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

+ CRL.REV.P. 625/2009 & CRL.M.A.13647/2009

HARISH CHAUHAN

..... Petitioner

Through: Mr.B.S. Joon, Mr. Varun Chugh and
Mr.Neeraj Balhara, Advocates

versus

STATE NCT OF DELHI & ORS.

..... Respondents

Through: Ms.Rajni Gupta, APP for the State
with Insp. Sunil Kumar, ISC Crime
Branch

AND

+ CRL.REV.P. 9/2010

STATE

..... Petitioner

Through: Ms.Rajni Gupta, APP for the State
with Insp. Sunil Kumar, ISC Crime
Branch

versus

MUKUL BHADANA

..... Respondent

Through: Mr.Manu Sharma, Advocate

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

22.03.2016

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1. By this common order I shall dispose of the Crl. Rev. P. No. 9/2010 filed by the state and Crl. Rev. P. No. 625/2009 filed by Harish Chauhan, who is complainant/father of the deceased Shweta Chauhan.

2. Both the petitions have been filed with a prayer to charge the respondent for the offence punishable under Section 306 IPC as well.
3. In the Crl. Rev. Pet. No. 625/2009 filed by the father of the deceased, the prayer has also been made to direct the learned Trial Court to take cognizance against Smt. Kamlesh, mother of the respondent No. 2 and Abdul Razzak and further frame charges under Section 201/120-B IPC against them and Abdul Razzak be further charged for the offence committed under Section 368 read with Section 120-B IPC.
4. On behalf of the petitioners it has been submitted that the order on charge dated 22nd August, 2009 has been passed by the learned ASJ whereby after considering the material on record, in para No. 13 of the impugned order it was observed that prima facie case under Section 120B read with Section 366 IPC is made out against the accused persons. Accused Mukul Badana was also charged for the offence punishable under Section 120B IPC read with Section 366/376 IPC and substantive offences under Section 366/376 IPC.
5. Charge for the offence punishable under Section 306 IPC was not framed observing that had the deceased been threatened and humiliated by mother and brother of the accused, she would have stated this fact while making statement under Section 164 Cr.P.C. Learned counsel for the complainant had also submitted that Razaaq, who has been made a witness, should have also been made accused in this case as the deceased was taken by Mukul Badana to his village and they stayed at his house.
6. I have carefully gone through the record.
7. The order on charge in this case was passed on 22nd August, 2009 by learned ASJ whereby charge under Section 306 IPC was not framed against

the accused as prima facie such offence was not made out against the accused.

8. On 22nd February, 2011 an application under Section 216 Cr.P.C. was filed by the prosecution for amendment of the charge by adding Section 306 IPC which was dismissed on 22nd March, 2011. Admittedly the order dismissing the application under Section 216 Cr.P.C. was not challenged either by the complainant or by the State. It is further revealed from the record that after examination of the material witnesses, an application under Section 319 Cr.P.C. was filed on 6th May, 2014 praying that Smt. Kamlesh (Mother), Monu Badana (Brother) and Abdul Razaq be summoned as accused.

9. The said application was also dismissed on 20.10.2014 and the said order was not challenged either by the State or by the complainant. As on date the case is fixed for final arguments and entire prosecution evidence has already been recorded.

10. The prosecution is mainly relying on the statements recorded under Section 161 Cr.P.C. of three witnesses, namely, Jagdish Singh, Lal Singh and Dalip Chauhan, who were total stranger to the parties, have made identical statements. Since the version given by these three witnesses is identically worded, I extract the statement of only one witness, namely, Jagdish Singh, which is as under:-

“That on 15.4.2008 he had come to Patiala House Court Complex for some personal work and at about 11:30 AM he saw the crowd outside the Court complex and saw the deceased being humiliated by Kamlesh wife of Late Ravinder Badana, Monu Badana s/o Late Ravinder Badana, Krishan s/o Mahender, Ashok s/o Mahender, Hakim S/o Mahender, all resident of village Dadha, Gautambudh Nagar, UP and one Anangpal, from the crowd, whose names and addresses were

