

Stree Atyachar Virodhi Parishad

Vs

Dilip Nathumal Chordia and Another

Criminal Appeals Nos. 486-487 of 1984

State of Maharashtra

Vs

Dilip Nathumal

Criminal Appeals Nos. 488-489 of 1984

Criminal Appeals Nos. 486-487 And 488-489 of 1984

(B. C. Ray, K. Jagannatha Shetty JJ)

08.02.1989

JUDGMENT

K. JAGANNATHA SHETTY, J. –

1. These four appeals, by leave, arise out of the common judgment of Bombay High Court April 5, 1984 in Criminal Revision Application Nos. 166 and 234 of 1983. Criminal Appeal Nos. 486 and 487 of 1984 have been preferred by an organisation called "Stree Atyachar Virodhi Parishad". It is an association committed to prevent atrocities on women. Criminal Appeal Nos. 488 and 489 of 1984 are by the State of Maharashtra.
2. The case relates to the death of a newly married girl called Chanda. On June 15, 1981, Chanda was married to Ramesh. The elder brother of Ramesh is called Dilip and Nathumal is their father. The marriage of Ramesh and Chanda took place at Nerparsopant, District Yavatmal.
3. On the next day of the marriage, the bride and groom returned to the house of the latter at Arvi. On June 19, 1981, they had gone to Amravati to have prayers in the Devi Temple. They came back in the same evening. The day following was a fateful day at about 2.30 p.m. on June 20, 1981, Chanda was seen with flames on the first floor of the residential building frantically crying for help. That attracted some of the neighbours from the ground floor. They rushed to rescue Chanda. Three of them are : Bhanrao, Ballu alias Nandu and Ramdas. They extinguished the flame which was practically engulfing Chanda. The inmates in the house, however, did not render any such help. Dilip who was on the first floor was seen coming down the stairs. Shortly thereafter two doctors came and the police also arrived. Chanda was taken to Ervin Hospital at Amravati in an unconscious condition. She died in the hospital at about 9 p.m. on the same day. Before the death, her dying declaration was said to have been recorded by the Executive Magistrate. It was stated therein that when she was preparing tea in the kitchen, her saree caught fire accidentally and consequently she received the burn injuries.

4. The parents of Chanda were informed of the death. They suspected foul play by the in-laws of Chanda. They lodged a report at Amravati Police Station complaining that Chanda's death might have been the outcome of tension due to demand of dowry. The Crime Branch of the CID investigated the case and charge-sheeted Dilip and Nathumal under Section 306 read with Section 34 IPC. It was alleged that Chanda had committed suicide by burning herself and Dilip and Nathumal abetted her.

5. An investigation of the case revealed that Chanda had hostile atmosphere soon after her marriage. She was not treated well in her husband's house. Vijay, her brother and Mani Chand, father have given statements that the in-laws demanded unreasonable dowry which could not be complied with. Even at the wedding ceremony, it seems, that they behaved badly on the payment of insufficient dowry. After the marriage, when Vijay came to take his sister back home as per custom, he was not even permitted to meet her. Kamala Bai, the maid servant accompanying Chanda was also sent back. She has also given detailed version about the unfavourable atmosphere around Chanda.

6. In addition to the statements of witnesses, there is a report of the Chemical Analyser and post-mortem report. These indicate that the death of Chanda could not be by accidental fire.

7. The trial could after considering all the facts and circumstances appearing on record and after hearing the counsel for accused and Public Prosecutors was of prima facie opinion that it was not a suicide but homicidal death. Accordingly, the charge under Section 302 IPC was framed against Dilip. Nathumal, however, was discharged holding that the allegations against him do not justify the framing of any charge.

8. There were two revision application before the High Court of Bombay. The State filed a revision challenging the validity of discharge of Nathumal. Dilip on his part questions of the charge framed against him and demanded his discharge also. The High Court dismissed the decision preferred by the State while accepting the revision of Dilip. The High Court was of opinion that the charge under Section 302 against Dilip was misconceived and there is not even a case against him to frame charge under Section 306 IPC. He was accordingly discharged.

