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

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Judgment delivered on: 12.03.2019

+ CRL.REV.P. 605/2017

BABU LAL JHA & ANR

..... Petitioners

versus

STATE OF GNCT OF DELHI

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Neeraj Bhardwaj, Advocate.

For the Respondent : Ms. Meenakshi Dahiya, APP for the State.
Insp. Prahlad Singh, PS Shahdara.
Mr. Ajit Nair with Mr. Dharampal Tiwari and Mr.
Avdesh Nuiwala, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

**CRL.REV.P. 605/2017 & CrI.M.A.13222/2017 (stay),
CrI.M.A.31993/2018 (for early hearing)**

1. Petitioners impugn order dated 31.05.2017, whereby, charge has been framed against the petitioners under Section 498A/34 304B/34 IPC and an alternative charge under Sections 302/34 IPC has also been framed. Petitioners are the parents-in-laws of the deceased.

2. Subject FIR was registered on the complaint of the father of the deceased, who contended that his daughter had got married on 25.02.2008 and she was initially living with her in-laws at their house in the village. It

is alleged that immediately after marriage, petitioner No.2 started demanding dowry from her and even the petitioner No.1 – her father-in-law used to harass her. Within one year of marriage she was turned out of her matrimonial house and started residing with her parents. Subsequently, it is alleged that the parents made her understand and she went back to her matrimonial house.

3. The husband and wife are alleged to have shifted to Delhi where the husband was working. It is alleged in the FIR that from time to time the husband of the deceased as well as the petitioners used to make demand for dowry and the father of the deceased would meet the demand from time to time.

4. It is alleged that few days before her death, the father of the deceased had provided Rs.30,000/- for purchase of a TV. Further, it is alleged that the petitioners being uneducated and the deceased being a graduate was being harassed with regard to upbringing of the child.

5. The deceased is alleged to have committed suicide on 19.06.2012 and chargesheet was filed alleging that the nature of injuries recorded in the MLC was not supportive of the theory of suicide and indicated towards the commission of offence of murder. On perusal of the record, the Trial Court framed charges against the petitioners under Sections 498A/304B read with Section 34 IPC. Alternatively, the Trial Court has framed a charge under Sections 302/34 IPC.

6. Learned counsel for the petitioners submits that the allegations with regard to demand for dowry and harassment are general and vague and

there is no material to show that the petitioners were either residing with the deceased or were present at the time when she died.

7. Learned counsel for the petitioners submits that the Trial Court has framed an alternative charge under Section 302 IPC merely on presumption.

8. Learned APP for the State as also learned counsel appearing for the complainant submits that there is sufficient material to show that the deceased was subjected to demand for dowry as well as harassment from time to time on account of dowry and further the demands for dowry were met by the parents of the deceased from time to time.

9. Learned counsel appearing for the complainant submits that a cheque for Rs.1,44,000/- was given to the petitioner No.1 to meet his demand for dowry. It is disputed by the petitioners that the said amount was given towards dowry.

10. Perusal of the impugned order shows that the Trial Court has framed an alternative charge under Section 302 IPC raising a negative presumption. The Trial Court has *inter alia* held as under:-

“From the material on record, I am of the view that there is prima facie case for framing charge against accused Babu Lai Jha and Urmila Devi u/s. 498-A/34 and 304-B/34 IPC. As far as alternative charge u/s. 302 IPC is concerned, since the presence of these two accused at the spot is neither confirmed nor ruled out, it is better to frame charge in the alternative u/s. 302/34 IPC as well.

Charges framed accordingly to which both the accused pleaded not guilty and claimed trial.”

11. The Trial Court has framed alternative charge under section 302/34 IPC solely on the ground that the presence of the petitioners at the spot is neither confirmed nor ruled out. It is an admitted position that the petitioners were not ordinarily residing with the deceased in Delhi and were residing in Muzzafarpur District, Bihar.

12. Though there is a dispute as to whether normally the petitioners would visit Delhi from time to time or not, however, there was no material to show that they either visited Delhi or in and around the date of the death or were present in Delhi on the day of the incident. None of the prosecution witnesses have in their respective statements even alleged that the petitioners were either visiting the deceased or were seen in Delhi around the time of her death.

13. Insofar as the charge under Section 302 is concerned, the presence of the petitioners is not established or even alleged by any of the witnesses. A charge cannot be framed solely on a presumption that their presence is neither confirmed nor ruled out. For framing a charge, grave suspicion is required to be shown by the prosecution of the involvement of the accused in the subject offence. It would have been a different case if there was a witness alleging that the petitioners were present in Delhi and they were disputing the same, in which case, it would have been a matter for trial but none of the prosecution witnesses have even alleged that the petitioners were seen in Delhi or in the house where the deceased was residing when her death occurred.

14. Further, there is no material on record to show common intention also.

15. In view of the above, the alternative charge framed against the petitioners under Section 302/34 IPC clearly is not sustainable.

16. Coming to the charge under Sections 498A and 304B/34 IPC, I am *prima facie* of the view that there is sufficient material to give rise to grave suspicion against the petitioners of having committed the subject offence.

17. The complainant, i.e., the father of the deceased, her mother and her brother have categorically stated that from time to time demand for dowry was being raised by not only the husband but also the petitioners. They have also averred that the said demand was being met from time to time. The complainant has also alleged that few days before the death of the deceased, he had paid Rs.30,000/- for purchase of a TV. The death of the deceased has occurred within 7 years of marriage and is a death other than from natural circumstances and there are averments of the family of the deceased that soon before the death of the deceased, she was subjected to demands for dowry *inter alia* by the petitioners.

18. In my *prima facie* view, the allegations give rise to grave suspicion of petitioners having committed an offence under Sections 498A/304B IPC and the facts, as alleged, satisfy the basic ingredients of the said Sections.

19. In view of the above, I find no infirmity in the impugned order insofar as it framed charges under Section 498A/34 & 304B/34 IPC against the petitioners.

20. Accordingly, the petition is allowed to the limited extent that the impugned order, insofar as it frames alternative charges under Sections 302/34 IPC against the petitioners is concerned, is set aside and the impugned order, insofar as it frames charges under Sections 498A/34 IPC and 304B/34 IPC against the petitioners is concerned, is sustained.

21. The Trial Court shall, accordingly, modify the charges in terms of this order.

22. The petition is disposed of in the above terms.

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

MARCH 12, 2019
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SANJEEV SACHDEVA, J

नस्यमेव जयते