

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on:05th October, 2009*
Judgment Delivered on:07th October, 2009

CRL.R.P.342/2009

YAMIN & ORS. Petitioners
Through: Mr.Kishan Nautiyal, Advocate.
versus

STATE Respondent
Through: Mr.Manoj Ohri, APP.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J.

1. This revision petition has been filed against the impugned order dated 28.2.2008 whereby the Trial Court had framed charges under Section 498-A/304-B/34 of the IPC against three co-petitioners. Yamin Petitioner No.1 is the father-in-law, Smt.Vakila Petitioner No.2 is the mother-in-law and Farukh Petitioner No.3 is the brother-in-law of the victim Shahana.

2. Deceased Shahana had been married to co-accused Mohd.Farid on 13.4.2005 as per muslim rites. She had died in the matrimonial home on 27.8.2007. It was not a natural

death; there is no dispute to this proposition; whether it was homicidal or suicidal would not make any difference as both homicide and suicide fall within the definition of 'death otherwise than under normal circumstances' as contained in Section 304-B of the IPC.

3. Out of the essential ingredients of Section 304-B IPC, three i.e.

- (a) death of a woman,
 - (b) by burns or bodily injuries or occurrence otherwise than in normal circumstances and
 - (c) within seven years of her marriage,
- stand established.

4. Learned counsel for the appellants has challenged the order of the framing of charge primarily on the ground that the SDM had recorded the first statement of the relatives of the victim, namely, her father Nawab Ali, her mother Zaibun and her brother Mohd. Shahid on 28.8.2007 but in all these statements there were no direct allegation against the petitioners and the allegations, at best, were levelled against the husband of the victim, namely, Fareed. The supplementary statements of the said persons recorded by the Investigating Officer wherein the allegations against the petitioners have surfaced for the first time are of little value and no credence can be placed on such subsequent

statements which had not detailed the offence in the first instance. These are major improvements having no evidentiary value and as such the Trial Court has misappreciated the evidence which had been collected by the prosecution in these supplementary versions. For this proposition reliance has been placed upon a judgment reported in Narender Kumar and Anr. vs. State (Govt. of NCT of Delhi) 2008 (1) JCC 1. Even otherwise, the submissions are vague with no specific allegations levelled against the petitioners in the absence of which the court has erred in framing charge. For this proposition reliance has been placed upon a judgment reported in Babita vs. State 2009 (2) LRC 180 (Del). Additionally, it has been argued that a grave suspicion by itself is not sufficient for framing of charge unless allegations are specific. Reliance has been placed upon a judgment reported in Yogesh @ Sachin Jagdish Joshi vs. State of Maharashtra 2008 VI AD (SC) 381. Learned defence counsel has also placed reliance upon Basavaraja and Ors. vs. State of Karnataka (2008) 9 SCC 329 to substantiate his submission that where the evidence collected by the prosecution would not be sufficient to prove the charge, the trial would be an empty formality. It is submitted that in the instant case no final opinion on the cause of death has been obtained by the investigating

agency. Attention has been drawn to the post-mortem report wherein the doctor had kept the opinion on the cause of death pending till the toxicological analysis report of the viscera is made available. It is submitted that the report of the viscera which is dated 20.11.2007 has categorically opined that metallic poisons, ethyl and methyl alcohol, cyanide, phosphide, alkaloids, barbiturates, tranquilizers and insecticides could not be detected in the viscera of the victim i.e. her liver, spleen and kidney. The prosecution, thus, has no evidence as to how the death of the victim had occurred; the ante-mortem injuries noted in the post-mortem were insufficient to cause death and death by poisoning also having been ruled out by the report of the viscera, there is thus no conclusive opinion on the cause of death; it would be a fruitless trial.

