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

+ CRL.REV.P.227/2017 & CrI.M.A.5194/2017 (Stay)

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Date of Decision: 18.08.2017

ASHOK KUMAR

..... Petitioner

Through: Mr.Manish Sharma, Adv.

versus

STATE & ORS.

..... Respondents

Through: Mr.Arun Kr.Sharma, APP.

Mr.Abdul Sattar, Adv. for R-2 & 3.

SI Ashwani Kumar, P.S.Jyoti Nagar.

CORAM:-

HON'BLE MR JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J (ORAL)

1. The petitioner who is the father of the deceased Dolly has questioned the order dated 23.01.2017 passed by the learned Additional Sessions Judge, Shahdara District, Karkardooma Courts, Delhi in Sessions Case No.243/2016 whereby respondent No.3 (father-in-law of the deceased) has been discharged and charges under Sections 498A and 306 IPC only have been framed against respondent No.2 (the husband of the deceased).

2. The daughter of the petitioner namely Dolly was married to respondent No.2 on 08.02.2013.

3. On 01.06.2015 an information was received in Jyoti Nagar police station that a woman had committed suicide in a house at Ashok Nagar. On that information, police visited the house of the

respondents. The petitioner thereafter lodged the FIR alleging that only two days prior to the marriage, respondent No.2, Amarjeet had demanded a bullet motorcycle as a condition for marriage. The respondent No.2 was thereafter made to understand that later such demand would be fulfilled. Marriage between the deceased and the respondent No.2 did take place but the demand for dowry continued and on many occasions the petitioner paid money to the family of the respondents. On 01.06.2015, it has been alleged by the petitioner, respondent No.3 called him on telephone and informed the deceased has hanged herself. On such information, the petitioner is said to have gone to the matrimonial home of the deceased and found that her body was lying on the ground on the second floor of the house. The entire family members of the respondents were sitting on the ground floor and nobody was present near the dead body. The brother of the petitioner thereafter called the police on which the police arrived and necessary formalities were fulfilled. The petitioner subsequently stated that his daughter has been killed and she has not committed suicide. He wanted the accused persons to be punished.

4. The post mortem of the deceased disclosed ligature mark around the neck of the deceased. There were also a number of injuries on the person of the deceased. In the opinion of the doctor conducting the autopsy, the death was caused by asphyxia as a result of ante mortem hanging. The injuries on the person of the deceased were also found to be ante mortem and were opined to have been caused by a blunt force impact.

5. After investigation, charge sheet dated 26.07.2015 was submitted against the respondents under Sections 304B/498A and 34 of the IPC. Thereafter a supplementary charge sheet was filed on 02.05.2016 along with the FSL report which suggested that the deceased could have committed suicide in presence of respondent No.2.

6. The Trial Court thereafter, vide a detailed order dated 23.01.2017 discharged respondent No.3 and framed charges only under Sections 306/498A against respondent No.2.

7. From the materials available on record, the learned Trial Court was of the opinion that the only allegation against respondent No.3 was that he did not stop respondent No.2 from beating the deceased. The investigation papers revealed that respondent No.2 stayed on the second floor of the house with the deceased whereas his brother and his family stayed on the first floor. Respondent No.3 occupied the ground floor of the house. It was further found out by the learned Trial Court that there was not much interaction between respondent No.2 and the other members of his family including respondent No.3. After the death of his first wife, respondent No.3 is said to have married another person with whom he was living in the same house. The allegation with respect to demand of dowry or harassment at the hands of respondent No.3 was found to be vague as it was not supported by specific instances.

8. The Trial Court, therefore, was not wrong in discharging respondent No.3.

9. However, with respect to the charges against respondent No.2, the Trial Court has not adopted a correct reasoning. A detailed discussion of the materials has been done by the learned Trial Court as if a full fledged trial was being held. At the stage of framing of the charge, if there is a strong suspicion of the accused having committed an offence, charges are required to be framed accordingly. It appears that the following materials were completely ignored by the Trial Court so far as respondent No.2 is concerned.

10. (i) The deceased died within seven years of her marriage under suspicious circumstances. (ii) Immediately prior to the wedding, respondent No.2 had demanded a bullet motorcycle and only on persuasion he had agreed to marry the deceased and had postponed the demand of motorcycle. (iii) Demand of money and other articles continued even after the marriage. (iv) The records of the case further disclose that a week prior to the death of the deceased, her sister Shashi Bala had met her in her matrimonial home and she was informed about the harassment and demand of Rs.50,000/-. (v) When the father of the deceased came to the matrimonial home of the deceased, he did not find any family member of the respondent sitting near the dead body. (vi) Apart from the ligature mark on the neck of the deceased, there were multiple injuries on her person which were ante mortem in nature.

11. Thus, all the ingredients for framing of the charge under Section 304B viz. the death of the deceased in otherwise than under natural circumstances, within seven years of her marriage and cruelty and

harassment in connection with the demand of dowry soon before her death, were satisfied.

12. Section 304B of the IPC reads as follows:-

“304B. Dowry death.—

(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death.

Explanation.—For the purpose of this sub-section, “dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.”

13. The explanation appended to Section 304B defines “dowry” to have the same meaning as contained in Section 2 of the Dowry Prohibition Act, 1961 which reads as under:-

“2 Definition of ‘dowry’. —*In this Act, “dowry” means any property or valuable security given or agreed to be given either directly or indirectly—*

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law(Shariat) applied.”

