

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.351 OF 2018

Pramod Kumar Ram Narayan Thakur,
Age 64 years, Occ.Business,
R/o.1-A, Deodar Street, Hriday Mansion,
P.S.Ballygunge, South Kolkata-700 019.

Applicant

versus

1. The State of Maharashtra

2. RaviRanjan Sharma, Age 37 years,

3. Arvind Sharma, Age 64 years,

4. Shanti Sharma, Age 55 years,
R/o.33/3C, New Navy Nagar, Coloba,
Mumbai-400 005.

Respondents

Mr.Ganesh Sovani I/by Saswati Deb Sanjib for applicant.
Mrs.Manjula Rao for respondent nos.2 to 4.
Mr.A.R.Patil, Additional Public Prosecutor, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 1st August 2018

PC :

1. Rule. Rule made returnable forthwith. Both sides were heard for final disposal.

2. The applicant had lodged the first information report ('FIR') bearing CR No.I-203 of 2007 with Cuffe Parade Police Station on

2nd December 2007 over unnatural death of his daughter Mrs.Nisha Raviranjana Sharma on 1st December 2007 against respondent nos.2 to 4 and one Richa Sharma who was not charge sheeted. The offences were registered under Sections 304B, 498A read with Section 34 of Indian Penal Code ('IPC').

3. The applicant has challenged the order dated 10th May 2018 passed below Exhibit-93 in Sessions Case No.119 of 2008 by the Additional Sessions Court for Greater Bombay rejecting the application preferred by the prosecution for alternative charge u/s 302 r/w Section 34 of IPC.

4. In the FIR lodged by the applicant on 2nd December 2007 it is alleged that marriage of applicant's daughter Mrs.Nisha Sharma was solemnized on 6th July 2007 at Kolkata. At that time the accused no.2 had demanded Rs.3 lakh as dowry, which was parted by the complainant. The complainant had also given gold ornaments and clothes to son-in-law and his sister. The accused no.2 has, however, shown displeasure with regard to the items given to them. He had demanded 400 gms. of gold. The complainant had given gold ornaments weighing about 350 gms to his daughter during the marriage. The expenses of the marriage were incurred by the complainant. The accused no.1 had also demanded Santro car. After the marriage, the deceased had joined her husband at Mumbai. All the accused were residing at Navy Nagar, Colaba, Mumbai. It is further alleged that the deceased was being harassed by the accused. She was assaulted and tortured. The accused also demanded Rs.6 lakh for purchasing a flat at Thane. On 1st December 2007, the complainant had received a missed-call from his daughter. Hence he

called her on her phone. The deceased wanted to speak to her mother. At that time she informed the complainant that her husband had harassed her in the previous night. Thereafter the wife of complainant spoke to the deceased and at that time she had referred to the quarrel which had taken place between the deceased and her husband on account of investing money in the name of their daughter. She also stated that the husband had threatened her that he would get married to another woman. The complainant thereafter gave a call to accused no.2 who informed him that his daughter is unconscious. Thereafter accused no.2 informed that Nisha is no more. It was also informed that she has committed suicide by hanging to ceiling fan in the house.

5. On the basis of complaint, the FIR as stated hereinabove was registered. The investigation was conducted. Statements of various witnesses were recorded. Charge sheet was filed for offences under Sections 304B and 498A r/w Section 34 of IPC. Learned Additional Sessions by order dated 24th November 2015 framed the charge for the offences u/ss.498A, 304 B of IPC.

6. The prosecution preferred an application on 16th April 2018 for framing alternative charge u/s 302 r/w Section 34 of IPC. In the said application it was stated that death of the victim was within seven years from the date of her marriage and she was subjected to cruelty for payment of dowry and she expired in suspicious circumstances at her matrimonial home. As per spot panchanama, two pieces of nylon rope were recovered and the rope was having hair of the victim which is evident from the chemical analysis report dated 15th May 2008. Odahni recovered from the spot was not tied

with the ceiling fan, whereas, it was tried to show that the victim had hanged herself by Odhni. It was therefore prayed that alternative charge u/s 302 r/w Section 34 of IPC may be framed against the accused.

