

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

% Judgment reserved on : 28th August, 2018
Judgment delivered on: 24th September, 2018

+ **CRL.REV. P. 93/2016**

STATE

..... Petitioner

versus

NAFISA @ ANISA & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Ms. Neelam Sharma, Addl. PP for the State

For the Respondent : Mr Kapil Singhal, Advocate.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J.

1. State has filed this revision petition impugning order dated 04.03.2015 in FIR No. 580/2014 under Sections 302/498A/304B Indian Penal Code, 1860 (IPC for short), Police Station Gokul Puri, in so far as the order discharges the respondents of the commission of offence under Sections 498A /304B IPC.

2. Respondent No. 1 was the mother-in-law of the deceased. Respondent no. 2 was the husband of the deceased.

3. By the impugned order on charge, trial court has declined to frame charges under Section 498A/304B IPC against either of the two accused, however, has framed a charge under Section 302 IPC against

respondent no. 2, the husband.

4. Subject FIR was registered on the complaint of the deceased who had sustained burn injuries. A call was received and when the Constable reached the house of the complainant, she was found in a fully burnt condition and was taken to hospital. Doctor declared that she had sustained 95% to 100% burns, however, was fit for statement. Her statement was recorded by the concerned SDM. On her statement, subject FIR was registered under Section 498A/307/34 IPC. Subsequently, two days later, the complainant died due to burn injuries. On her death, Section 302 IPC was added.

5. It would be expedient to refer to the FIR, which was recorded on the statement of the victim. The English translation of the same reads as under:-

“Statement of Nazmin, Wife of Bobby dated 10.06.2014, at 9.15 am. I Nazmin, D/o Late Latif and Wife of Adil @ Bobby, Resident of H. No. F-2, Gali No. 2, Sundar Nagri, Delhi, Aged about 19 years do hereby solemnly affirm that my marriage was solemnized on 24.03.2014 according to the rites and rituals of Muslim Community and my parents had given sufficient dowry according to their status. On 09.06.2014, I along with my father-in-law, mother-in-law and sister of my mother-in-law Anisa came back from my parental home to my matrimonial home at around 7 pm. I cooked for all the family members and after having food my husband told me that you came here to drink my blood and he hit me thrice by hand and said that I will set you on fire. I was laying on a sofa situated at the outside of the room and my husband lay down on the bed inside and I slept. At about 12.30 am

in the midnight I felt that I have been set on fire and while burning I ran towards upstairs where other family members were sleeping and I was shouting. PCR officials took me to Emergency Ward of GTB Hospital. My husband has set me on fire and my mother-in-law Anisa used to harass me. Appropriate legal action may be taken against them. I am giving this statement in my full conscious. LBT Impression of Nazmin”

(underlining supplied)

6. The trial court in the impugned *order on charge* has taken into account the allegations in the FIR as also the statement of the witnesses recorded and has opined that in none of the statements, there is any allegation with regard to demand of dowry or harassment for dowry.

7. The statement of the deceased to the SDM makes specific allegation against her husband. There is no allegation with regard to any demand for dowry or harassment for dowry. The only allegation against respondent no. 1, the mother-in-law is that she used to harass her. Deceased has not stated that the harassment was because of dowry.

8. Section 498-A IPC reads as under:

“498A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purpose of this section, “cruelty”

means—

- (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or*
- (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”*

9. For Section 498A to be satisfied, subjection of a woman to cruelty is necessary. Cruelty, has been defined by explanation to Section 498A IPC to mean wilful conduct of such a nature as is likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health of woman or harassment of the woman with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or on account of failure to meet such demand.

10. Section 304B IPC reads as under:-

“304-B. 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.”

11. The ingredient of Section 304B IPC is where death has occurred otherwise than under normal circumstances within seven years of marriage and it is shown that soon before her death, her husband or any relatives in connection with any demand for dowry subjected her to cruelty or harassment.

12. The Supreme Court in *Dilawar Balu Kurane v. State of Maharashtra*, (2002) 2 SCC 135 has held as under:

“12. Now the next question is whether a prima facie case has been made out against the appellant. In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained the court will be fully justified in framing a charge and proceeding with the trial; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was

conducting a trial (see Union of India v. Prafulla Kumar Samal [(1979) 3 SCC 4 : 1979 SCC (Cri) 609]).”

13. For a charge to be framed the material placed before the court should disclose grave suspicion against the accused and if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused.

14. In the present case, there is no material or evidence on record to show that there was ever any demand for dowry or harassment or cruelty relating to any demand for dowry, either by the husband or by his mother.

15. The allegation made by the deceased/complainant is that when she was sleeping, she felt that someone had burnt her and she has specifically stated that her husband, respondent no. 2 had burnt her. There is no averment or allegation by the complainant that there was any harassment or cruelty in relation to dowry. As she has categorically stated that her husband had burnt her, trial court has framed a charge under Section 302 IPC against the husband and since there is no material on record to show the commission of offence under Section 498A IPC or Section 304B IPC either by the mother-in-law or the husband, trial court has, in my view, rightly discharged the mother-in-law and the husband under Section 498A and 304B IPC.

16. In view of the above, I find no infirmity in the view taken by the trial court in discharging the respondents of the offences under Section 498A and 304B IPC. The petition is accordingly dismissed.

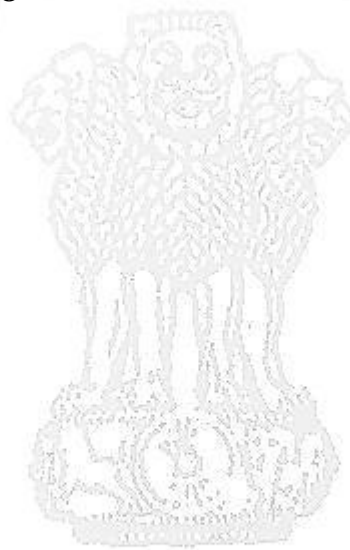
17. Order *Dasti* under signatures of Court Master.

SEPTEMBER 24, 2018

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SANJEEV SACHDEVA, J

HIGH COURT OF DELHI



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