

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

+ Crl. Rev. P. 141/2011 and Crl. M.A. No. 3671/2011 (Stay)

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Reserved on: 14th February, 2012

Decided on: 09th May, 2012

SANDHYA TRIPATHI AND OTHERS

..... Petitioners

Through: Mr. Sheikh Issar Ahmed, Advocate.

versus

STATE NCT OF DELHI

..... Respondents

**Through: Mr. Mukesh Gupta, APP for the State
with ACP M.S. Dabas, SHO Ram
Kishan Yadav, SI Satya Dev, PS
Dabri.**

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By this petition, the Petitioners challenge the order dated 23rd February, 2011 passed by the learned Trial Court directing and framing of charges under Sections 498A/304B/34 IPC and the alternative charge under Section 302 read with Section 34 IPC.

2. Learned counsel for the Petitioners contends that the Petitioner Nos. 1 and 3 are the sisters-in-law of the deceased Vinita @ Bubbly and Petitioner No. 2 is the husband of Petitioner No. 1. Petitioner Nos. 1 and 2 are residing at Lucknow and had no concern with the matrimonial home of the deceased. Petitioner No. 3 is the unmarried sister-in-law of the deceased, who was employed and had left for the work in the garments factory when the alleged incident took place. In view of the absence of the Petitioners at the time of alleged incident, no charge sheet was filed against them however, the learned Metropolitan Magistrate summoned them for offences punishable under

Sections 304B/498A/34 IPC and the learned Additional Sessions Judge directed and framed the charge by the impugned order. There is no material on the basis of which the charge could be framed against the Petitioners. On 31st July, 2009, the grandfather of Petitioner Nos. 1 and 3 suffered a heart attack due to which the entire family was at the hospital and on 1st August, 2009 the deceased committed suicide when Petitioner No. 3 had gone to her work place. Petitioner Nos. 1 and 2 were not in Delhi and all other members of the family were at the hospital. The FIR was registered belatedly on the statement of the father of deceased made on 3rd August, 2009, which does not disclose any offence against them. Even taking the facts on their face value, no case for attracting criminal liability in terms of Section 34 IPC is made out. There is no evidence that the Petitioners acted in furtherance of their common intention with the other co-accused. Though the parties were married on 12th May, 2007 however, the Gauna was performed on 28th April, 2008. Thereafter, again the deceased went to her parental home and returned only in June 2009. Thus the deceased hardly lived in her matrimonial home. It is prayed that the impugned order be set aside.

3. Learned APP for the State on the other hand contends that the alleged incident took place on 1st August, 2009, that is, within seven years from the date of marriage. The statements of the father and the uncles of the deceased were recorded, who stated that there was a continuous demand of a car. It is further stated that the factum of Petitioner Nos. 1 and 2 living in Lucknow and Petitioner No.3, the unmarried sister-in-law, having gone for work had been verified and that is why no charge sheet was filed against them. However, from the statements of the family members of the deceased,

allegations of the offences for which charges have been framed are substantiated.

4. I have heard learned counsel for the parties.

5. The abovementioned FIR was registered on the complaint of Rajender Prasad Mishra, father of the deceased, who alleged that he had solemnized the marriage of his daughter on 12th March, 2007 with Ajay Pathak, as per Hindu rites. After the marriage, Maya Pathak, mother-in-law, Mata Badal, father-in-law, Ajay Pathak, husband, Sandhya Tiwari and Lovely, sisters-in-law and Prem Tiwari, the husband of Sandhya Tiwari used to harass his daughter for dowry. These persons used to harass his daughter to bring a vehicle in dowry. On 31st July, 2009 the Complainant was to come to Delhi to take his daughter, as her in laws were harassing her. However, when the complainant informed on phone that he would be coming to take his daughter, Ajay Pathak, the husband of the deceased extended threat on the phone stating that in case he comes, he would see his daughter dead. On 1st August, 2009 at about 3.00 P.M. he received a phone call from Ajay Pathak that the condition of Vinita @ Bubbly was serious.

6. Further Durga Prasad and Badri Nath Mishra, uncles of the deceased stated that when their niece had come to their house in April, 2009 she stated that she was very upset because of the ill treatment meted out to her by her husband, mother-in-law, father-in-law, sisters-in-law and the husband of the sister-in-law. According to them, she stated that the in-laws were troubling her on one pretext or the other and demanding four wheeler vehicle. Vinita went to her matrimonial home on 16th June, 2009 after completing her exams and on 1st August, 2009 they received a call that she had died.

7. A perusal of the statement of Badri Nath Mishra also shows that the deceased had come to her parental house in January, 2009 to prepare for her examination. Thus, it is apparent that the deceased had lived in the matrimonial home after the gauna from 20th April, 2008 to January, 2009 and thereafter had gone in June, 2009 only. The statement of Durga Prasad and Badri Nath Mishra relate to the period prior to January, 2009. However, as per the statement of the father of the deceased it is not stated specifically as to when the demand of car was made. Further there is no evidence to suggest that petitioner Nos. 1 and 2 were available in Delhi and thus could harass the deceased in furtherance of the common intention soon before the death. In view of the evidence on record, there is no grave suspicion that Petitioner Nos. 1 and 2 harassed the deceased for demand of dowry soon before death. Thus, no charge for offence under Sections 304B IPC is made out against the Petitioners No. 1 and 2. However, since the Petitioners along with the accused harassed her for demand of a four wheeler vehicle, charge for offence under Section 498A IPC is made out.

8. In *Harinder Singh and others vs. State, 2007 (97) DRJ 370* this Court observed:

“12. Petitioner No. 3 and 4 are the brother and unmarried sister of the husband; petitioners 5 and 6 are the married sister and brother-in-law of the husband. As far as these accused are concerned, at the highest, the allegations are general and vague. In fact, the fifth and sixth respondent lived in a different place. On circumstances, there does not appear to be anything material to hold that there is a “grave suspicion” about their involvement in the alleged crime.”

9. Petitioner No. 3 is the unmarried sister-in-law, staying in the matrimonial home. Though she was not present at the time the deceased committed suicide as she had gone to her work place, however, it cannot be said that Petitioner No. 3 had no occasion to cause harassment in relation to dowry soon before death. The complainant has alleged that Petitioner No. 3 along with the other accused harassed the deceased in relation to demand of dowry. Thus Petitioner No. 3 is liable to be tried for offences punishable under Sections 304B/498A/34 IPC.

10. In the present case the death was caused due to hanging and thus no alternative charge for offence under Section 302 IPC read with 34 IPC could be framed against the Petitioners. Undoubtedly the Hon'ble Supreme Court in *Rajbir @ Raju and another vs. State of Haryana in SLP (Crl.) No. 9507 of 2010* directed that all trial courts in India should ordinarily add Section 302 IPC to the charge of Section 304B IPC, so that death sentences can be imposed in such heinous and barbaric crimes against women, however, the said charge cannot be framed in a case of suicide.

11. The petition and the applications are disposed of with the direction that the charge under Section 304B IPC framed against Petitioners Nos. 1 and 2 is quashed.

12. Petition and application are disposed of accordingly.

(MUKTA GUPTA)
JUDGE

MAY 09, 2012
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