

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

CRR-407-2016

Date of decision: 20.10.2016

Rama Devi and another

.....Petitioners

Versus

State of Haryana

.....Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Kartar Singh, Advocate,
for the petitioners.

Mr. D.R. Singla, DAG, Haryana.

Ritu Bahri, J.

Challenge in this petition is to the order dated 05.01.2016 passed by the Additional Sessions Judge, Faridabad, whereby charges under Sections 302, 498-A, 304-B read with Section 34 IPC have been framed against the accused-petitioners.

The FIR (Annexure P-1) has been registered on the statement made by Shiv Kumar-complainant to the effect that marriage of his daughter-Poonam was solemnized with Kameshwar Yadav-petitioner No.2 on 19.05.2014 according to Hindu rites and rituals. According to him, he had given Rs.15.00 lacs in cash and other domestic articles worth Rs.5.00 lacs in the marriage to the in-laws of his daughter. After marriage, in-laws of Poonam i.e. Rama Devi-petitioner No.1 (mother-in-law), Kameshwar Yadav-petitioner No.2 (husband), Ajit Singh, his wife Sunita, Brijesh Yadav

and Neelam started demanding Scorpio car from her. Thereafter, they started harassing and humiliating her. It has been further alleged that on 15.04.2015, at about 3/4 P.M., the aforesaid persons-accused had killed Poonam, daughter of the complainant, by tying rope around her neck and thereafter, her dead body was hanged on the ceiling fan. Thereafter, her sister-in-law informed the complainant and his family through telephone that Poonam had died. Prior to this, Poonam-deceased had telephoned the complainant through her mobile phone that they should come and take her, otherwise they would kill her. In this background, the FIR was registered against Rama Devi-petitioner No.1, Kameshwar-petitioner No.2, Ajit Singh, Sunita, Brijesh Yadav and Neelam.

On completion of investigation, challan was presented only against Rama Devi-petitioner No.1 and Kameshwar-petitioner No.2 for commission of offence under Section 304-B read with Section 34 IPC and the remaining accused namely Ajit Singh, Sunita, Brijesh Yadav and Neelam were found to be innocent. After presentation of challan, charges under Sections 498-A, 302, 304-B read with Section 34 IPC were framed by the trial Court against the accused-petitioners vide impugned order dated 05.01.2016 (Annexure P-2).

Learned counsel for the petitioners is seeking quashing of the charge-sheet on the ground that no charge under Section 302 read with Section 34 IPC could be framed keeping in view the postmortem report (Annexure P-3). In this report, apart from ligature mark on the neck, there is no mark of fresh injury on all over the body of deceased. As per opinion of the Board of Doctors, cause of death in this case was **asphyxia due to hanging** which is antemortem in nature and sufficient to cause death in

ordinary course of nature. Learned counsel has further referred to the Civil Court decree dated 30.09.2014 (Annexure P-4) to contend that late Sh. Ram Shanker had partitioned his property between his three sons namely, Brij Bhushan Yadav, Ajit Yadav and Kameshwar Yadav. After partition, petitioner No.1-Rama Devi was staying separately from his sons.

Heard, counsel for the parties.

Death of Poonam, daughter of complainant, had taken place within seven years of the marriage and the allegations of harassment would finally be decided by the trial Court after going through the evidence led by the parties.

The question for consideration in this case is, 'whether charge under Section 302 read with Section 34 IPC could have been framed when as per medical report (Annexure P-3), there was no external mark of fresh injury on all over the body of deceased.'

After framing of charges, during trial, the prosecution has examined Dr. Smriti Dhami, Medical Officer, Civil Hospital, Faridabad as PW-2. In her cross-examination, she has deposed that there was no external marks of fresh injury seen all over the body of Poonam Devi (since deceased) at the time of examination. She further deposed that no force was used by any other person upon the deceased. This statement was recorded on 16.08.2016. In her deposition, Dr. Smriti Dhami has proved the postmortem report as Ex.PB. The said report has been placed on record by the petitioners as Annexure P-3.

At this stage, reference can be made to decision given by the Hon'ble Supreme Court in **Pal Singh Vs. State of Punjab**, 2014 (3) RCR (Criminal) 328, wherein it has been held that the accused has to satisfy the

Court that there was a defect in the charge sheet, which eventually will prejudice the accused resulting in failure of justice. Only in this eventuality, the Court can interfere in the order framing of charge. The plea of prejudice has to be in relation to the investigation or trial.

In **Darbara Singh Vs. State of Punjab**, 2012 (8) RCR (Criminal) 1775, Hon'ble the Supreme Court was examining a case, where the conviction of an accused was being examined in the backdrop of the deposition given by Dr. Charanjit Singh (PW-11), who had conducted the postmortem on the dead body of the deceased and given a report that the death had occurred on account of haemorrhage and shock. He further opined that injury No.1 would have been impossible to inflict, if the deceased was running and the assailant was chasing him. It was not possible to inflict injury on the deceased while he was running and the assailant was chasing him. The ocular version of Amrik Singh (PW-1) was in conformity and consonance with the available medical evidence. Ultimately, the conviction was upheld. In para No.5 of the judgment, Hon'ble the Supreme Court has observed as under:-

“5. We have considered the rival submissions made by the learned counsel for the parties and perused the record. So far as the question of inconsistency between medical evidence and ocular evidence is concerned, the law is well settled that, unless the oral evidence available is totally irreconcilable with the medical evidence, the oral evidence would have primacy. In the event of contradictions between medical and ocular evidence, the ocular testimony of a witness will have greater evidentiary value vis-a-vis medical evidence and when medical evidence makes the oral testimony improbable, the same becomes a relevant factor in the process of evaluation of such evidence. It is only when the contradiction between the two is so extreme that the medical evidence completely rules out all possibilities of the ocular evidence being true at all, that the ocular evidence is liable to be disbelieved.....”

Ratio of the aforesaid judgment is that if, the medical evidence

completely rules out the possibility of ocular evidence, the ocular evidence, in that situation, is liable to be disbelieved.

In the present case, as per postmortem report (Annexure P-3), which has been proved on record by Dr. Smriti Dhami (PW-2) as Ex.PB, there was no external mark of fresh injury all over the body of deceased. Therefore, charge under Section 302 read with Section 34 IPC could not have been framed against the accused-petitioners. Thus, the impugned order dated 05.01.2016 framing charge under Section 302 read with Section 34 IPC is liable to be set aside.

Resultantly, the present petition is partly allowed and the impugned order dated 05.01.2016 (Annexure P-2) is quashed to the extent of framing of charge under Section 302 read with Section 34 IPC.

20.10.2016
ajp

(RITU BAHRI)
JUDGE

speaking/non-speaking : Yes/No
Reportable : Yes/No