

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

% Judgment delivered on: 14th November, 2019

+ CRL. REV. PET. 610/2016 & Crl. M.A. 14229/2016 (stay)

YOGESH KUMAR & ORS. Petitioners

versus

STATE Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. Akshay Malik with Mr. Anirudh Sharma, Advocates.

For the Respondents: Ms. Meenakshi Dahiya, APP for the State with SI
Rajender Singh, PS Malviya Nagar.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

1. Petitioner impugns judgment dated 24.05.2016 and the consequent charge framed by order dated 14.07.2016 whereby petitioners have been charged for the offences under Sections 498-A/304-B/34 of the IPC.

2. Petitioner no. 1 is the husband of the deceased. Petitioner no. 2 is the father-in-law. Petitioner no. 3 is the brother-in-law. Petitioner no. 4 is the mother-in-law and petitioner no. 5 is the wife of the brother-in-law of the deceased.

3. Marriage between petitioner no. 1 and the deceased was solemnized on 26.02.2012. Within 7 months of marriage, i.e. on 25.09.2012, the deceased, who was five months' pregnant at that time, was found hanging from the ceiling fan of her matrimonial house.

4. FIR bearing No. 416/2012, Police Station Malviya Nagar, was registered under Sections 498-A/304-B/34 of the IPC on the statement of Tarun Kumar, brother of the deceased, which was given on 14.10.2012.

5. It is alleged in the FIR that they had performed the marriage with great pomp and show and had spent approximately Rs. 5½ lakhs on the marriage.

6. It is alleged that after some days of the marriage, the husband and the family of the deceased i.e., the petitioners started making demands for dowry from the deceased and used to beat her daily. It is alleged that they tried to reason with the petitioners, however, they did not agree. It is alleged that deceased used to complain to her elder sister and also used to complain that petitioner no. 1 used to spend most of his time with petitioner no. 5 and was maintaining distance with the deceased.

7. It is alleged that the deceased informed the complainant and his mother that the petitioners were demanding Rs. 2 lakhs. In the month

of August, 2012, the complainant and his mother gave a sum of Rs. 2 lakhs to the petitioners. After receipt of the said amount, pressure was being built upon the deceased for getting a four-wheeler.

8. It is alleged that on 23.09.2012 deceased had come to her parents' house for the birthday celebrations of her nephew. Since the elder sister could not come, the deceased went to her house. The complainant further alleged that the deceased told her elder sister that she was afraid of her in-laws and they were threatening to kill her. The next day, the deceased went to All India Institutes of Medical Sciences (AIIMS) for her routine checkup and after that went back to her matrimonial house. In the evening, a missed call was received by the other brother of the deceased from the phone of the deceased and when he called back, deceased is alleged to have told him that her in-laws were threatening her and that they were making her write on certain documents. Thereafter she disconnected the phone. Very next day, the deceased is alleged to have committed suicide.

9. After investigation, charge sheet was filed. As per the charge sheet, when the Investigating officer (IO) reached the spot he found a diary which was identified by the husband of the deceased as the diary of the deceased. In the diary there was an alleged suicide note. The hand writing on the suicide note was identified by petitioner no. 1 as

the hand writing of the deceased. Subsequently, it is alleged that the handwriting has also been identified by the brothers of the deceased.

10. As per the note of 25.09.2012, the deceased is alleged to have written that she was feeling very sorry because she had misbehaved with her mother-in-law and father-in-law and because of that reason she had no intention to live and that no one should be blamed for the incident and she was committing suicide and was also taking her unborn child with her.

11. In the impugned order dated 24.05.2016, trial court relied upon Section 113-B of Indian Evidence Act as also the statement given by the family members of the deceased to the Investigating officer. Trial court has held that the report of the handwriting expert, could not be completely relied on as sufficient data was not available with the handwriting expert to base his opinion and the opinion is based particularly on one word i.e. signatures of the deceased and accordingly the trial court was of the view that charge was liable to be framed.

12. Learned counsel for the petitioners contends that the suicide note recovered from the spot completely exonerates the petitioners and it clearly indicates that the deceased was committing suicide because she had misbehaved with her in-laws and was sorry for her conduct. Learned counsel further contends that immediately after the

deceased expired, inquest proceedings were conducted by the Sub-Division Magistrate and statements of mother and brother of the deceased were recorded. In the said statements, no allegation of demand of dowry or harassment was made.

13. It is further contended that the FIR has been registered solely on the basis of the statement of the other brother of the deceased which was made to the Investigating Officer after a gap of 20 days. It is further alleged that the statement based on which the FIR was registered is to some extent hearsay and that part of the statement could not have been relied upon.

14. Learned counsel for the petitioner relied on the judgement of the Supreme Court in *Sharad Birdhichand Sarda Versus State of Maharashtra (1984) 4 SCC 116* to contend that the suicide note has the same evidentiary value as a dying declaration. Learned counsel further relied on the judgement of the Supreme Court in *State of Andhra Pradesh versus M. Madhusudan Rao (2008) 15 SCC 582* to contend that delay in lodging an FIR is fatal to the prosecution case.