learnt later, and at that time two police men in uniform having named SI Manoj Sharma & SI Pawan Tomar along with one Constable and a boy whose name was revealed as Monu Badana were also standing there. Kamlesh, Monu Bhadana, Krishan, Ashok, Hakim and Anangpal were shouting on the girl Shweta @ Nonu, standing with the above named Harish Chauhan and were saying that "Bastard, you are happy now? I will get you abducted again and we see that how your father searches out you again, I will sent you there again." In the meantime, water bottle was thrown on Shweta @ Nonu and Kamlesh and all other started laughing with clapping. They all said that bastard, we will send you at brothel, we will not allow you to live, we will kill you or you should commit suicide. In the meantime, one lady, aged about 43 years, about whom it was learnt later that she was the wife of Harish Chauhan and Harish Chauhan and his daughter requested the SI Manoj Sharma and SI Pawan tomar, who were present there, for help, but they did not take any action and started laughing. Above-named Harish Chauhan and the persons accompanying him, being humiliated, left the place. I have never seen such kind of humiliation and insult in my life. I have got registered my above statement on receiving your notice. Now I have learnt that above-named daughter of Harish Chauhan has committed suicide and she has committed suicide due to abetment by Kamlesh, Monu Badana, Krishan, Ashok, Hakim, Anangpal and due to SI Manoj Sharma and SI Pawan Tomar's not taking any lawful action in time. Legal action may be taken against all of them. You have recorded my statement, which is heard and admitted as correct.

*Sd/-
Insp.
3.11.08"*

11. In this regard suffice it to note that as per version given by these witnesses Harish Chauhan and his wife were present when the deceased was allegedly humiliated, which as per the complainant led her to commit suicide. Suffice it to note here that about the alleged incident of 11.30 a.m.,

neither the deceased, whose statement was recorded under Section 164 Cr.P.C., nor her parents informed either the concerned Magistrate or the link Magistrate who recorded the statement or made any complaint.

12. It may also be mentioned that as per the charge-sheet the deceased was taken to Patiala House Court Complex for getting her statement recorded at about 12.30 p.m. i.e. almost after one hour of the said incident. During the inquest proceedings statement of Smt.Resham Devi, grandmother of the deceased Shweta, Sh.Harish Chauhan, the complainant and Sh.Sumit Chauhan, brother of the deceased and in respect of Sh.Khairati Lal, immediate neighbour of the complainant have been recorded.

13. Statement of Harish Chauhan, s/o Late Sh.M.L.Chauhan, r/o A-58, South Ex. Part-I, Amrit Ngr. K Mubarakpur, aged 48 years, is to the following effect:-

“ Today on 17.4.08 at around 3 pm in the day we were having lunch and my daughter was sleeping with her grandmother Mrs. Reshma Devi in the backside room. The moment Mataji turned around the girl quietly stepped out of the room and went to the room downstairs by climbing down the stairs adjoining that room. And closed both the doors. My boy Sumeet and his friend Palu were coming from Vakeel had just come. They saw that both the doors were shut. The boy suddenly thought and went upstairs and saw that his sister was not there and raised a cry. Everyone gathered and both of them broke open that door and saw that my daughter Shweta was hanging from the ceiling fan with the help of her white chunni tied around her neck. My son Sumeet and his friend Palu raised her and I untied the chunni from ceiling fan and brought her to AIIMS Hospital in the car and got her admitted there where she is presently undergoing treatment. In this none is to be blamed. Neither do I suspect anyone. And we don't want any legal proceeding.”

14. Statement of Smt.Reshma Devi, w/o Late Sh.M.L.Chauhan, r/o A-58,

South Ex. Part-I Amrit Ngr. K Mubarakpur, Aged 75 years, is to the following effect:-

“It is stated that I am residing at the abovementioned address with my son daughter-in-law and grandchildren. My granddaughter Shweta who is doing MBA course from IILM College was kidnapped from college on 10.3.08 and my son Harish had got a case registered at PS Lodhi Road and three boys have been arrested. And my granddaughter had come home, date I don't remember. And yesterday dated 16.4.08 she had gone to Court and come back. And today on 17.4.08 at around 3 pm my granddaughter was sleeping with me in my room. When I turned around she quietly stepped out and went down the stairs to the toom downstairs. My grandson Summet came from outside and saw where was his sister. He went downstairs and saw the door of the room and broke open the door with the help of his friend and saw that she was hanging from the ceiling fan with the help of chunni. The chunni was untied and she was taken to hospital in the car. Till today she has not said anything to anyone and everyone was living with love. Nothing like that had happened. Neither had anyone scolded her. She used to live with me and there was nothing like that. Neither do we have any suspicion on anyone. Neither is anyone to be blamed for this. My family has not said anything to her. And I along with my family do not want any proceeding. You have read out my statement. It is correct.”

