

HIGH COURT OF DELHI AT NEW DELHI

Crl. Rev. P. 13/2010

Date of Decision: 09.8.2010

Sanjeev Kumar & Anr. ... Petitioners

Through: Mr. Sunil Mittal, Advocate

Versus

The State ... Respondent

Through: Mr. Naveen Sharma, Adv.

CORAM:

HON'BLE MR. JUSTICE S.L. BHAYANA

1. Whether reporters of local paper may be allowed to see the judgment? Yes
2. To be referred to the reporter or not? Yes
3. Whether the judgment should be referred in the Digest? Yes

S.L. Bhayana, J.

This revision petition has been filed by the petitioners u/s 397/401 Cr.P.C. read with section 482 Cr.P.C. with a prayer that the order dated 30.9.2009 (Order on Charge) and 17.11.2009 (framing of Charge) whereby the learned trial Court has framed Charge against the petitioners under section 302/34 IPC may be set aside and quashed.

2. Learned counsel for the petitioners has submitted that all the petitioners are liable to be discharged in this case as there is no prima facie case made out against the petitioners for framing of Charge u/s 302/34 IPC. He has further submitted that on 3.10.2007 the mother of the deceased Sapna Goel along with other near relatives had given an application in writing to the ACP, Tilak Nagar, Delhi that the post mortem on the dead body of her daughter Sapna Goel be waived and the dead body be handed over to them for cremation. He further stated that it is mentioned in the application that deceased Sapna Goel was

happy in her matrimonial home and there was no complaint against the accused persons. So keeping in view the application moved by her mother and other relatives no case is made out against the accused persons. He has further submitted that Dr. L.C. Gupta who has conducted the post mortem is a tainted doctor and some enquiries were pending against him so no reliance can be placed on the report of the post mortem of the said doctor. He has further submitted that learned trial Court had wrongly framed Charge and the petitioners are liable to be discharged.

3. On the other hand learned counsel for the State stated that there is sufficient material on record for framing of Charge against the petitioners and the learned trial Court has rightly framed Charge against all the accused persons on the basis of statement recorded by the police of the mother of the deceased and various other near relatives who have made serious allegations against all the petitioners having killed the deceased.

4. I have heard learned counsel for the parties and perused the record.

5. Although the mother of the deceased Sapna Goel had moved an application before ACP that the post mortem on the dead body of her daughter be waived but it was only because of the fact that she and other near relatives were present at the house of the accused persons and when the I.O S.I. Dharmpal arrived there the accused persons had told her mother and the other relatives and also the police officer that Sapna Goel was drying cloths on the roof of the house and due to giddiness she fell down from the roof and died. Thereafter at the instance of the accused persons an application was moved in writing to ACP, Tilak Nagar, Delhi, for waiving of post mortem of deceased. All the accused persons also moved a similar application to the police for

waiving of post mortem giving the same story in the application. S.I Dharmpal reached the spot when the accused persons were about to take the dead body of the deceased for cremation. S.I Dharmpal reached the spot on the basis of a DD No. 21A dated 3.10.2009 wherein somebody had informed the police that a lady has died on account of hanging. On the receipt of this DD, SI Dharmpal reached the spot but the S.I. refused to waive of the post mortem and thereafter post mortem was got conducted by Dr. L.C. Gupta on the following day at 4.10 p.m and Dr. L.C. Gupta has given his opinion regarding cause of death as under:-

“Death is asphyxia as a result of sustained and forceful pressure over the neck with help of ligature which is sufficient to cause death in ordinary course of nature, postmortem finding are consistent assault prior to death. All injuries are antemortem and possibility of homicide cannot be ruled out”

Dr. L.C. Gupta has given a clear finding in the post mortem report that all the injuries are ante mortem in nature and homicide cannot be ruled out. So from the findings of doctor in the post mortem report it is clear that this is a case of homicide and the injuries on the dead body are ante mortem in nature and possibility of homicide cannot be ruled out. The arguments of the learned counsel for the accused cannot be accepted that there are some allegations against doctor and some enquiry is pending. Post mortem report cannot be rejected merely on this ground. There is a prima facie case made out against the petitioners which is supported by medical evidence and also the statement of witnesses recorded by the police on 17.10.2007. The mother of the deceased gave statement to the police leveling serious allegations against all the accused persons. Similarly statements of other witnesses have also been recorded by the police in which they

have leveled serious allegations against the accused persons. Police also recorded statement of one Tara Chand Gupta, the Nana of the deceased under section 161 Cr.P.C. He told to the police in his statement that on 2.10.2007 he had received a telephone call from Sapna Goel at about 11 p.m. wherein she wanted to meet him on the following day. He further submitted that he wanted to know the reasons from Sapna Goel but she told him that her Nanand namely Lata and her husband Sanjeev were present in the house so she will told everything on the day when they will meet and the telephone was dis-connected. The police also recorded statement of Priyansi, minor daughter of the deceased under section 161 Cr.P.C. who told the police that on the date of incident her Bua Lata and Sajeew were present in the house and her Bua had made her ready to go to the school when she asked Bua about the well being of her mother she told that she was sleeping as she was not well. Presence of petitioners Lata and Sanjeev has been confirmed by this witness Priyanshi. The police also took 42 photographs of the deceased at the time of the post mortem and these photographs also show the presence of injuries on her neck etc.

6. After going through the statements of the witnesses and the post mortem report, I am satisfied that learned trial Court has rightly framed Charge against the petitioners under section 302/201/34 IPC.

7. There is no merit in the revision petition

8. Dismissed.

August 09, 2010
kb

S.L. BHAYANA. J