

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.R. No.1293 of 2019

1. Chandra Shekhar Kaushik S/o Late Lalji Kaushik Aged About 70 Years

2. Pushpa Kaushik W/o Chandra Shekhar Kaushik Aged About 62 Years

(Both are r/o Saraswati Rice Mill, Main Road, Akaltara, Police Station
Akaltara, District Janjgir Champa, Chhattisgarh)

---- Petitioners

Versus

- State Of Chhattisgarh Through Station House Officer, Akaltara, District
Janjgir Champa, Chhattisgarh

---- Respondent

For Petitioner : Mr. Sumit Singh, Advocate.

For State : Mr. Devendra Pratap Singh, Dy.A.G.

For Objector : Mr. Gautam Khetrapal, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

18-10-2019

Heard.

1. This petition has been brought against the order framing charge dated
20.09.2019 by the Court of Third Additional Sessions Judge, Janjgir-
Champa, Chhattisgarh.

2. Learned counsel for the petitioner submitted that the petitioners are
father-in-law and mother-in-law of the deceased- Chetana Kaushik. The
marriage of the deceased with the son of the petitioners was performed
on April, 2010. The relation of the petitioners with the deceased did not
get along well for the reason that the deceased wanted to reside
separately with her husband and children. The only allegation made by
the mother of deceased in her statement under Section 161 of Cr.P.C. is

this that these petitioners have never tried to resolve the dispute between the deceased and her husband and on the contrary, they used to taunt her and subsequent to that, the deceased started living separately with her children and then she committed suicide. This statement makes it clear that the deceased, when she committed suicide on 14.09.2018, was not living with these petitioners. Similar is the content of the F.I.R.

3. It is also submitted that the statement of other witnesses namely- A.S.I.- Chandrakant Tiwari, female Constable- Nandani Madhukar, Constable- Sheshnarayan Sahu, shows that the dispute had been only between the deceased and her husband. The copy of counseling proceeding that has taken place before the Family Counseling Center is produced along with the petition, according to which, there is nothing to conclude that the petitioners had in any manner instigated the deceased to commit suicide, therefore, the charge framed against them for commission of offence under Section 306/34 of I.P.C. is totally without any substance as there is no prima-facie case. Therefore, prayed that his application be allowed and the petitioners be discharged.
4. The learned counsel for the State opposes of the petition and the submissions made in this respect and submits that the statement of the witnesses in other circumstances very clearly shows that a prima-facie case is made out against these petitioners. There is evidence to show that these petitioners had tortured the deceased during her lifetime by mis-behaving and also by making untoward comments on her because of which she was frustrated and this has compelled her for commission of suicide. Hence, prayer that this petition may be dismissed.
5. Learned counsel for the objector after adopting the arguments advanced

by the learned counsel for the State submits that in fact it had been a case of murder which has been suppressed in the investigation and a charge-sheet has been filed for commission of offence of abetment to commit suicide. Smt. Vimla Kashyap, the mother of deceased had given a complaint on 03.10.2018, in which she has made allegations regarding the torturous behavior of the petitioners and the husband of the deceased. She has stated that on 13.09.2018, Nikhil Kaushik, the husband of deceased, had made a phone call, it was during the call, the complainant had heard the voice of deceased, that she was crying and requesting to allow her to talk with her parents, but the phone was hanged and thereafter on 14.09.2018, the complainant came to know that the deceased had committed suicide. In this complaint, she has raised her doubts that the deceased was a woman of strong will and she loved her children very much, therefore, it was not possible for her to commit suicide. She has also raised doubts that a conspiracy was hatched to conceal and suppress the real facts and circumstances and to show that it is a case of suicide, whereas, there were injuries found on the hands, neck and ear of the deceased. The photographs show that the feet of the deceased were touching the ground and her knees were on the dressing table and there were also injuries on her head to show that she was beaten. Therefore, it was prayed that case of murder be registered against the applicants and others.

6. Making reference to the Jurisprudence of Modi, it is submitted that there are prominent symptoms to show that it had been a case of strangulation instead of hanging, for the reason that the eyes of the deceased were open, marks of fingers pressing throat were also present on the neck of the deceased according to the photographs produced. Further, the marks of injuries on the body of the deceased suggests that

there had been some struggle before her death.