15. Statement of Sumeet Chauhan, s/o Sh. Harish Chauhan, r/o A-58, South Ex. Part-I, Amrit Ngr. K Mubarakpur, Aged 24 years, is to the following effect:-

“It is stated that I reside at the above-mentioned address with my parents and am running a shop in Sheikh Sarai which is owned by me father. All my family members live together. My sister Shweta is doing MBA course from IILM College Lodhi Road who was kidnapped from college on 10.3.08. My father had lodged an FIR with PS Lodhi Road in which three boys have been arrested. On 14.4.08 our sister was found wo the Police had sent home with us, whose statement was recorded on

16.4.08 in Patiala House Court and we had brought our sister back home. Today on 17.4.08 my sister was sleeping with my grandmother in the backside room and my parents were having lunch, I and my friend Palu were coming from Vakeel. I saw that both doors of the downstairs room were shut. I went upstairs and saw that my sister was not sleeping with my grandmother and raised a cry "where is Shweta". I came downstairs and on suspicion I and my friend broke open the door of the room and saw that my sister was hanging from the ceiling fan with the help of white chunni. I and my friend raised her and my father untied the chunni. And brought her to AIIMS Hospital Emergency in the car and got her admitted there where she is undergoing treatment. We do not have any suspicion on anyone. And we do not want any legal proceedings."

16. Statement of Khairati Lal, s/o Ram Lobhaya Gandhi r/o A-58 Amrit Nagar, K.M.Pur ND, Aged 50 years recorded on 18th April, 2008 is to the following effect:-

"It is stated that I am residing at the above mentioned address with my family and I have wood shop in Wajir Nagar and I have my residence adjoining Harish Chauhan A-58 which number is same for both of us. I had gone to my shop as usual when my brother's son called that girl Shweta had hung herself in A 58 Amrit Nagar residence and who has been taken to AIIMS hospital. I took my car to AIIMS hospital where I saw the girl Shweta in the Emergency and her family was present there. And at her home there was nothing like that. Everyone was living as usual properly. In this episode there is no suspicion. You have read out my statement which is true."

17. In the above statements made by family members of the deceased on 17th April, 2008 in detail, there is no mention of the deceased being humiliated by anybody in Patiala House Court Complex on 16th April, 2008 at 11.30 a.m. which could have led her to commit suicide.

18. It is worth noting that the three witnesses, namely, Jagdish Singh, Lal

Singh and Dalip Chauhan were total strangers to the parties. How their names surfaced after 6 ½ months to be examined as witnesses to the alleged humiliation, cannot be ascertained from the record.

19. It is suffice to note here that on 16th April, 2008 for recording the statement under Section 164 Cr.P.C., Shweta was produced before the learned Metropolitan Magistrate at about 12.30 p.m. i.e. after about one hour of the alleged incident of humiliation. The deceased was found hanging in the room at about 3.00 p.m. on 17th April, 2008. She was declared dead on the night intervening 17th/18th April, 2008 at about **1.30 am.** Even on 18th April, 2008 after she was declared dead due to hanging and cause of death being asphyxia, no complaint was made to the police about suicide being abetted by the accused or his family members by publicly humiliating her in Patiala House Court Complex.

20. This issue was raised time and again before learned Trial Court as well by filing separate complaint before learned Metropolitan Magistrate and has been kept alive till date when the trial has already concluded knowing fully well that the subsequent orders by the learned Trial Court on the application under Section 216 Cr.P.C. and 319 Cr.P.C. have not been challenged.

21. It has been informed that during the hearing of these revision petitions, the complaint case has been dismissed.

22. In my view, learned Trial Court had rightly not framed charge against the accused persons for the commission of offence under Section 306 IPC as even prima facie there was no material to substantiate the said charge.

23. Both these petitions are accordingly dismissed.

PRATIBHA RANI, J.