

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Judgment delivered on: March 04, 2011

+ **CRL.REV. P. No. 720/2010**

RAM BAHADUR YADAV & ORS. PETITIONERS

Through: Mr.K.N.Balgopal, Sr. Advocate with Mr.
Mohinder Saini, Mr. Ritu Raj Biswa & Mr.
Jitender Saini, Advocates.

Versus

THE STATE (NCT OF DELHI) RESPONDENT

Through: Ms. Fizani Husain, APP.

WITH

CRL.REV. P. No. 721/2010

UDAY NARAYAN YADAV PETITIONER

Through: Mr.K.N.Balgopal, Sr. Advocate with Mr.
Mohinder Saini, Mr. Ritu Raj Biswa & Mr.
Jitender Saini, Advocates.

Versus

THE STATE (NCT OF DELHI) RESPONDENT

Through: Ms. Fizani Husain, APP.

**CORAM:
HON'BLE MR. JUSTICE AJIT BHARIHOKE**

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

AJIT BHARIHOKE, J.(ORAL)

1. Ram Bahadur Yadav, Ram Sundri Devi, Suraj Narayan Yadav, Indu Bharti and Uday Narayan Yadav, the petitioners herein, vide instant Criminal Revision Petitions bearing No. 720/2010 & 721/2010

have prayed for setting aside of orders dated 16.01.2010 and consequent framing of charges under Section 498A/304B/34 IPC against the petitioners on 15.02.2010.

2. The allegations of the prosecution in brief are that on 09th February, 2007, the deceased Sudha Shri was married to Uday Narayan, son of the petitioners No. 1 & 2 and brother of the petitioners No. 3 & 4. Sudha Shri died due to asphyxia by hanging, an unnatural death in her matrimonial home at Delhi on 03rd June, 2008. Her death was reported to the SDM, who during inquest proceedings recorded the statements of Bihari Prasad and Urmila Prasad, father and mother of the deceased. On the basis of the statement of Bihari Prasad, FIR was registered qua the petitioners and Uday Narayan, husband of the deceased.

3. Learned Sh. K.N.Balgopal, Sr. Advocate appearing for the petitioners has contended that perusal of the statement of Bihari Prasad recorded by the SDM on 05th June, 2005 would show that in the said statement, there is not a whisper against the petitioners that they subjected the deceased to cruelty or harassment in relation to the dowry demand. Learned counsel has specifically referred to question Nos. 4, 5, 6 & 7 put by the SDM to Bihari Prasad and answers given by him and submitted that on reading of the answers given by Bihari Prasad to the SDM, it is apparent that the

alleged demand of ₹ 5 lakhs was only in relation to purchase of a house at Delhi, which cannot be termed as a demand for dowry.

Aforesaid questions and answers are reproduced thus:

“Question No. 4: Whether your daughter was beaten or harassed for bringing less dowry in her matrimonial home?

Ans.: Immediately after the marriage my daughter was residing in my house and she was doing B.Ed. On the festival of Deshear, my daughter came to her husband in Delhi and after residing in Delhi for 15 days she came back to Patna and started residing in her matrimonial house where her harassment started. The father-in-law of my daughter used to reside with her elder son Narain Yadav in Patna in his house. My daughter used to be taunted by her brother-in-law Suraj Narain, father-in-law Ram Bahadur Yadav, her mother-in-law and sister-in-law Indu Devi.

Question No. 5: Did you call a panchayat in this regard or give any complaint anywhere?

Ans.: No. I did not do this due to the fear of the society.

Question No. 6.: When did you meet last with your daughter?

Ans.: On 27-05-2008 in the night, my son-in-law made a telephone call to me that I was not helping them financially. Therefore, I should come to Delhi and daughter (sic) otherwise, the result will be bad. Here I want to mention (sic) that my daughter in December, 2007 had come from Patna to Delhi to her husband. On 28-05-2008, I took a train and reached Delhi on 29-05-2008 where I got compromised the matter between my daughter and son-in-law in front of his friends because the son-in-law wanted some financial help after which on 02.06.2008, I again set out for Patna.

Question No. 7: What do you know about this incident?

Ans.: I was in the train when on my mobile No. 93348444401, I received the telephone call of my son-in-law that I had left without giving something and that I should see the condition of my daughter. I persuaded him after which I reached Patna on 03-06-2008 in the evening at which at about 9-10 p.m. in the night, the SI Sh. Rawat of Delhi Police told me on phone that my daughter had hanged herself”. On 04-06-2008 in the morning I reached Delhi by a morning flight”.