7. Learned Sessions Judge rejected the said application by order dated 10th May 2018. While rejecting the application it was observed that there was no evidence of resistance by the deceased. The nail clipping does not have blood. If someone had throttled her by nylon rope, she would not have kept quite and could have resisted. The nylon rope was in the gallery. The doctors have opined that the cause of death is due to asphyxia due to neck compression (unnatural). The circumstances prima facie do not show that it is the case of brutal murder. The charge is already framed u/s 498A and 304B of IPC. On the basis of such reasoning, the application was rejected.

8. Learned counsel for applicant has submitted as follows :

(a) The accused had preferred application for anticipatory bail during the investigation. In response to the said application, the investigating officer filed reply, in which many opinions were revealed, which can be read between the lines. After filing of the charge sheet the applicant had sought transfer of investigation to specialized agency as the investigation was lacking in many areas. The Court was pleased to transfer the investigation to a specialized unit after filing of the charge sheet vide order dated 2nd August 2008. The said order was challenged by the accused before High Court, which was reversed by the High Court;

(b) The Sessions Court has rejected the application preferred by the prosecution without application of mind by completely ignoring the evidence on record;

(c) The charges were framed in mechanical manner. The deceased was assaulted by the accused for which she was required to take treatment for four days in Navy's Hospital. The police have conducted investigation in mechanical manner. There was no proper investigation in respect to the incident of assault;

(d) Even on the day of incident, there was a quarrel between the deceased and her husband. The deceased was continuously harassed and there were demands from her. She died in suspicious circumstances;

(e) The charge u/s 304B is framed when the death of the woman is caused within seven years of her marriage when it occurs otherwise under normal circumstances and in this case apart from monetary and car demands, the affair of accused no.1 with Shweta Chomal was the crucial factor with whom he wanted to marry, which was echoed by the deceased to the applicant many a times in the past;

(f) The circumstances in which the victim died clearly shows that it was a case of murder. Police did not make serious efforts to arrest accused after lodging FIR till 15th January 2008. During the course of investigation the nylon rope which was cut into two pieces, was found nearby the place of incident and hair of the

deceased was attached to the said rope, which is evident from the CA report;

(g) The Sessions Court has ignored the judgment of Supreme Court relied upon by the applicant in the case of Rajbir @ Raju and another Vs. State of Haryana in Criminal M.P.23051 of 2010, wherein it was observed that all Trial Courts in India ordinarily should add Section 302 to the charge of Section 304B so that the death sentence can be imposed in heinous and barbaric crimes against women;

(h) The Trial Court lost sight of the fact that there was no knot of any nature to the Dupatta which is sufficient to rule out the theory of suicide which has been portrayed by the accused to police, who completely accepted the same without ascertaining the possibility or plausibility of the same;

(i) The Trial Court has lost the sight of the fact that while conducting the spot panchanama, the panchas had noticed the broken bangles on the bed which were scattered on the bed and also pieces of yellow coloured rope from the scene of offence, which is sufficient to rule out the theory of commission of suicide by the deceased, as there is no reason of the bangles getting broken if a female wearing the same commits suicide by hanging to the ceiling fan. It is submitted that the deceased was carrying child in her womb and there were limitations in resisting the assault and there is every possibility that the accused had over-powered her. The police ought to have disbelieved the theory of suspicion as propagated by the accused taking into account the height of bed, gaddi, stool,

height of the deceased, distance between the ceiling to motor of the fan, distance between the ceiling and the top portion of gaddi, which rules out the possibility suicide;

(j) Two portions of yellow coloured rope were cut into two pieces by sharp edged weapon which was stuck up with hair of the deceased and there is every possibility that the rope was being used for stifling the neck of the deceased.

9. On the basis of aforesaid submissions learned advocate for applicant has prayed that the Trial Court may be directed to frame charge u/s 302 of IPC from the originally framed charge u/s 306 in respect of unnatural death of applicant's daughter.

10. The applicant had relied upon the contents of FIR, statement of brother of deceased, statement of Shweta Chomal, post mortem report with regards to final cause of death, spot panchanama, reply filed by investigating officer in anticipatory bail application preferred by the accused and the application preferred by the prosecution for charge u/s 302 of IPC.

