

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

Crl. Misc. No.M-12490 of 2014

Date of Decision: 15.02.2016

Sunder Lal

....Petitioner

Versus

Veer Kumar and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see the judgment ? (Yes/No)**
- 2. To be referred to reporters or not ? (Yes/No)**
- 3. Whether the judgment should be reported in the Digest ? (Yes/No)**

Present:- Mr. N.K. Malhotra, Advocate
for the petitioner.

Mr. Keshav Partap Singh and
Mr. Vishavjit Singh, Advocate
for the respondents.

Mr. Neelam Kashyap, D.A.G., Haryana
for the respondent-State.

DAYA CHAUDHARY, J.

This petition has been filed under Section 482 of the Cr.P.C for quashing of order dated 19.03.2014 passed by the Sessions Judge, Rohtak, whereby, the respondents have been discharged for the offence punishable under Sections 306 and 302 IPC.

FIR No.674 dated 13.11.2013 was registered on the basis of complaint made by the petitioner against the respondents under Sections 498-A/306/302/34 IPC at Police Station Civil Lines, Rohtak but during investigation, the offence under Section 304-B IPC was deleted and offence under Section 306 IPC was added. Accused persons were arrested but sisters-in-law of the deceased, namely, Promila, Meena, Rekha and

Sarla were kept in column No.2. On completion of investigation, challan was presented and offence under Section 302 IPC was also added.

Learned counsel for the petitioner submits that in the FIR as well as in the challan, it was specifically mentioned that the daughter of the petitioner had expired due to starvation as she was confined in the house and was also maltreated. Even the anticipatory bail application of the respondents was also dismissed by considering the seriousness of allegations levelled in the FIR as it was found to be a case of death. Thereafter, Sessions Judge, Rohtak, at the time of framing of charge, discharged the respondents under Sections 306 and 302 IPC without taking into consideration the evidence and other documents available on the file.

As per opinion of the doctor, the cause of death of daughter of the petitioner was starvation. Learned counsel also submits that even in the FIR, it was alleged that food was not provided to her by in-laws of the deceased and she was confined in a room. She was also subjected to maltreatment. All these allegations were not taken into consideration by the Court below and the respondents have been discharged under Sections 306 and 302 IPC.

Learned counsel for the petitioner has relied upon the judgments of Hon'ble the Apex Court in cases ***P. Vijayan vs State of Kerala and another 2010(2) SCC 398, Onkar Nath Mishra and others vs State (NCT of Delhi) and another 2008(1) RCR (Criminal) 336*** as well as judgment of this Court in case ***Rajinder Partap Garg vs H.S. Randhawa 2007(1) RCR (Criminal) 794.***

Learned counsel for the respondents submits that as per opinion of the doctor, the cause of death was *tuberculosis*. He further submits that the complainant was not present in the case on earlier dates.

Even at the time of arguments of framing of charge, a detailed finding has been given that as per medical opinion, the death occurred due to *tuberculosis*.

Heard the arguments advanced by learned counsel for the parties and have also perused the allegations levelled in the FIR, charge sheet and other documents available on the file.

Admittedly, deceased-Indu was got married to accused Veer Kumar on 02.07.2002 and a son and daughter were born out of the said wedlock. As per case of the prosecution, the deceased was harassed by her husband-Veer Kumar, father-in-law Mukand Lal, mother-in-law Darshana, sisters-in-law Promila, Meena, Rekha and Sarla for demand of dowry and was not provided proper food. She remained admitted in the hospital i.e Post Graduate Institute of Medical Sciences, Rohtak and ultimately died on 12.11.2013. The complaint was made by father of the deceased against her husband and other family members. On the basis of complaint, the FIR, in question, was registered. Later on, because of the fact that the death occurred after seven years of marriage, the offence under Section 304-B IPC was converted into Section 306 IPC. Ultimately, the charge-sheet was filed for offence punishable under Sections 498-A/306/302/34 IPC against the husband and parents-in-law of the deceased. However, sisters-in-law of the deceased, namely, Promila, Meena, Rekha and Sarla were found innocent and were kept in column No.2.

On post-mortem examination of the dead body of the deceased, no injury was found on her person. No cause of death was ascertained and the case was kept pending till the receipt of the Chemical and Histo-pathological reports. As per Histo-pathological report, features of tuberculosis were found in various organs of the body of the deceased but

no poison was detected in the viscera. On receipt of the said reports, an application was moved by the Investigating Agency before the doctor concerned to seek her opinion regarding cause of death. The doctor opined that the cause of death was *tuberculosis*, after which on 09.01.2014, charge sheet was filed against the accused persons for the offence punishable under Sections 498-A/306/302/34 IPC on the next day i.e 10.01.2014.

A perusal of opinion of the doctor shows that it was neither a case of homicidal death nor of suicide rather it was a case of natural death on account of tuberculosis. The application moved by the applicants for discharging the accused was allowed and they were discharged for offence punishable under Sections 306 and 302 IPC. However, the Sessions Judge, Rohtak found that *prima facie*, an offence punishable under Sections 498-A/406/34 IPC was made out against the accused, which was triable by Magistrate. Thereafter, the case was sent to Chief Judicial Magistrate, Rohtak as per provisions of Section 228 of the Code of Criminal Procedure to proceed against the accused for the commission of said offence in accordance with law.

The said impugned order dated 19.03.2014 passed by the Sessions Judge, Rohtak was challenged by contending that in the allegations levelled in the FIR and challan, it was specifically mentioned that the daughter of the petitioner had expired due to starvation, which occurred in the matrimonial house of the deceased and *tuberculosis* was a result of starvation. Even the anticipatory as well as regular bail petition of the respondents was also dismissed by the trial Court by making certain observations. It is also the argument of learned counsel for the petitioner that the respondents have been discharged without considering the allegations levelled in the FIR and the final report and as such, the

impugned order of discharge is liable to be set aside. A specific finding has been recorded by Sessions Judge, Rohtak that no injury was found on the person of deceased and even as per Histo-pathological report, features of tuberculosis were found in various organs of the body of the deceased. When after getting Chemical Examiner's Report, no poison could be detected in the viscera of the deceased then opinion of the doctor was sought. As per opinion of the doctor, the cause of death was *tuberculosis* as it was widely disseminated. Neither it was a case of homicidal death nor of suicide but it was a case of natural death on account of disease. It cannot be a case of offence under Sections 306 IPC or 302 IPC.

On the basis of documents available on record and by considering the concerned reports as well as opinion of the doctor, the accused were acquitted of the charge for offence punishable under Sections 306 and 302 of the Indian Penal Code. On the basis of allegations, an offence punishable under Sections 498-A/406/34 IPC was made out against accused persons, which was triable by the Magistrate. The case was sent to the Court of Chief Judicial Magistrate, Rohtak for the said offence as per provisions of Section 228 of the Code of Criminal Procedure, which is still pending. Moreover, the death occurred while the deceased was in her parental house and she was given treatment by her parents as she has herself left the matrimonial house.

In view of the facts as mentioned above, there is no merit in the contentions raised by learned counsel for the petitioner and the petition, being devoid of any merit, is hereby dismissed.

15.02.2016
gurpreet

(DAYA CHAUDHARY)
JUDGE