7. Making reference to judgment of Supreme Court recently delivered in ***Vinubhai Haribhai Malaviya & Ors. Vs. State of Gujarat & Anr.*** in ***Criminal Appeal Nos. 478-479 of 2017 decided on 16.10.2019***, it is submitted that it is a case where further investigation can be ordered on the basis of facts and circumstances present which have not been given any consideration by the Investigating Officer and the charge-sheet has been filed for prosecution of offence of abetment to commit suicide. It is also submitted that there is evidence to show that these petitioners had equally participated in torturing the deceased as a result of which she has committed suicide. Therefore, no case is made out for discharge.
8. Heard learned counsel for both the parties and also perused the documents present.
9. Morgue intimation was given by co-accused- Nikhil Kaushik, the husband of the deceased, that the deceased has committed suicide on 14.09.2018 in the house where she was residing separately, on that basis F.I.R. has been lodged. In the inquest procedure, the mother of deceased had raised doubts that the case was not of suicide and instead it was of murder. Copy of postmortem report which is attached with the petition shows that injuries of contusion were seen on the left hand elbow and below wrist, one abrasion mark on the left hand between shoulder joint and elbow and description of the noose and ligature marks are given. There is no report of any other injury found on the body. In the internal examination, her both lungs were found congested, blood was found on the right ventricle of the heart whereas, the left ventricle was empty. Considering the ligature mark, the opinion has been given by the Examining Doctor that cause of death is

asphyxia, which has resulted due to ante-mortem hanging. Therefore, the opinion has been given that death is suicidal.

10. There is no such report of the Examining Doctor that there had been any injury of fingers marks on the neck of the deceased, which may have been suggestive of strangulation. Further, the injury that have been reported, their description has been given.

11. Mother of deceased- Smt. Vimla Kashyap, has stated in her statement under Section 161 of Cr.P.C. that the applicants, who are in-laws of the deceased, had never accepted the deceased as their daughter in-law, they used to mis-behave and her husband also use to mis-behave with her. Earlier, a case was filed before the Family Court but that resulted in no solution. Thereafter, the deceased was living separately in a room with her children. It is stated by her that the husband of the deceased has directly instigated the deceased to go and die, therefore, he had been responsible for the death of the deceased. Similar statement has been given by other witness- Mithlesh Kashyap, who is brother of deceased. Aarav Kashyap, the son of deceased has not made any statement against the applicants. Om Prakash Kashyap, who is uncle of the deceased, has stated that the deceased used to narrate him about the torture given by her in-laws and husband. Same is the statement of Mahendra Kumar Kashyap, uncle of the deceased.

12. On perusal of the whole material present in the charge-sheet, it is found that the deceased was living separately from these applicants at the time she committed suicide and there is no such evidence or other circumstance that these applicant had any participation in any quarrel with the deceased before she committed suicide. On the contrary, the morgue intimation, which is statement of the co-accused, Nikhil

Kashyap, shows that deceased had come to quarrel with him and thereafter, she had left giving this threat that she will commit suicide.

13. All the apprehensions that have been raised by the objector side are just apprehensions for the reason that the postmortem report and the charge-sheet do not show any strong and specific evidence that the death of the deceased may have been a case of throttling or strangulation. The minor injuries found are sufficient only to raise doubt. The clear finding in postmortem report is that the cause of death was asphyxia and that was due to anti-mortem hanging and the other symptoms are very clearly suggestive that it is a case of suicide. Therefore, only because the parents of the deceased feel that it is a case of murder, no such order can be passed for further investigation in this. There are no such strong material to show that things have been suppressed in the investigation. On the basis of the discussions made hereinabove, I am of this view that there is nothing to suggest in the material present in the charge-sheet that the petitioners had any opportunity to instigate the deceased to commit suicide and further, there is no evidence to show that they conspired in any manner with the other co-accused as a result of which the deceased committed suicide or that they deliberately aided the deceased in committing suicide. Therefore, the charge framed under Section 306 of I.P.C. against these applicants is erroneous for which there is no prima-facie case present. Therefore, the petitioners deserve to be discharged from this offence. However, there is material present in the evidence that may cover offence under Section 498(A) of I.P.C., hence, the petitioners are not entitled for complete discharge. Therefore, the petition is allowed with such modification that the order framing charge against the petitioners for commission of offence under Section 306/34 of I.P.C. is hereby set

aside. However, the trial Court may consider on the basis of evidence present whether a prima-facie case is made out under Section 498(A) of I.P.C. against these petitioners. Therefore, the petitioners shall remain present before the trial Court on the next date of hearing fixed by the trial Court.

14. Accordingly, the petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Monika