9. The Primary question for consideration before us, is whether the High Court was justified in interfering with the charge framed by the trial court against Dilip ? The next question to be considered is whether it is necessary to put Nathumal also on trial with the material on record.

10. We have perused the judgments of the courts below and heard counsel on both sides. We gave our anxious consideration to the material on record.

11. Section 227 of the Code of Criminal Procedure having bearing on the contentions urged for the parties, provides :

227. Discharge. - If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submission of the accused and the prosecution in this behalf, the judge consider that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

12. Section 228 requires the judge to frame charge if he considers that there is ground for presuming that the accused has committed the offence. The interaction of these two sections has already been the subject matter of consideration by this Court. In state of Bihar v. Ramesh Singh ((1977) 4 SCC

39 : 1977 (Cri) 533 : (1978) 1 SCR 257), Untwalia, J., while explaining the scope of the said sections observed : [SCR p. 259 : SCC pp. 41-42 : SCC (Cri) pp. 535-36, para 4]

Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the judge at that state of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence then it is not open to the court to say that there is no sufficient ground for proceeding against the accused.

13. In *Union of India v. Prafulla Kumar Samal* ((1979) 3 SCC 4 : 1979 SCC (Cri) 609 : (1979) 2 SCR 229), Fazal Ali, J., summarised some of the principles : [SCR pp. 234-35 : SCC p. 9 : SCC (Cri) pp. 613-14, para 10]

(1) That the judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused had been made out.

(2) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained the court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the judge which under the present Code is a senior and experienced court cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities appearing in the case and so on. This however does not mean that the judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting trial.

14. These two decisions do not lay down different principles. Prafulla Kumar case ((1979) 3 SCC 4 : 1979 SCC (Cri) 609 : (1979) 2 SCR 229) has only reiterated what has been stated in Ramesh Singh case ((1977) 4 SCC 39 : 1977 SCC (Cri) 533 : (1978) 1 SCR 257). In fact, Section 227 itself

contains enough guidelines as to the scope of enquiry for the purpose of discharging an accused. It presides that "the judge shall discharge when he considers that there is no sufficient ground for proceeding against the accused." The 'ground' in the context is not a ground for conviction, but a ground for putting the accused on trial. It is in the trial, the guilt or the innocence of the accused will be determined and not at the time of framing of charge. The court, therefore, need not undertake an elaborate enquiry in sifting and weighing the material. Nor is it necessary to delve deep into various accepts. All that the court has to consider is whether the evidentiary material on record if generally accepted, would reasonably cannot the accused with the crime. No more need be enquired into.

15. So much is, we think, established law. To be fair to the accused, we have examined the material on record and also perused the statements of some of the witnesses. From the report of the Chemical Analyser, it will be seen that kerosene residue was found on each and every garment of the deceased. The post-mortem report also indicates, besides burn injuries, that Chanda had sustained contusions on the back shoulders. According to the doctor who conducted the post-mortem, those contusions might have been caused with a blunt rounded object. The learned Judge of the High Court has not adverted to these facts although the contention of the Public Prosecutor in this regard has been noticed. Not merely that, the events that preceded the death of Chanda did not receive any consideration. The statements of brother and father of Chanda and also that of Kamala Bai - the maid servant of Chanda - have been ignored. The conduct of Dilip which was highlighted in the context and circumstances, was down from the staircase when Chanda was crying for help. The manner in which he went on at that time, if true, did not bring him credit. The High Court, however, said :

That the accused was passive is neither here nor there. It all depends upon the mental response and reaction of an individual whether he faces the risk and attempt to extinguish the flames or quietly watches the incident. By no interpretation could it be stretched to show that the accused either actively committed the act of burning or actively aided the commission of suicide.

16. Counsel for the State was very critical of the attitude adopted by the High Court in dealing with the case. His criticism to some extent is not unjustified.

