

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

+ **CRL.REV.P.389/2013**

Reserved on: 09.07.2015

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Date of Decision: 15.07.2015

BALWAN SINGH & ORS. Petitioners

Through: Mr. K.K. Manan, Sr. Adv. with
Mr. Ankush Narang and Mr. Kartik
Gandotra, Advs.

versus

STATE NCT OF DELHI Respondent

Through: Mr. Lovkesh Sawhney, APP for the State
with ASI Tej Ram, PS Najafgarh.
Mr. Y.P. Sirohi, Adv. for R-2

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J:

1. The petitioners who are the father-in-law, mother-in-law, brother-in-law (devar) and maternal uncle of the husband of the deceased have put up a challenge to the order dated 29.5.2013 whereby their prayer for discharge under Section 227 of the Code of Criminal Procedure has been rejected in connection with Sessions Case No.14/2013 arising out of FIR No.254/2012 (P.S.Najafgarh) instituted for the offences under Sections 498A/304B and 34 of the Indian Penal Code.

2. One Naresh Kumar lodged an FIR alleging that he had married his daughter Neeraj Rani to one Ashok Kumar son of petitioners Nos.1 and 2

in the year 2009. After six months of the marriage the daughter of the informant was subjected to physical and mental torture for not bringing desired dowry. However, the daughter of the informant became pregnant and gave birth to a son in the year 2010. On the occasion of the ceremony to celebrate the birth, the informant gave gifts worth Rs.2 lakhs. Thereafter, for about three months the daughter of the informant (hereinafter referred to as the deceased) stayed in her parental home for about three months. During that period no effort was made by the accused persons to communicate with her or to look after her. Again gifts were given by the informant in the hope that the relationship of the deceased in her matrimonial home would normalize. The harassment and the torture continued unabated. The informant claims to have talked to the deceased on 27.1.2012 on telephone. On 29.7.2012 Ashok Kumar, son in law of the informant, was requested to send the deceased to her parental home on the eve of Raksha Bandhan. However, on the same day at about 10.30 in the night the son-in-law of the informant informed the brother of the deceased that she has died.

3. On such information the informant along with his associates and family members went to Ayushman Hospital. It has been alleged in the first information report that the Principal of the school in which the deceased was teaching told the informant that she was regularly attending school. It was, therefore, suspected by the informant that the death was not natural. It was alleged that despite all efforts by the informant, the deceased was not properly treated in her matrimonial home.

4. On the basis of the aforesaid statement of the informant, a case was registered. During investigation it was found that the deceased was very unhappy because of the treatment meted out to her in her matrimonial home. The investigation further revealed that the deceased was pregnant and had visited Malik Maternity Home and Surgical Centre, Najafgarh on 16.7.2012 along with her husband. Medicines were prescribed to her for undertaking surgical abortion, for which the deceased and her husband had consented.
5. The investigations further revealed that because of the medicines administered to the deceased, she had aborted and thereafter had become normal.
6. The post-mortem report, discloses the cause of death as uterus burst. In the opinion of the autopsy surgeon, the death was due to shock and hemorrhage (internal hemorrhage) following rupture of uterine appendages. Injury No.1 namely bruises was present on the right side of forehead. Such injury was opined to be of recent origin and caused by hard and blunt trauma.
7. Since the needle of suspicion veered around the husband of the deceased namely Ashok Kumar, he was arrested. During interrogation, aforesaid Ashok Kumar is said to have stated that because the deceased was insisting for going to her matrimonial home she was assaulted by slaps. When the insistence of the deceased continued, she was given a kick in her stomach and as a result of such assault, the deceased became

unconscious. Thereafter she was brought to Ayushman Hospital where she was declared brought dead.

8. After investigation chargesheet was submitted whereupon cognizance was taken and the case was committed to the Court of Session for trial.