15. Learned counsel further relied on the judgement of the Supreme Court in *Ramaiah Versus State of Karnataka (2014) 9 SCC 365* to contend that the delay, in lodging of the FIR affects the credibility of the prosecution case. Further reliance is placed on the decision of this court in *Satbir Dalal & Others Versus State 257 (2019) DLT 613* to

contend that where facts do not disclose grave suspicion, accused were liable to be discharged.

16. It may be noticed that marriage between the deceased and petitioner no. 1 was solemnized on 26.02.2012 and the unnatural death occurred on 25.09.2012 i.e. within 7 months of the marriage, when the deceased was five months' pregnant.

17. Though the statement of the complainant – Tarun Kumar, brother of the deceased, has been recorded after a gap of 20 days, nonetheless the statement makes allegations of harassment with regard to the demands of dowry. Complainant has also alleged that he along with her mother paid Rs. 2 lakhs to the petitioners in the month of August, 2012. Mere because there is some delay in making a complaint would be no ground to discharge the accused.

18. Though contention of petitioners is that no complaint was made by the mother and brother of the deceased to the SDM at the time of the inquest proceedings, however it may be seen that mother of the deceased, in her statement given to the Investigating Officer under Section 161 Cr. P.C., has supported the allegations made by the complainant.

19. Whether the mother of the deceased made any statement in the inquest proceedings or not and which of the two statements have to be

given credence, is a matter for trial. Inquest proceedings are no substitute for trial. Statements, if any, recorded during inquest proceedings are also to be proved in accordance with law and cannot be taken as absolute proof of what is contained therein.

20. At the stage of framing of charge, no doubt, the Court would take into account contradictions, if any, but the Court has also to be conscious of the fact that merely because there are certain discrepancies in the version of the family members of the deceased that *ipso facto* would not imply that the statements which implicate the accused have to be completely ignored.

21. At the stage of framing of charge, the Court has to see as to whether such circumstances exist, which raise grave suspicion of the offence having been committed by the accused.

22. The fact that the deceased suffered an unnatural death within 7 months of her marriage, when she was five months' pregnant coupled with the fact that allegations are that there were demands of dowry as well as harassment on the account of the dowry and further that a sum of Rs. 2 lakhs was allegedly given to the petitioners in the month of August, 2012, about a month prior to the unnatural death of the deceased gives rise to grave suspicion of the offence having been committed by the petitioners.

23. In the facts and circumstances of the case, the trial court has rightly relied on the statutory presumption that arises under Section 113B of the Indian Evidence Act. More so, in view of the statements given to the Investigating Officer, by the brother and mother of the deceased about dowry demands, harassment and also of giving of money to the petitioners. The Trial Court has also taken into account the fact that the opinion of the handwriting expert is based on a particular word i.e. signatures of the deceased and prima facie returned a finding that sufficient data was not available with the handwriting expert to render the view.

24. It may further be observed that the report of the handwriting expert is merely a corroborating piece of evidence and is not conclusive proof of the facts alleged therein. At the stage of framing of charge, the Court cannot presume the report of the handwriting expert to be gospel truth.

25. It cannot be said, in the facts and circumstances of the present case, that grave suspicion does not arise so as to hold that no charge is liable to be framed against the petitioners.

26. The trial court has rightly held that, no doubt the earlier version of the brother-complainant and mother of the deceased to the SDM does not blame anyone, however, there were two subsequent statements of the other brother and sister which were recorded by the

investigating officer, which accuse the petitioners of their making dowry demands and harassing the deceased.

27. The sister of the deceased had alleged in her statement given to the investigating officer that deceased used to confide in her and had on number of occasions mentioned that she was facing problems in her matrimonial life and was being pressurized to bring a car and money.

28. Reliance placed by learned counsel for the petitioner on the judgements of the Supreme Court in *Sharad Birdhichand Sarda (supra)*, *M. Madhusudan Rao (supra)* and *Ramaiah (supra)* is misplaced inasmuch as in all the said judgements the Supreme Court was considering the case of the accused after trial. In the present case petitioners are seeking a discharge.

29. Whether the alleged note is a suicide note or not is yet to be proved at trial. Then the question of it having the same evidentiary value as a dying declaration, would be considered. Further, whether there is any delay in lodging the FIR which has not been explained and whether the same is fatal or affects the credibility of the prosecution case would be considered after trial.

30. The reliance placed by learned counsel for the petitioner on the decision of this court in *Satbir Dalal (supra)* is also misplaced as in

the said case the petitioners were the in laws and the deceased was living separately with her husband and there was no material against the petitioners therein raising grave suspicion unlike the present case.

31. I am of the view that the impugned order framing charge against the petitioners does not suffer from any infirmity and does not warrant any interference.

32. I find no merit in the petition. The petition is accordingly dismissed.

33. It is clarified that this Court has not expressed any opinion on the merits of the case and nothing stated herein shall be relied on by the trial court at the stage of passing of final order.

34. Original record received from the Trial Court be sent back.

35. Order *dasti* under signatures of the Court Master.

NOVEMBER 14, 2019
‘rs’

SANJEEV SACHDEVA, J