Learned counsel has also referred to following portion of the statement of Uday Narayan, husband of the deceased recorded by the SDM on 03rd June, 2008 which is inter alia, reproduced thus:

“Since after marriage, there were quarrels between myself and my wife on petty issues. My wife had resided with me in Patna City and I was doing job in Delhi after which I brought my wife Delhi. We used to quarrel on the petty household issues. Previously also my wife had threatened me that she will leave me and regarding committing suicide. I also disclosed these facts to my parents-in-law but they kept on saying that it is just routine. Now some days ago Sudha Shri set on fire her marriage clothes and started saying that in the similar matter she will burn herself. I got frightened upon seeing this and I told my parents in law on phone that Sudha Shri had put the fire upon which my parents in law came to Delhi and they talked to her. Sudha Shri also quarrelled with them. I also got my parents in law to tour Delhi. After that my parents in law went to Patna by train in yesterday night. In today morning, I had left my wife in normal condition in the house and had gone to my office at 11:00 A.M. Today in the evening at 7:30 P.M., when I returned back home then it was dark inside the house and the door was closed from inside. I tried a lot but the door could not be open.”

Learned counsel submitted that from the aforesaid statement, it is obvious that the deceased was not of a stable mind and she committed suicide under depression. Learned counsel further contended that not only this, during the pendency of this petition, examination-in-chief of Bihari Prasad was recorded and in the said statement, he has not referred to the telephonic call dated 10th May, 2008 between him and his daughter, which basically is the foundation of allegation of dowry demand and harassment. He submitted that even PW2 Urmila Prasad, mother of the deceased did not mention about the said telephonic call in her examination-in-chief, and her only reply to the suggestion given to her in cross examination by learned A.P.P. that her husband received a telephonic call dated 10th May, 2008 from Uday Narayan, whereby he had threatened to kill their daughter is of no consequence. In view of the above-said circumstances, learned counsel submits that

no case under Section 498A/304B IPC is made out, as such, the petitioners are entitled to discharge.

4. Learned APP, on the other hand, has submitted that the petitioners have been rightly charged for the offences under Section 498A/304B/34 IPC. In support of her contention, she has drawn my attention to the copies of the statements of the witnesses recorded under Section 161 CrPC during investigation. Relevant portion of statement of Bihari Prasad, father of the deceased is reproduced thus:

“At the time of marriage, the sister-in-law Indu Bharti and mother in law Ram Sundri Devi taunted that the Jewellery was less and at 8:00 A.M. on 10.05.2008 my daughter told on phone that the parents in law and the brother and sister in law had come to Delhi also and have demanded ₹ 5 lacs and that she was being harassed. She told that she was in difficulty. I talk to Udai Narain Yadav who said that I should take back my daughter and threatened to take divorce and disconnected the phone”.

Sudha Shri started residing with her husband in Delhi where also Udai Narain, Ram Bahadur, Suraj Narain and Ram Sundri Devi and Indu Bharti who also came to Delhi and demanded ₹ 5 lacs. They all frequently visit Delhi and pressurized my daughter to bring ₹ 5 lacs and tortured her and in Delhi all these greedy persons beat my daughter black and blue by knocking her on the ground.

On 29-05-2008, I with my wife Urmila and relative Shambhu Prasad had come to Delhi after being called by Sudha Shri and we tried to persuade Udai Narain for 3 days but he remain adamant and said that we should purchase a house for him in Delhi otherwise, he will not keep Sudha Shri at which I told him that I was myself in a rented house and was not in a position to purchase a house or to give ₹ 5 lacs and we returned to Patna on 02-06-2008 after persuading Sudha Shri and Udai Narain.

Till Railway Station my daughter Sudha Shri had come to see us off and we had left and when we were in the train then on mobile phone my son in law Udai Narain called me and said that we had left without giving him any financial help and it will be bad and disconnected the phone after half an hour I called my daughter Sudha Shri who told on phone that Udai Narain was beating her and was saying that the coming of her parents was of no use”.

Learned APP also referred to the statement under Section 161 CrPC of the mother of the deceased.