5. The revision petition has been opposed.

6. The parties had admittedly been married on 13.4.2005. The incident had occurred on 27.8.2007; i.e. within less than three years of the marriage of Shahana and Fareed. It is also not in dispute that the victim had died in the matrimonial home where the petitioners also resided along with Fareed, the husband of the victim. The information about the incident had been received by the family of the victim through her neighbours and not directly through the

petitioners or the husband of the victim. The statement of Nawab Ali, the father of the victim was recorded by the SDM on 28.8.2007. The same has been perused. He has specifically stated that one month after the marriage of his daughter she had informed him that she was being harassed for dowry and her husband used to beat her; so much so, that his son-in-law was not even talking to his father-in-law; he received information about his daughter being hospitalized in the late evening of 27.8.2007; when he reached the hospital his daughter had already died but his son-in-law had no explanation to offer. This version of Nawab Ali categorically recites that he doubted his son-in-law regarding the death of his daughter. His daughter was fine and was not suffering from any disease; her sudden death should be investigated. On the very same day, his supplementary statement was recorded by the Investigating Officer wherein he had detailed the role of the present petitioners i.e. Yamin, Vakila as also of Farukh who also used to harass her for bringing insufficient dowry.

7. To the same effect is the statement of Zaibun, the mother of the victim whose statement was recorded first by the SDM on 28.8.2007 and on the very same day by the Investigating Officer; in her statement before the

Investigating Officer she had detailed the role of the co-petitioners.

8. In the statement of Sahid Saifi, the brother of the victim, recorded before the SDM, it has been stated that besides her husband, her in-laws also used to trouble her for bringing insufficient dowry. The role of the in-laws i.e. all the petitioners has been categorized in the first statement of Mohd.Sahid Saifi and thereafter again as recorded in his statement before the Investigating Officer which was also of the same date.

9. Statements of Rajuddin, a member of the 'Biradari' as also of Hakim Ali, uncle of the victim have also been perused. All the said statements i.e. of the father, mother and the brother of the victim had been recorded on 28.8.2007 itself. Human nature is very complex. Different persons react differently under pressure or in times of sudden bereavement or grief. The shock suffered by a parent having seen his daughter dead in an unnatural manner can in some cases prevent immediate outpouring of reasons. This proposition has been laid down in Alamgir Sani vs. State of Assam (2002) 10 SCC 277 and can well answer the submissions of the learned defence counsel as to why in the first statement recorded of the parents of the victim before the SDM, no detailed role had been attributed to the petitioners.

10. The judgment relied upon by the learned counsel for the petitioner as reported in Narender Kumar and Anr. vs. State (Govt. of NCT of Delhi) (supra) was against a final conviction i.e. after the evidence had been marshaled and would thus have no application to the present case which is only at the stage of the framing of charge.

11. The second judgment relied upon by the counsel for the petitioner reported as Babita vs. State (supra) is also not applicable to the facts of the instant case as the allegations against the petitioners are specific and cohesive.

12. Principles for framing of charge are well established; a strong suspicion against the accused from the evidence produced which makes out a prima facie case is sufficient for framing of charge. State of Bihar vs. Raj Narain AIR 1991 SC 1308.

13. In the instant case, there are four ante-mortem injuries which had been noted in the post-mortem report but the doctor had opined them to be insufficient to cause death. The FSL report has also been perused wherein metallic poisons, ethyl and methyl alcohol, cyanide, phosphide, alkaloids, barbiturates, tranquilizers and insecticides could not be detected in the viscera. Thereafter, the post-mortem report along with FSL report had been placed for opinion before the concerned doctor who had vide his subsequent opinion dated

15.12.2007 opined that poisoning as a cause of death could not be ruled out. Trial is yet to take place and the doctor has yet to come into the witness box to explain his subsequent opinion.

14. In Taiyab Khan and Ors. Vs. State of Bihar AIR 2006 SC 673, the Supreme Court had held that even in the absence of the report of viscera and the prosecution not having been able to prove that death had occurred by poisoning, the fact, nevertheless, stood established that it was a case of unnatural death; Section 304-B makes reference to death which occurs otherwise than under normal circumstances.

15. The submissions made by the revisionist are without any force. There is prima facie sufficient material to hold that the co-petitioners had subjected Shahana to cruelty/harassment in connection with demand for dowry; her death had occurred within less than three years of her marriage in unnatural and abnormal circumstances. The presumption under Section 113-B of the Evidence Act is also attracted. The impugned order calls for no interference. Revision petition dismissed.

(INDERMEET KAUR)
JUDGE

07th October, 2009
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