9. The petitioners, on point of charge submitted that there was no specific allegation of dowry demand or cruelty against them soon before the death of the deceased; as a result, the essential ingredient for making out a case under Section 304B of the IPC was missing. It was further submitted that in a most malafide manner, a supplementary statement dated 25.10.2012 of the informant was recorded which stated that Rs.50,000/- was demanded on 29.7.2012 i.e. two days before the death of the daughter of the informant. It was submitted that the second statement was of no consequence and could not have been relied upon for framing charges under Section 304B against the petitioners.

10. A reference also was made to the post mortem report, which, according to the petitioners revealed the cause of death as internal hemorrhage because of uterus burst.

11. The learned Trial Court vide order dated 29.5.2013 rejected the prayer of the petitioners for their discharge and framed charges against them under Section 498/34; 304B/34 and in the alternative 302/34 of the IPC.

12. The major ground of challenge to the order impugned is that for framing charges under Section 304B, what is of utmost importance is that

the deceased must have been subjected to cruelty or harassment by her husband or any relative of her husband soon before her death.

13. Mr.K.K.Manan, learned senior advocate has laid specific stress on the fact that initially no statement was made by the informant with respect to any demand of money soon before her death. However, only later on, a supplementary statement of the informant was brought on record alleging that two days prior to the death, the husband of the deceased had asked for Rs.50,000/-.

14. In Satvir Singh vs. State of Punjab, (2001) 8 SCC 633, it was held by the Supreme Court that the legislative object in providing a radius of time by employing the words ‘soon before her death’ is to emphasize the idea that the death, in all probabilities was the cause of such cruelty or harassment. There is a requirement of a perceptible nexus between the death and torture related harassment or cruelty to make out a case under Section 304B. If the interval between the infliction of such cruelty or harassment and the death is too wide then perhaps the probabilities of death not being on that account would be higher. However, what interval of time is sufficient is dependent on the facts and circumstances of each case and no fixed formulae could be made for all cases.

15. The “proximity test” as it is popularly known requires the prosecution to bring on record materials to show that dowry demand was not stale so as to be the cause of death of the victim.

16. The facts of the present case present a different tell tale account of the harassment of the deceased because of dowry.

17. The demand and harassment continued and remained unabated till her death.

18. It would not make any difference if a supplementary statement with regard to demand of dowry having been made by the husband two days prior to the death is brought on record by the investigating agency.

19. For the present, this Court refrains itself from expatiating any further with respect to the merits of the case and the analysis of the materials which have been brought on record, for the trial of the offences charged are underway and it might prejudice the case of the petitioners.

20. Whether the harassment and cruelty in connection with demand of dowry was perpetrated soon before the death of the deceased is the subject matter of trial.

21. For the present, this Court is only beset with the task of seeing whether charges have been framed (prayer for discharge has been refused) in accordance with law.

22. There is no ambiguity in the position of law regarding framing of charges in a sessions triable case. While framing charges, the Court is required to evaluate materials and documents on record to decide whether facts emerging therefrom, taken on their face value would disclose existence of ingredients constituting the alleged offence. At that stage it is not required for the Court to delve deep into the probative value/intrinsic worth of the materials on record. What is to be seen by the Court is whether there is a ground for presuming that the accused has

committed the offence. If there is a grave suspicion against the accused persons, the Court must frame charges against them.

23. In *Union of India vs. Prafulla Kumar Samal*, 1979 (3) SCC 4, the Supreme Court while examining this question summed up the legal position as under:-

“10. Thus, on a consideration of the authorities mentioned above, the following principles emerge :

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out:

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post Office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the

documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

24. The Trial Court, on an appreciation of facts was not satisfied that a case of discharge was made out by the petitioners.

25. Perused the status report.

26. Till the date of the filing of the status report 21 prosecution witnesses had been examined.

27. On the aforesaid premised reasons, this petition fails and is dismissed. The learned Trial Court is, however, directed to conclude the trial as expeditiously as possible.

Crl. M.A. No.10533/2013

1. In view of the main petition having been dismissed, this application becomes infructuous.

2. This application is disposed of accordingly.

ASHUTOSH KUMAR, J

July 15, 2015

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