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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: 6th January, 2011

Date of Order: 1st February, 2011

+ CrI. Rev. P. No. 666/2010

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Durga Ram & Ors.

01.02.2011

...Petitioners

Versus

State & Anr.

...Respondents

Counsels:

Ms. Sima Gulati for petitioners.

Mr. Sunil Sharma, APP for State/respondent with SI Madhav Krishna PS Malviya Nagar.

JUSTICE SHIV NARAYAN DHINGRA

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

JUDGMENT

1. By present revision petition, the petitioners have assailed an order dated 8th September 2010 passed by learned District Judge-IV, New Delhi whereby the learned District Judge framed charge against the petitioners under Section 498A/304B/406 read with Section 34 IPC. Petitioner Durga Ram is the father in law of the deceased (husband's father) and petitioner no.2 Smt. Sunehra is the wife of elder brother of husband of the deceased. They were summoned on an application under Section 319 Cr.P.C during trial and charged with above offences.

2. The deceased Kamlesh was married to Rajesh son of Durga Ram on 21st January 2005. She died an unnatural death on 11th March, 2005 at her matrimonial home. She was taken to hospital where she was declared brought dead. The parents of

the deceased were informed that she had died of electrocution. However, since it was an unnatural death, postmortem was conducted and viscera was preserved which was sent for analysis. On 11th May, 2005 statement of Phool Chand (father of the deceased) was recorded by the concerned SDM. In this statement, he stated that his daughter had visited him twice between marriage and her death and she never made any complaint of any kind. On that day (11th March, 2005) at about 8 am he received phone call from her daughter's in-laws house that she had suffered electrocution and was taken to AIIMS Hospital and they reached there. This phone call was made by Hukam Chand elder brother of Durga Ram and he had no suspicion on Rajesh, father in law, mother in law and jeth in regard to the death of his daughter. No one was responsible for her death and he does not want any legal action. Similar statement was given by Ram Niwas uncle of deceased who stated that his niece had visited his house along with her husband on one occasion and they were happy and there was no problem and they did not want any police action. The viscera report of the deceased showed suspicion of poison being present in her body and after coming to know of this viscera report brother and father of the deceased made second statement to SDM and in the second statement brother of the deceased and father of the deceased leveled allegations that on 7th March, 2005 Kamlesh (deceased) made telephone call at home and wanted that she should be brought to her parental home and she would tell other things after coming home. It was alleged that Rajesh used to demand a car from them and he suspected that the entire family of her in laws have done his daughter to death. In laws named by the two were Hukam Chand (jeth), Rajesh (Husband) and other members of the family. About his earlier statement he explained that he was not in his senses and he had signed the earlier statement without giving a thought to it. Brother of the deceased also made a similar statement of her killing by in-laws. However, he in his statement also stated that he inquired from neighbourhood and he was told that Kamlesh had been murdered but those neighbourhood people did not want to come

forward. He also did not elaborate the names of in-laws. A subsequent statement was recorded by the police where the names of all possible family members of husband whether living there or not was taken by these persons. In the charge-sheet police placed petitioners in Column No.2 on the ground of there was no sufficient evidence qua them. The present petitioners were not summoned by the court when trial began despite an application made by the complainant for summoning them as accused. The trial court dismissed the application. Later on PW-1 Phool Chand and PW-3 Ram Niwas, PW-4 Raj Kumar made statements in the court accusing the present petitioners as well as other family members of in laws of the deceased. General and common allegations were made that they all had abused the deceased. This included Rajesh, Hukan Chand, Durga Ram, Ram Kali, Sunehra, Subhash and Pooja. Similarly Raj Kumar brother of deceased named Rajesh, Hukam Chand, Durga Ram, Ram Kali, Subhash, Mamta and Pooja. PW-5 Manish Garg, SDM who had recorded statements of father, uncle and brother of deceased deposed that he had correctly recorded the statements as SDM and the statements were read over and explained to the witnesses. Even otherwise, the statements recorded are in Hindi and the witnesses knew Hindi very well.