14. The aforesaid provisions of Indian Penal Code has to be read along with Sections 113A and 113B of the Indian Evidence Act which deals with presumption under certain circumstances as to dowry death.

“113-A. Presumption as to abetment of suicide by a married woman.—When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

113B. Presumption as to dowry death.—When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation.—For the purposes of this section, “dowry death” shall have the same meaning as in section 304B, of the Indian Penal Code, (45 of 1860).”

15. The aforesaid provision of presumptive evidence was introduced in the Evidence Act for tackling large number of dowry deaths within the confines of the matrimonial home of the deceased, with almost negligible direct evidence for the same. However, for the aforesaid presumption to be drawn, what is required, on a plain reading of Section 113B of the Evidence Act, is that the woman must have been “soon before her death subjected to cruelty or harassment”, “for, or in connection with, any demand for dowry”.

16. The Trial Court appears to have gone wrong in holding that materials warranting framing of charge under Section 304B of the IPC is not made out. True it is that a suicide is a complex act leading to unnatural death and that there is no presumption that every suicide is a sequel to harassment but such presumption was not required to be made by the Trial Court at the stage of framing of charge, especially when there were definite materials for demand of dowry and harassment of the deceased at the hands of respondent No.2.

17. The Trial Court perhaps did not realize that evidence with respect to demand, torture and subsequent death of the deceased under unnatural circumstances would come only after a trial is held. The way the charge has been framed under Section 306 of the IPC against respondent No.2, gives an impression to this Court that after a full fledged trial, the respondent No.2 has been held guilty under Section 306 of the IPC. This is not the purport or the intent or the method of framing charge against an accused who is to face trial.

18. In **Satvir Singh and Ors vs. State of Punjab and Anr, (2001) 8 SCC 633**, the Supreme Court dealt with the provisions of Section 306

of the IPC viz-a-viz Section 113A of the Indian Evidence Act and Section 304B IPC in relation to Section 113B of the Indian Evidence Act. The Supreme Court in Satvir Singh (Supra) has held as follows:-

17. No doubt, Section 306 IPC read with Section 113-A of the Evidence Act is wide enough to take care of an offence under Section 304-B also. But the latter is made a more serious offence by providing a much higher sentence and also by imposing a minimum period of imprisonment as the sentence. In other words, if death occurs otherwise than under normal circumstances within 7 years of the marriage as a sequel to the cruelty or harassment inflicted on a woman with demand of dowry, soon before her death, Parliament intended such a case to be treated as a very serious offence punishable even up to imprisonment for life in appropriate cases. It is for the said purpose that such cases are separated from the general category provided under Section 306 IPC (read with Section 113-A of the Evidence Act) and made a separate offence.

18. We are, therefore, unable to concur with the contention that if the dowry-related death is a case of suicide it would not fall within the purview of Section 304-B IPC at all. In Shanti v. State of Haryana [(1991) 1 SCC 371 : 1991 SCC (Cri) 191] and in Kans Rajv. State of Punjab [(2000) 5 SCC 207 : 2000 SCC (Cri) 935] this Court has held that suicide is one of the modes of death falling within the ambit of Section 304-B IPC.”

(Emphasis provided)

19. The reasoning given by the Trial Court with regard to the presence of 10 external ante mortem injuries on the body of the deceased are only being extracted to be rejected.

“19. Ld. Counsel for the complainant had pressed hard to charge accused Amarjeet for offence punishable under section 302 IPC. The centre point of his argument was post-mortem report, which mentions 10 external ante mortem injuries on the dead body of Dolly. I have examined post-mortem report on the parameters of deference between hanging and strangulations as explained by Supreme Court in the case of Kashmir Singh and by Bombay High Court in the case of Deepak. The post-mortem report in this case says that the cause of death was asphyxia as a result of ante mortem hanging rather than strangulation. Thus, there is the major basic difference in the evidence before Supreme Court and Bombay High Court in the respective cases from the evidence of this case.

20. Furthermore, this PMR mentions that there was incomplete ligature mark and it was obliquely above thyroid cartilage. Though, in the case of strangulation there has to be a continuous ligature mark round the neck. The bleeding around dead body is not shown to be a case of bleeding from nose, mouth and ear of the deceased. The 10 external injuries found on the dead body cannot be a basis to say that it was a case of strangulation. There may be different reasons for presence of these external injuries on the dead body. These external injuries were in the form of contusion, abrasion and lacerated wounds on the face, fingers and leg of the dead body. These injuries could have been sustained in the process of falling of dead body on the floor as well. But in any case, these injuries cannot be a basis to term the death of Dolly as culpable homicide. Therefore, I do not find any material on the record to frame charges under section 302 IPC as well.”

20. The Trial Court has perhaps gone on extreme presumption and has misdirected himself.

21. Thus the order framing charges under Sections 498A and 306 IPC only as against respondent No.2 is set aside.

22. The case is remitted to the Trial Court for writing out a fresh order in accordance with law.

23. If the Trial Court has examined some of the witnesses upto now, it would only be in the fitness of things that the Trial Court may direct for a de novo trial as the requirements of Section 304B would be different and there can be a possibility of prejudice to the respondent No.2 if the charge against him is altered and the trial proceeds only from that stage.

24. The revision petition is thus partly allowed.

ASHUTOSH KUMAR, J

AUGUST 18, 2017

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