5. Learned APP further referred to the statement of witness Shambhu Prasad, who has inter alia stated thus in his statement under Section 161 Cr.P.C.:

“After marriage I frequently visited the house of Bihari Prasad who himself and his wife Urmila told me that the in-laws of Sudha Shri were demanding ₹ 5 lacs and if the money will not be given then they are threatening to kill her. After this, on 29-05-2008 , Bihari Prasad took me alongwith his wife Urmila and came to Delhi and we all three went to the rented accommodation of Sudha Shri in Delhi where we persuaded a lot Udai Narain Yadav and Sudha Shri but Udai Narain remain adamant on his demand of ₹ 5 lacs and kept on saying that his parents, elder brother and his sister in law have directed him to purchase a house in Delhi for which ₹ 5 lacs are required which were refused by Bihari Prasad at which Udai Narain said in my presence that he will not keep Sudha Shri and for 3 days, we kept on persuading him but he remained adamant and we came back. From New Delhi Railway Station Sudha Shri came to see us off. At about 11:00 P.M., Bihari Prasad called from the moving train that if Sudha Shri had reached home at which Sudha Shri told that she was in the house and Udai Narain was still threatening her to kill her that the purpose for which we were called to Delhi was not fulfilled”.

Learned APP argued that aforesaid version of the witnesses, if found reliable during trial, would definitely provide foundation for conviction of the petitioners for the offences under Sections 498A/304B IPC read with Section 34 IPC.

6. As regards the statements made by PW1 Bihari Prasad and PW2 Urmila Prasad during trial, it is submitted by learned APP that those statements are incomplete, cross examination of witnesses has not yet started and it is possible that the learned APP may opt to further examine the witnesses, as such, at this juncture, it cannot be

said that Bihari Prasad and Urmila Prasad, parents of the deceased have not supported their version given in their statements under Section 161 CrPC.

7. I have considered the rival submissions and perused the material on record. It is well settled that at the time of framing of charge, the court is supposed to take a prima facie view of the matter and is not expected to indulge in an intricate exercise of analysing the evidence to come to the conclusion regarding falsity or correctness of the prosecution case.

8. The court at the stage of charge is prima facie expected to consider the material offered by the investigation to be adduced in evidence, to assess if aforesaid material, if provided, is sufficient to hold the accused guilty. If it is so, the charge has to be framed. In my aforesaid view, I find support from the judgments of Supreme Court in the matter of **Kanti Bhadra Shah Vs. State of Bengal** (2000) 1 SCC 722 and **State of Madhya Pradesh Vs. Dr. Krishna Chandra Saksena**, (1996) 11 SCC 439.

9. In the instant case, from the above statements of the witnesses, namely the parents of the deceased and Shambhu Prasad, a prima facie case of dowry demand and harassment soon before the death of the deceased against the petitioners is made out. Admittedly, the deceased has died an unnatural death within

seven years of her marriage by hanging, therefore, prima facie, a case under Section 498A/304B IPC is made out.

10. As regards the statements of the parents of the deceased recorded during trial, it is suffice to say that their examination is yet not complete and there is every possibility that the prosecutor may opt to further examine the witnesses. Further one cannot lose sight of the fact that even the Trial Court, under Section 311 of the Code of Criminal Procedure, has ample power to examine the witnesses namely Bihari Prasad and Urmila Prasad, parents of the deceased if the court deems it essential for just adjudication of the case. It is the object of Section 311 Cr.P.C. to ensure just decision of the case and to prevent miscarriage of justice. In the instant case, admittedly, as per the statements of the parents of the deceased recorded under Section 161 Cr.P.C., they received a telephone call from their daughter on 10th May, 2008, who told them about her harassment and cruel treatment at the hands of parents-in-law and the brother-in-law & sister-in-law, who had visited Delhi. If the Prosecutor wittingly or unwittingly has failed to ask any questions to the witnesses in this regard, the Trial Court under Section 311 Cr.P.C., can always use its discretion to examine the witnesses on this aspect of the matter for clarification of the facts with a view to arrive at a just decision of the case and such exercise of discretion on the part of the Trial Court, in my view, would be in the interest of

the just decision of the case. Since the investigating agency, along with the charge sheet has placed material on record to show that a telephonic conversation did take place on 10th May, 2008 between the deceased and her father, in my considered view, the Trial Court with a view to bring out substantial justice, is likely to feel obliged to exercise its discretion to examine the parents of the deceased on the aspect of the aforesaid call purportedly made by the deceased to her father to bring true facts on record and arrive at just decision in the case. Thus, in my considered view, aforesaid incomplete statements of parents of the deceased recorded during trial cannot be used at this stage for quashing of charge.

11. In view of the discussions above, I do not find any infirmity, impropriety or illegality in the order of learned Additional Sessions Judge directing the framing of charges, which may call for interference by this court in its revisional jurisdiction.

12. Petitions are accordingly dismissed.

13. Copy of the order be given dasti to the parties.

(AJIT BHARIHOKE)
JUDGE

MARCH 04, 2011

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