17. It may not be out of place to mention that "dowry" which is a deep-rooted social evil appears to be the cause of ever so many unfortunate deaths of young ladies. It is an offence brutal and barbaric. It is generally committed inside the house and more often with a circumstance to give an impression that it was a suicidal death. There will be all round attempt to cover up such offence by the family members rather than to expose it. The government has come forward with legislations from time to time to protect women and to punish those who commit atrocities on them. In 1961 the Dowry Prohibition Act (Act 28 of 1961) was passed prohibiting the taking or giving of dowry. By the Criminal Law (Second Amendment) Act, 1983 (Act 46 of 1983) Chapter XX-A was introduced in the Penal Code with Section 498-A creating new offence of cruelty. It provides for punishment to husband or his relatives if they harass a woman with a view to coerce her to meet any unlawful demand for property. Section 174 of the Criminal Procedure Code was also amended to secure post-mortem in case of suicide or death of a woman within seven years of her marriage. Section 113-A has been introduced in the Evidence Act, 1872 raising presumption of cruelty as defined under Section 498-A IPC against the husband or his relative if the wife commits suicide within a period of seven years from the date of her marriage. These provisions reflect the anxiety of the representatives of our people to deal firmly with the menace of dowry deaths. Again, there are sweeping changes made in the Dowry Prohibition (Amendment) Act, 1984. A new offence called 'Dowry death' has

been created by introducing Section 304-B in the Penal Code. It raised presumption of capability against the husband or relative hitherto unknown to our jurisprudence. It provides that where the death of a woman is caused by any burns or bodily injury or otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for or in connection with any demand for dowry, such death shall be called 'dowry death'. The section also provides that such husband or relative imprisonment for a minimum of seven years but which may extend to life imprisonment.

18. We are referring to these provision not that they are attracted to the present case. It is only to emphasize that it is not enough if the legal order with sanction alone moves forward for protection of women and preservation of societal values. The criminal justice system must equally respond to the needs and notions of the society. The investigating agency must display a live concern and sharpen their wits. They must penetrate into every dark corner and collect all the evidence. The court must also display grater sensitivity to criminality and avoid on all counts "soft justice".

19. In the instant case the trial court has considered every material on record in support of the charge framed. The trial court has also given reasons why a charge under Section 302 IPC is warranted against Dilip even though the police charge-sheeted him under Section 306 IPC. The High Court has gone on tangent mainly relying on the dying declaration as if it has been conclusively proved to be the true and faithful version of the deceased. Apart from that, we are unable to compromise ourselves with the approach made and the opinion expressed by the High Court in respect of many of the matters.

20. We wish to add a word regarding interference by the High Court against a charge framed by the Sessions Court. Section 227 which confers power to discharge as accused was designed to prevent harassment to an innocent person by the arduous trial or the ordeal of prosecution. How that intention is to be achieved is reasonably clear in the section itself. The power has been entrusted to the Sessions Judge who brings to bear his knowledge and experience in criminal trials. Besides, he has the assistance of counsel for the accused and Public Prosecutor. He is required to hear both sides before framing any charge against the accused or for discharging him. If the Sessions Judge after hearing the parties frames a charge and also makes an order in support thereof, the law must be allowed to take its own course. Self-restraint on the part of the High Court should be the rule unless there is a glaring injustice which stares the court in the face. The opinion on any matter may differ depending upon the person who views it. There may be as many opinions on a particular matter as there are courts but it is no ground for the High Court to interdict the trial. It would be better for the High Court to allow the trial to proceed.

21. The counsel for the State was equally critical upon the discharge of Nathumal. It was argued that Nathumal being the manager of the family ought to have taken care of Chanda and without his convince, none would have demanded dowry and put chanda on fire. It is true that it is his obligation as manager of the family to protect Chanda and safeguard her rights. We have no doubt that he has failed to perform his moral obligation. But that by itself without anything more is not sufficient to frame a charge against him. We, therefore, agree with the discretion exercised by the trial court and leave it at that.

22. In the result and for the reasons stated, we allow the criminal appeals to the extent indicated only as against Dilip. We set aside the order of the High Court and restore that of the trial court. The appeals against Nathumal are dismissed. His discharge is confirmed. We direct the court to proceed

with the trial expeditiously.

23. Before parting with the case, we must place on record the useful service rendered by 'Stree Atyachar Virodhi Parishad' in this case. It is a social welfare organisation. It has come up to this Court spending its own money by appeals. We very much appreciate the object of the organisation and the assistance rendered.

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