

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

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Judgment reserved on : 31st January, 2019

Judgment delivered on: 15th March, 2019

+ CRL.REV.P. 649/2017 & Crl.M.A.14196/2017 (stay)

AJEET KUMAR

..... Petitioner

versus

STATE OF NCT OF DELHI

..... Respondent

Advocates who appeared in this case:

For the Petitioners	:	Mr. Rakesh Kumar Singh , Advocate.
For the Respondent	:	Mr. Hirein Sharma, APP for the State with SI R.N. Ashangsomatai, PS Patel Nagar. Mr. N.L. Sahai, Advocate for complainant.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J.

1. Petitioner impugns order dated 15.03.2017 whereby the charge has been framed against the petitioner under Section 498-A/304-B/34 of the IPC.

2. Petitioner was the husband of the deceased and was married to the deceased on 25.06.2012. A child was born from the wedlock on 10.07.2013. On 26.06.2016, the wife is alleged to have committed suicide.

3. On the complaint of the father of the deceased, the subject FIR No. 606/2016 was registered under Sections 498A/304B/34 of the IPC.

4. It is alleged in the FIR that the mother-in-law of the deceased was not happy with her and she did not want the petitioner to reside with her. It is alleged that after one year of residing in the matrimonial home in the village, petitioner along with deceased shifted to Delhi. It is averred in the FIR that the deceased used to talk to her mother but she never complained about any problem and the only complaint that she had made to the complainant was that some time her husband i.e. petitioner would not talk to her.

5. It is stated that the petitioner never beat her. It is stated in the FIR that neither the petitioner nor his family ever demanded dowry. They used to harass her only because they did not like the deceased. It is alleged that when the deceased was unwell and her brother had gone to meet her, she complained that her husband and his brother would not give her money for treatment. Subsequently, the deceased committed suicide on 26.06.2016.

6. During investigation the statement of the mother of the deceased was also recorded and she in her statement to the Investigating Officer, alleged that the petitioner and his family would not take care of the deceased and were not getting her treated for her illness.

7. Charge sheet was filed after investigation only against the husband i.e. petitioner.

8. The trial court by the impugned order and on perusal of the

material on record, held that death of the deceased was an unnatural death which occurred within seven years of marriage and there are clear-cut and specific allegations made by the parents of the deceased and as such the trial court was of the view that charge under Section 498-A/304-B of the IPC was liable to be framed.

9. Learned counsel for the petitioner contends that the trial court has erred in framing a charge against the petitioner and has solely gone on presumption. Learned counsel submits that perusal of the record shows that the parents of the deceased have categorically stated that there was never any demand for dowry or harassment on the ground of dowry of the deceased.

10. Learned counsel further contends that the statement of the family of the deceased is that the in-laws of the deceased did not like her and the petitioner would not permit her to buy things that she wanted or give her money for her treatment and that the petitioner never used to listen to her. Learned counsel submits that the ingredients of Sections 498-A and 304-B of the IPC are not made out.

11. In the impugned order, the trial court has recorded as under: -

“I have given my thoughtful consideration to the respective rival submissions made before me and I find substance in the contention of Ld. Addl. PP that in the present set of circumstances where the death of the deceased took place within the period of seven years from the date of her marriage with accused and further the death of accused was an unnatural death and in the statements of prosecution witnesses i.e. Gopal Prasad

Singh, Smt. Madhuri Singh and Anshuman there are specific and clear allegations regarding harassment and demand of dowry, so there are sufficient prima facie material on record for framing of charge u/s 498 A/304 B/34 IPC.

Charge u/s 498A/304B/34 IPC be framed, accordingly against accused.”

12. Perusal of the record shows that the observation of the trial court that in the statement of the prosecution witnesses i.e. parents and the brother of the deceased there are specific and clear-cut allegations regarding harassment and demand of dowry is not borne out from the record.

13. On the contrary, father of the deceased has categorically stated that there was never any demand for dowry from the deceased or any harassment on account of dowry. The mother of the deceased in her statement has stated that the in-laws were taking care of the deceased but there was nobody in her house to take care of her in the hospital when she was pregnant. She had stated that the deceased had complained to her that nobody in the petitioner's house would give any importance to what she had to say.

14. Father of the deceased has also filed a reply-cum-written submissions in these proceedings stating that he had never deposed before the Investigating Officer that there were any demands for dowry made by the petitioner, rather he had specifically stated that no demand for dowry was made. Further, it is contended that the

deceased had been residing in her parental house at Bihar for almost two to two and a half years and she had gone to Delhi in January, 2016 and during the period that she was staying at her parents' house in Bihar, petitioner had been taking care of her maintenance and had been regularly sending money to her bank account maintained with State Bank of India.

15. Trial court in the impugned order has solely relied on the statutory presumption of unnatural death within 7 years of marriage, without noticing that apart from statutory presumption other ingredients of the sections have also to be satisfied.

16. Section 498-A of the IPC reads as under: -

“Section 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.”

17. Section 304-B of the IPC reads as under: -

“304B - 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. Explanation.—For the purpose of this sub-section, “dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.”

18. Section 498-A IPC makes treating a woman with cruelty punishable. Cruelty has been defined as a wilful conduct which is likely to cause the woman to commit suicide or to cause grave injury or danger to life and harassment with a view to coerce her or any person related to her to meet any unlawful demand for any property or valuable security.

19. Section 304-B of the IPC stipulates that where a death of a woman occurs otherwise than under normal circumstances within seven years of 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

20. Prior to the deeming fiction under Section 304-B IPC coming into play, two things have to be established by the prosecution; i.e. (i) death has occurred otherwise than under normal circumstances within seven years of marriage and; (ii) soon before her death, the deceased was subject to cruelty or harassment in connection with demand for dowry.

21. In the subject case, the trial court has invoked statutory presumption solely on the ground that death has occurred otherwise than under normal circumstances within 7 years of marriage. The trial court has erred in not appreciating that the basic ingredient of harassment or demand for or in relation to dowry is absent in the present case. Requirement of both Sections 304-B and 498-A is harassment or demand for dowry. In the present case, categorical statement of the father of the deceased is that there were no demands for dowry. The mother and the brother of the deceased have also not stated that there was any ever demand for dowry. Rather the statement is that the petitioner used to maintain the deceased and deposit money in her account even when she was staying at her parents' house for 2 – 2½ years.

22. The allegations are that the deceased was not liked by the

family of the petitioner, they would not take care of her, she was not given money to purchase things she liked and petitioner would not talk to her some times. These allegations would not satisfy the requirements of section 498A or 304B. Firstly, no specifics have been given and secondly there is categorical assertion that the deceased was never beaten or harassed for dowry. Perusal of the record does not show that there is any allegation of harassment for or in connection with demand for dowry rather statements of the family of the deceased are to the contrary.

23. On perusal of the record, I am of the view that the prerequisite for framing of charge i.e. grave suspicion that the accused is likely to have committed the offence is absent in the present case.

24. In view of the above, impugned order framing charge under Section 498-A /304-B/34 of the IPC against the petitioner cannot be sustained. The impugned order dated 15.03.2017 is accordingly set aside. The petitioner is discharged of all offences. The petition is allowed in the above terms.

25. Order *Dasti* under the signatures of Court Master.

MARCH 15, 2019/‘rs’

SANJEEV SACHDEVA, J