

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.411 of 2018

Arising Out of PS. Case No.-83 Year-2017 Thana- LALIT NARAYAN UNIVERSITY
District- Darbhanga

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1. Teekam Chand Mandhyan @ Tikamdas Mandhyan, Son of Late Khub Chand Mandhyan
 2. Smt. Bharti Devi Wife of Tikam Chand Mandhyan, Residents of House No. 122/333 Shashtri Nagar, P.S. Kakadev, District- Kanpur (U.P.).

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Smt. Chitra Hoiyani, Wife of Nanak Chand Hoiyani, Resident of Mohalla-Katahalbadi, P.S. L.N.M. University, District- Darbhanga.

... .. Respondent/s

Appearance :

For the Petitioner : Mr. Amarendra Nath Verma
For the State : Mr. Ram Priya Sharan Singh
For the Informant : Mr. Pramod Kumar Singh

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

4 17-07-2018 The petitioners are the parents in-law of the deceased. They have challenged the order dated 12.02.2018 passed by the learned Chief Judicial Magistrate, Darbhanga in connection with L.N.M. University (Darbhanga) P.S. Case No. 83 of 2017 which was instituted for the offences under Sections 498A, 304B, 302 and 120B of the Indian Penal Code read with Section 3/4 of the Dowry Prohibition Act.

The aforesaid case was initiated on the basis of a complaint lodged by opposite party no. 2/mother of the deceased, which was sent to the police under Section 156(3) of the Code of Criminal Procedure for institution



of a regular case whereafter, L.N.M. University (Darbhanga) P.S. Case No. 83 of 2017 was registered for investigation for the aforesaid offences.

The police, after thorough investigation in the matter, found the allegation of killing the deceased for dowry to be absolutely without any basis. The investigation papers reveal that the deceased died because of complications which had arisen post-pregnancy operative measures adopted by the doctors. The allegations with respect to the ill-treatment and torture during the lifetime of the deceased, was also not found to be correct. As a result, final report false was submitted vide Report No. 146 of 2017 on 18.08.2017. The learned Chief Judicial Magistrate, Darbhanga vide his order dated 12.02.2018, referred to above, differed with the police report on the ground that the death had taken place under suspicious circumstances and therefore took cognizance under Sections 498A, 304B, 302 and 120B of the Indian Penal Code and $\frac{3}{4}$ of the Dowry Prohibition Act.

Mr. Amrendra Nath Verma, learned advocate appearing for the petitioners has submitted that there was no reason for the learned Chief Judicial Magistrate, Darbhanga, to have differed with the police report, in as much as, the entire chain of medical documents were



investigated by the police and found to be genuine. It has further been submitted on behalf of the petitioner that the deceased after two years of her marriage had become pregnant and was hospitalized for delivery. She was admitted in Reenadeep Women & Child Care Centre on 11.03.2017 and was diagnosed with term pregnancy with discharge. At the time of admission in the aforesaid Women & Child Care Centre, there were no complaints and the deceased had normal pulse rate and blood pressure. On 12.03.2017, the deceased went for an elective LSCS, which is a ceasarian operation for child birth. On the same day at about 06:00 P.M. a healthy male child was delivered and the patient also remained normal. She was under constant monitoring of the hospital authorities. Slowly, thereafter, the urine output started decreasing and the deceased started suffering from stomach ache. It was found that the deceased had developed diaphoresis and hypotension and discharged low output of urine because of the aforesaid two complications. Shortly thereafter, there was discoloration of eyes of the deceased which rapidly progressed along with the altered sensorium.

On the advice of the aforesaid Women & Child Care Centre, the patient/deceased was shifted to Regency Hospital, Kanpur where she was diagnosed of



absolutely low haemoglobin and high TLC along with deranged liver and renal functions. There was failure of DIC and metabolic acidosis. Somehow or the other, the patient was managed with IV antibiotics, transfusion of blood products, dialysis, vasopressors and other supportive measures. When her condition deteriorated further, she was administered Noradrenaline infusion every hour. By that time, the respiratory rate had decreased.

Under such circumstances, the patient was shifted to Apollo Hospital, Delhi where she was put on ventilator support in the ICU.

The death summary of the deceased further refers to the fact that the deceased was treated with antibiotics and infusion of life support drugs, but her condition kept on deteriorating. The peripheral smear examination showed fragmented RBCs and high level of LDH serum leading to deranging of coagulation profile. She was, thereafter, subjected to plasma exchange with 100% replacement and was also given POCS transfusion in view of low platelets.

On 19.03.2017, by evening the deceased suffered sudden bradycardia and refractory hypotension followed by asystole. As per the medical protocol, urgent CPR was started which continued for 30 minutes but the



patient could not be revived. She was declared dead at 05:00 P.M. i.e. on 19.03.2017.

