife went to see his daughter. At that time she informed to them that apart from her husband, mother-in-law, sister-in-law and her husband were causing inconvenience to her in connection with gynaec problem. Except that he has not stated any other facts against the petitioners/A2 and A3. The statement of PW1 was recorded also by Tahsildar-cum-Executive Magistrate, Vijayawada Urban during the time of inquest. In the said statement he did not make even a whisper of allegation against the petitioners.

9) Then, coming to PW2—mother of the deceased, she too deposed as if after marriage, accused, his mother and sister used to harass the

deceased stating that she was not suitable to their family and they used to abuse her in filthy language. She further deposed that once her daughter informed all the accused were abusing and beating her. When PW1 went to the house of deceased to question about the attitude of A1, himself (A.1) and his brother-in-law beat PW1. However, neither in her 161 Cr.P.C. statement nor in the statement recorded by the Mandal Executive Magistrate she stated those facts. The only allegation made in her 161 Cr.P.C. statement is that with regard to the gynaec problem of the deceased, A1, his mother, his sister and brother-in-law used to cause inconvenience to her. Except that we do not find any tangible allegations against the petitioners.

10) Thus, on a careful scrutiny of the earlier statements of PWs.1 and 2 and their evidence before the trial Court, it is clear that they made any amount of improvement in their evidence and made allegations against petitioners/A2 and A3. In that view, there is any amount of truth in the submission of learned counsel for petitioners that in the evidence, PWs.1 and 2 improvised their version only to implicate the petitioners. If really the petitioners had harassed and subjected the deceased to cruelty, nothing prevented PWs.1 and 2 to mention those facts in their respective 161 Cr.P.C. statements.

11) Above all, in her statement, the deceased did not make any allegation about harassment caused by the petitioners. She only stated that in respect of her gynaec problem, her mother-in-law, sister-in-law

and her husband were causing inconvenience to her. Except that she did not cast any aspersions on them.

12) Section 319 Cr.P.C. speaks about the power of Trial Court to proceed against the persons who are not appearing as accused basing on the evidence available on record. The Court must record its reasonable satisfaction before summoning the additional accused. In ***Rajendra Sharma and others v. State of Madhya Pradesh and others***¹, Hon'ble Apex Court had comprehensively dealt with the aspect of adding of additional accused in the mid trial by exercising the power under Section 319 Cr.P.C. In its judgment, the Apex Court perused its various earlier judgments and answered the question "what is the degree of satisfaction required for invoking the power under Section 319 Cr.P.C", as follows:

***"Para 105:** Thus, we hold that though only a prima facie case is to be established from the evidence led before the court not necessarily tested on the anvil of Cross-Examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 Code of Criminal Procedure. In Section 319 Code of Criminal Procedure the purpose of providing if 'it appears from the evidence that any person not being the accused has committed any offence' is clear from the words "for which such person could be tried together with the accused." The words used are not 'for which such person could be convicted'. There is, therefore, no scope for the Court acting under*

¹ MANU/SC/0854/2014 = 2014 (III) MPJR (SC) 1

Section 319 Code of Criminal Procedure to form any opinion as to the guilt of the accused.”

With regard to the word ‘evidence’ appearing in Section 319 Cr.P.C, the Apex Court made it clear that the word ‘evidence’ has been given a comprehensive and broad sense which will also include the material collected by the investigating officer, material collected during the inquiry and not necessarily the evidence brought during trial. The Apex Court happened to answer the following question, thus:

“Question: Whether the word "evidence" used in Section 319(1) Code of Criminal Procedure has been used in a comprehensive sense and includes the evidence collected during investigation or the word "evidence" is limited to the evidence recorded during trial?

Para 116.2: *Section 319 Code of Criminal Procedure, significantly, uses two expressions that have to be taken note of i.e. (1) Inquiry (2) Trial. As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry. Inquiries under Sections 200, 201, 202 Code of Criminal Procedure; and under Section 398 Code of Criminal Procedure are species of the inquiry contemplated by Section 319 Code of Criminal Procedure. Materials coming before the Court in course of such enquiries can be used for corroboration of the evidence recorded in the court after the trial commences, for the exercise of power under Section 319 Code of Criminal Procedure, and also to add an accused whose name has been shown in Column 2 of the charge sheet.*

Para 116.3: *In view of the above position the word 'evidence' in Section 319 Code of Criminal Procedure has to be broadly understood and not literally i.e. as evidence brought during a trial.”*

In view of the above precedential jurisprudence, in my considered view, the Trial Court ought to have scrutinised the material collected during the investigation also in addition to the evidence given by the concerned witnesses during trial to form an opinion for adding the petitioners as accused.

13) In the instant case, unfortunately the trial Court has not perused the previous statements of the witnesses particularly the deceased wherein no allegations are made against the petitioners causing any cruelty or harassment to her. Therefore, I am of the considered view that inclusion of petitioners/A2 and A3 to undergo trial along with A1 would amount to travesty of justice.

14) In the result, this Criminal Revision Case is allowed by setting aside the impugned order dated 14.12.2017 in CrI.M.P.No.1024 of 2017 in S.C.No.53 of 2014 passed by the trial Court.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 18.07.2018
Murthy