3. While disposing of application under Section 319 Cr.P.C made by the prosecution vide order dated 21st July, 2008, the learned ASJ summoned Subash, Mamta and Pooja also as accused persons though shown in column no.3 on the basis of statement of PW-1, PW-3 and PW-4, despite the fact they were children of sister of the husband living separate in Gurgaon. After these accused persons were summoned, they made an application for their discharge which was dismissed by learned ASJ holding that he had no power to discharge. Against this order, the accused persons approached this Court vide Crl. Revision No.541 of 2009 and this Court vide order dated 20th January 2010 directed the learned trial court to dispose of the application

made by the accused persons for discharge on merits instead of showing his inability to reconsider the previous order. It is under these circumstances that the impugned order was passed by learned ASJ. While passing the order, the learned ASJ observed that accused Subhash and Mamta were not the members of the family of in laws and there was nothing to show if these persons used to reside there. No charge was made out against them. Similarly in respect of accused Pooja it was observed that she has already been acquitted by juvenile court on same set of evidence. Regarding present petitioners, it was observed that since they used to reside in matrimonial home at the time of incident and father and brother of the deceased had leveled allegations against in laws of the deceased of harassing the deceased on account of demand of car, therefore, father and brother of the husband of the deceased were to be charged with offences under Section 498A/304B IPC.

4. The allegations made by the witnesses in their statements in the court in respect of present petitioners and in respect of other accused persons who were discharged by the learned ASJ are same. The demand of car was allegedly made by the husband alone. The allegations against brother Hukam Chand were that he wrongly informed that the girl had died on account of electrocution. There are no allegations of demand of car having been made by any other member of the family. There was no allegations made in the initial statement about harassment of the deceased. Making of initial statement is not denied rather PW-5 has stated that the initial statement made before him was read over to the witnesses and signed by them only after understanding the same. While passing an order under Section 319 Cr.P.C for summoning additional accused, the court has not to consider the examination in chief alone of the witnesses but has to consider the entire testimony of the witnesses in light of the cross examination and has to see whether the witnesses was a reliable witness or not. Since the witness has deposed in the court and undergone test of cross examination, the

court cannot brush aside the cross examination or the changing stand of the witness at different stages. What the court has to see is if on the basis of evidence on record including the cross examination an accused can be convicted if there is no further evidence. If this test is applied, no offence under Section 406/304B or 498A IPC is made out against the present petitioners. There are no allegation that the petitioners made any dowry demand and the allegations regarding harassment for dowry are unbelievable because the same witnesses on 11th March, 2005 made statements that deceased had visited them and made no complaint about dowry demand. The allegations regarding killing of deceased are based on hearsay. There is no evidence whatsoever collected by the prosecution to show if there was any poisonous substance administered by these two petitioners to the deceased so as to charge them for murder. The only ground on which the charge has been framed against the petitioners is that they are father in law and sister in law of deceased and were living in the same house. Apart from that, the allegations against the petitioners are the same as against discharged accused persons. I consider being father in law and sister in law is no crime, neither living under the same roof is a crime nor it forms ingredients of any offence. While framing charge, the court has to see as to whether the required ingredients of offences under sections 406/498A and 304B IPC were made out or not. The evidence of witnesses recorded does not show if any dowry was entrusted to the present petitioners which was refused to be returned on demand. The evidence does not show a dowry demand by petitioners or perpetuating of cruelty for dowry demand. The evidence also does not show if any act was done by petitioners in furtherance of extracting dowry.

5. In view of my foregoing discussion, I find that the charge framed against the present petitioners was not supported by any evidence and the testimony of father, brother and uncle of the deceased does not prima facie show commission of offences

by the present petitioners. The revision in the result is allowed and order dated 8th September 2010 passed by learned District Judge-IV, New Delhi framing charge against the petitioners under Section 498A/304B/406 read with Section 34 IPC is hereby set aside

February 01, 2011
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SHIV NARAYAN DHINGRA, J