The cause of death has been stated to be post LSCS-Puerperal Sepsis; multi-organ failure and Intracranial Bleed.

The aforesaid medical papers were examined by the investigating agency and, the hospital authorities were also questioned, who certified that the deceased had been put to such extensive/holistic treatment for her pregnancy and post-pregnancy complications. In that event, it has been argued, it was highly unjustified for the learned court below to have found the cause of death of the deceased to be suspicious in nature and, thereby, for him to differ with the police report and take cognizance under Section 304B and 302 of the Indian Penal Code.

It has further been submitted on behalf of the petitioner that allegation of ill-treatment and torture for non-fulfillment of dowry demand does not appear to be correct, as no such complaint was ever lodged in two years' time when the deceased lived in her matrimonial home along with her husband and his other relatives. In fact, the complaint petition, which ultimately became the FIR, also clearly discloses that the opposite party/complainant/mother of the deceased was informed



about the deteriorating health condition of the deceased. The only reason for suspecting some foul play, then appears to be that sometimes prior i.e. six months before the death of the deceased, an insurance policy of 90 lakhs in the name of the deceased was taken. It was therefore suspected that no proper care was taken of the deceased, so that it serves twin objectives viz. her death and payment of insurance money which lay on her head. When this allegation was brought to the investigating agency, it was properly investigated and it was found out that the other members of the family of the husband of the deceased also had insurances of somewhat similar amount. This only demonstrates, it has been argued by Mr. Verma, learned advocate, that the deceased was taken good care of and that the family of the husband of the deceased was well off. This cannot be the cause of suspicion regarding the death of the deceased.

On the other hand, Mr. Pramod Kumar Singh, learned advocate appearing for informant/opposite party no. 2 has argued that even in cases of suspicion, cognizance is required to be taken, as the truth of the matter would only be unravelled by a full fledged trial. The process of justice cannot be halted midway. He has also submitted that under the revisional jurisdiction of the High Court, the aforestated facts cannot be



appreciated and the wisdom of the court below, i.e. of the Chief Judicial Magistrate, cannot be questioned by the High Court in a revisional jurisdiction. He further reiterates that the Code of Criminal Procedure provides the power to the learned magistrate for differing with the police report and a Judicial Officer is not a mere Post Office to accept any document or investigation report submitted before him. After application of his mind, the learned court below has taken cognizance of the offences which cannot be interfered with.

On factual issues, learned counsel for the opposite party no. 2 has stated that the cause of death may have been opined by the hospital functionaries to be post operative complications, but that would not be a definite proof of the fact that the deceased was not ill-treated for dowry and was not subjected to any torture. In fact, it has been submitted that in the hope of the restoration of normalcy in the behaviour of the family members of the deceased, no complaint was made hitherto and when there was a final nail in the coffin with the death of the deceased, the opposite party no. 2 has chosen to bring to the fore the act of torture which had taken place behind closed doors in the matrimonial home of the deceased.

Lastly, it has been submitted that at the stage



of taking of cognizance, no interference is required as the petitioners would get an opportunity of contesting this case at the stage of the framing of the charge where it would be incumbent upon the court below to look into all the materials whether in favour of or against the accused persons.

On a perusal of the investigation papers and after hearing the parties, it appears *prima facie* that the deceased died because of complications which occurred after her operation for delivery of the child. The allegations of torture, assault and administration of deleterious substance before her death is not borne out by the condition of the deceased at the time when she was admitted in the hospital for delivery of her child. The death was mainly because of the post operative complications. That apart, no material appears to have been collected during the investigation to lend credence to the allegations leveled in the FIR. Even with respect to the quantum of the insurance amount, the investigator found out that almost all the members of the family of husband of the deceased had taken insurance cover for huge amounts.

In that view of the matter, at best a case under Section 498 A of the Indian Penal Code could have been made out against the accused persons but definitely not



under Section 304B or 302 of the Indian Penal Code.

Though, a learned magistrate is not required to give the detailed reasons which has prompted him to differ with the police report but in a case of this kind, with such investigation report, it was necessary for the learned magistrate to have noted down the reasons for his differing with the police report and for his coming to the conclusion that the death was under suspicious circumstances. Not according any reason and merely relying on the statements made by the family members of the deceased in holding that the death appeared to be suspicious, is not acceptable to this court.

For the aforesaid reasons, the order impugned dated 12.02.2018 is set aside.

The matter is remitted to the court of learned Chief Judicial Magistrate, Darbhanga to give a fresh look at the entire investigation papers and pass a reasoned order in accordance with law, without being in any manner influenced by any observations made in the present order, which are purely tentative.

Needless to state that since the matter is being re-heard on merits, both the parties ought to be heard before passing any specific order.

With the aforesaid direction, the present petition is allowed.



The learned court below shall pass an order after hearing the parties within a period of three months of the receipt/production of a copy of this order.

(Ashutosh Kumar, J)

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