11. Learned APP supported the arguments of the advocate for applicant. It is submitted that in the light of the evidence on record the application was made by the prosecution for said charge, which was rejected by the Sessions Court. Learned APP made reference to the recovery of nylon rope, statements of witnesses, presence of hair of the deceased on the nylon rope, the suspicious circumstances in which death has occurred and the post mortem report which indicate that the death was due to asphyxia due to neck compression (unnatural).

12. Learned advocate for respondent nos.2 to 4 Mrs.Rao has opposed the grant of relief prayed in this application. It is submitted that there is no evidence to frame charge u/s 302 of IPC. The application was filed by the prosecution belatedly on 16th April 2018 when the trial was due for commencement. It is submitted that the charge u/s 302 of IPC cannot be framed without prima facie evidence and only on the basis of surmises and conjectures. The Sessions Court has rejected the application by assigning reasons. It is submitted that there is no iota of evidence to substantiate the charge u/s 302 of IPC. The medical opinions have ruled out the case of homicide. The presence of hair of the deceased on the nylon rope which was allegedly cut by sharp edged weapon, does not lead to interference of murder by using the said rope in the absence of any cogent evidence. Learned counsel tendered compilation of documents which refers to various orders passed by this Court as well as by Sessions Court in relation to anticipatory bail, investigation conducted by police etc.. The respondents have also filed reply opposing this application. Along with reply, the respondents have placed on record investigation report dated 17th March 2008, report of DCP, Zone-I dated 7th April 2008, report of panel of doctors dated 6th February 2009 and spot panchanama dated 1st December 2007.

13. Mrs.Rao further submitted that the FIR was registered on 2nd December 2007 and the charge sheet was filed on 24th January 2008. The charges were framed on 24th November 2015. The Trial Court had time and again fixed the dates to proceed for recording of evidence. However, the witnesses were not produced by prosecution for recording evidence and the matter has been delayed for over ten

years. Respondent no.2 and his father were working with Indian Navy. The father of respondent no.2 died on 20th April 2009. Respondent no.2 commissioned for twenty years in Indian Navy in 1996 and due to pendency of the case, he was not continued and his services ended on 31st January 2016. It is further submitted that during pendency of the sessions case, the applicant made application for re-investigation and making sister of respondent no.2 as an accused. Further investigation was carried out and report was submitted to the Court of Metropolitan Magistrate. The Human Rights Commission also called for investigation for offence u/s.302 of IPC. The Deputy Commissioner of Police, Zone-1 submitted report confirming the death to be suicidal and not homicidal. It is further submitted that to ascertain the death of deceased, a panel of doctors was constituted and after examination of all the medical documents, opinion was given that the cause of death was suicidal. It is further submitted that the complainant filed an application through public prosecutor for alteration of charge at belated stage only with a view to prolong the trial. The application was preferred three and a half years after framing of charges. It is further submitted that the spot panchanama dated 1st December 2007 reflects that the alleged rope was recovered from the dust bin kept in the balcony of the residence. Since 2015 the prosecution did not make any application for alteration of any charge and such an application was preferred only after summons was issued to witnesses to remain present before the Court. It is, thus, submitted that the application preferred by the applicant be rejected.

14. Having heard learned counsel appearing for parties, I have gone through the documents on record. The alleged incident had

occurred on 1st December 2007. The FIR was lodged immediately thereafter. The investigation was conducted and the charge sheet was filed on 24th January 2008. During the course of investigation the statements of mother of the deceased and other witnesses were recorded. The investigating authorities also recorded statement of Shweta Chomal who was allegedly having an affair with the husband of deceased. The spot panchanama was recorded on 1st December 2007. There is a reference to yellow coloured nylon rope being recovered from the rack of shoes lying in the balcony in the house. It is also noted that the rope was cut into two pieces by sharp instrument and hair were attached to the said rope. The post mortem report refers to ligature marks around the neck anteriorly just below the level of thyroid cartilage. It further refers to puncture wounds on dorsal aspect of both hands. From the histo-pathology report it is apparent that the final cause of death is referred to as death due to asphyxia due to neck compression (unnatural). It is also mentioned that nail clipping does not detect blood.

