

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

**Crl. Rev. No.815 of 2016 (O&M)
Date of decision : 05.09.2016**

Rakesh Kumar

.....Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. S.S. Khurana, Advocate
for the petitioner.

Mr. Dimple Jain, AAG, Haryana.

Mr. Gulshan Nandwani, Advocate
for respondents no.2 & 3.

ANITA CHAUDHRY, J.

This revision is directed against the order dated 05.02.2016, passed by the Sessions Judge, Rewari where the oral prayer for addition of charge under Section 304-B IPC had been refused by the trial Court.

It is necessary to advert to the relevant facts. A telephone call was received by the police that a burnt body of woman was lying near the Bandh (dam). Tula Ram in a statement stated that he was the son of the Sarpanch and had found the dead body of a woman in the age group of 22-23 years in a burnt condition and there were injury marks on the right side of the neck and it appeared that she had been given knife injuries and some unknown person had murdered that woman.

The family came forward and Anar Devi, mother of the deceased made a statement that she had been murdered by the husband and by the in-laws family. Similar statement was made by Rakesh, brother of the deceased. A case was registered against the husband, the father in law and mother in law under Section 302/201 IPC. It had also appeared during investigation that Sandeep and Rekha had left home together that day and Rekha did not return. The husband could not be arrested and he is a proclaimed offender. The in-laws are facing trial.

At the trial the private prosecution witness namely Anar Devi for the first time alleged that their daughter had been killed on account of dowry and their daughter had been telling her about the demand of dowry and oral prayer was made by the Public Prosecutor after the witnesses had been examined that since allegations of cruelty on account of dowry had been levelled, therefore, charge under Section 304-B IPC should be added. The trial Court rejected the plea and observed as under:-

“Six PWs Dr. Luv Sharma, Smt. Anar Devi, Rakesh Kumar, Inspector, Narender Singh, HC Anil Kumar and Inspector Gaurav are present and examined.

After tendering report of FSL Ex.PM in terms of his separate statement learned Public Prosecutor has given up PWs Dr. Kunal Khanna, Kirori Mal, lady SI Maya Rani and constable Harpal as unnecessary. Their names be deleted from the array of the witnesses.

Learned Public Prosecutor submits that since allegations of cruelty on account of dowry have come on record and Rekha died within 7 years of her marriage, it is a case of dowry death, therefore, charge under section 304B IPC be also added.

Heard. To my mind, there is no justification for addition of charge in as much as it was never the case of the

prosecution that there was cruelty on account of dowry demand. The fact remains that the complainant party is being represented by counsel. The possibility that under professional advice they have made improvement just to attract the provisions of Section 304-B IPC so as to shift the burden on the accused cannot be ruled out. The addition of charge under Section 304-B IPC in these circumstances is fraught with serious consequences. It is not a simple case where commission of some other offence from the allegations set forth in the FIR is also made out. Had that been the case there would have been justification for addition of charge but not in the present case. Therefore, the prayer is declined. To come up on 26.2.2016 for remaining evidence of the prosecution.”

I have heard the submission of both the sides. The submission on behalf of the petitioner was that the girl had been married only on 04.05.2015 and the occurrence took place two months later and the police did not record the statement correctly and it was a case of dowry death and the challan should have been presented under Section 304-B IPC.

The submission on the other hand was that the incident is of May, 2015 and after seven months of the registration of the FIR for the first time the family had stated that their daughter was being harassed for demand of dowry and a new story was introduced. It was urged that even in that statement it was not stated as to what was demanded and how it was communicated and it was only an improvement on the advise of a lawyer. It was urged that the prosecution did not even move an application for addition of the charges and an oral request was made after the list of prosecution witnesses had been exhausted. It was urged that the trial is complete and the case is at the final stages.

I have gone through the statement made by Anar Devi and Rakesh and I find that there are no allegations that the police did not record their statements correctly. I also find that the Court had put certain questions to bring out the true facts. It was only when the defence had confronted the witness with the earlier statement then the complainant came out with the version that the police did not correctly record their statement. The witnesses have changed their statement at the trial. The trial Court had hinted the possibility of professional advise. It had noted that it was not the case of the prosecution that there was any cruelty on account of dowry demand and it had rightly rejected the prayer. I see no infirmity in the order.

The revision is dismissed.

05.09.2016

Sunil

(ANITA CHAUDHRY)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No