15. The FIR and statements of other witnesses refer to the harassment caused to the deceased. The medical case sheet dated 17th September 2007 annexed to the application refers to pain in left leg of the patient (Nisha Sharma) and also refers to history of fall from bike and swelling in ocephetal region and trauma on back. The CA report dated 13th May 2008 mentions that result of morphological and microscopic examination of hair in Exhibit 1 and 4 indicate that they are human hair and appear to be similar. The examiner was called upon to examine the hair in plastic container labelled Nisha Sharma and hair found on nylon rope. The result of analysis also mentions in the said report that no blood is detected on

Exhibits-1,2,3 and 4 i.e. hair of deceased, Odhni, two pieces of nylon rope and hair found on nylon rope (Exhibit-3). It is further indicated that no tissue matter is detected on the aforesaid articles. The examination report dated 3rd May 2008 in relation to nail clipping in a file labelled Arvindkumar Sharma shows that there was no blood detected on the said exhibit. Similar is the report in respect to the nail clipping of Shanti Sharma. The CA report in respect to the hair of Shanti Sharma and Richa Sharma also shows the result that no blood is detected on the said exhibits. Similarly, the CA report in respect to the nail clipping of Raviranjana Sharma also shows that no blood is detected on the nail clippings.

16. In the aforesaid circumstances I do not find that there is any infirmity in the impugned order passed by the Sessions Court. The Trial Court has already framed the charge u/s 304B and 498A of IPC on the basis of material on record. There is no prima facie evidence to frame charge u/s 302 of IPC. The presence of hair on the nylon rope which was lying on a shoe rack from the balcony and other circumstances as addressed by the prosecution and the learned counsel for applicant, do not support the charge u/s 302 of IPC. Apart from that, the Deputy Commissioner of Police, Zone-I had submitted a report to the Court of Chief Metropolitan Magistrate on 17th March 2008 with reference to the investigation conducted by them wherein it is stated that the investigation carried out so far does not indicate that the death of the deceased was a case of homicidal. It is stated in the report that the ligature mark which was not complete on the rear side of the neck, is a clear indication that this is a case of suicide and not homicide. There is nothing on record to prove that hands or legs of the deceased were tied before

strangulation and there is nothing to indicate that there was violence prior to the strangulation or that the deceased had resisted the strangulation. In relation to the complaint made to the State Human Rights Commission, the report was submitted stating that investigation carried out does not indicate that the death of the deceased was not homicidal. The charge sheet has been submitted against the accused on 24th January 2008. The opinion of death of Mrs.Nisha Sharma submitted by the panel of doctors from the Department of Forensic Medicine, J.J.Hospital, Mumbai and Professor and Head, Department of Forensic Medicine, TNMC & BYL Nair Ch. Hospital, Mumbai and the Police Surgeon of Nagpada Hospital, Mumbai dated 6th February 2009, which has been placed on record along with reply filed by the respondents, indicate that the cause of death does not specify whether the asphyxia is due to hanging or strangulation. The post mortem examination nor does the result of accessory examination mention any features suggestive of homicide. On perusal of all papers including post mortem notes, CA report, crime scene visit and examination of articles viz dupatta, the pieces of nylon rope, the doctors were of the opinion that asphyxia death is due to hanging. It is further stated that this is a case of suicidal hanging and not homicidal hanging. The report also indicate the reasons not favouring homicidal hanging, some of which are as follows :

- (a) There is absence of head injury and other fatal injuries on any part of body the deceased;
- (b) There is absence of any poison in the body;
- (c) The victim's height is 5.1 ft and weight is 68 kg i.e. she is a well nourished healthy individual who would have resisted if it is

was a homicidal attack and in that case there would have been either offensive or defensive injuries on her body;

(d) The point of suspension is easily accessible to the deceased;

(e) The statement of deceased father also states that his daughter has committed suicide due to repeated humiliation and torture;

(f) Cases of homicidal hanging are extremely rare.

17. Taking into consideration the factual matrix as stated hereinabove and analysing the material on record, I do not find any reason to set aside the order passed by the Trial Court. In the circumstances, the application deserves to be dismissed. Hence, I pass following order :

ORDER

- (i) Criminal Revision Application No.351 of 2018 is dismissed;
- (ii) The Trial Court shall proceed with the trial in accordance with law.

(PRAKASH D. NAIK, J.)

MST