

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

% Judgment delivered on: 14th February 2019

+ CRL.REV.P. 678/2015 & Crl. M.A. 15667/2015

SATBIR DALAL & ORS

..... Petitioners

versus

STATE (GOVT OF NCT OF DELHI)

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Anunaya Mehta and Mr. Akshay Deep Singhal, Advs

For the Respondents : Ms.Kusum Dhalla, APP for the State

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

1. The petitioners impugn order on charge dated 08.09.2015 and the consequent charge framed against the petitioners under Section 498A/304B/34 IPC.

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

3. Case of the prosecution is that in the night intervening 20-21/02/2015 an information regarding quarrel was received at police station Begumpur. A head constable who was directed to investigate. He reached the spot and found that the address given was incorrect. He was diverted to the correct address. On reaching there he came to know that a woman had been taken to Sanjay Gandhi Memorial Hospital. Simultaneously an information was received at the police station Begumpur from Sanjay

Gandhi Memorial Hospital that one woman had been admitted and was declared brought dead by the doctor. The doctor opined on the MLC *“alleged history of hanging and declared brought dead”*.

4. It is the case of the prosecution that the deceased was married to one Harvinder Dalal on 27.11.2009 and her death had taken place within seven years. Statement of the parents of the deceased was recorded who alleged that the husband and in-laws had started harassing the deceased after 5-6 months of marriage on small matters and demanded money from time to time. It is alleged that a Santro car was given as dowry but there was demand for a bigger car.

5. The father of the deceased had given money on several functions to the husband and on account of quarrel the deceased and her husband had shifted to Rohini and all expenses were borne by him. It is alleged that on shifting to Rohini the father of the deceased had given money and also bought all the items required in the flat. Subsequently on the night of the incident the son of the complainant received a call from the husband that something had happened to his daughter. It is alleged that he reached Sanjay Gandhi Memorial Hospital. He found his daughter dead.

6. It is alleged that the husband of the deceased and the in-laws i.e. the petitioners used to harass her. On the statement of the complainant subject FIR was registered.

7. It is contended by learned counsel for the petitioners, who are the in laws, that in so far as petitioners are concerned, the basic ingredients of Section 304B are not made out. It is contended that admittedly the deceased was not residing with the petitioners for last several years. It is alleged that

the averments in the complaint are general and bald allegations have been made against them which are not substantiated. It is alleged in the statements apart from general averments against the petitioners, there is no specifics given as to any harassment for dowry or otherwise on the part of the petitioners leave alone any harassment or demand for dowry soon before the death of the deceased.

8. It is contended that there is no proximate connection between the alleged harassment and the death. Relying on the judgment of this Court in *Hans Raj Sharma Vs. State Govt. of NCT of Delhi*, 175 (2010) DLT 446 and of *Jai Prakash Pandey vs. Prabhawati & Ors*, 224 (2015) DLT 47, it is contended that the allegation of expenditure incurred on the couple for setting up their house in Rohini and bearing of some expenditure of the husband cannot be said to be instances of demand for dowry on the part of the petitioners, who admittedly did not reside with them and were living separately.

9. It is further contended that the ingredients of offence under Section 498A IPC are not made out. It is contended that the requirement of Section 498A is that there should be a series of systematic and willful action of such a nature which is likely to drive a woman to commit suicide or cause grievous injury or danger to her life. It is contended that apart from making general and vague allegations against the petitioners, there is no specific instance of any harassment on the part of the petitioners which could qualify as an offence under Section 498A IPC.

10. Further it is contended that in so far as petitioners are concerned, charge sheet was filed without arrest as investigation did not reveal any offence against the petitioners regarding cruelty or harassment.

11. Charge sheet as also the status report filed by the prosecution contends that after investigation it was revealed that petitioners were living separately from the deceased and her husband for about 9-10 months prior to the date of the incident and investigation did not reveal any proof of dowry demand, harassment or any fight against the petitioners and as such charge sheet was filed against them without arrest.

12. The Trial Court by the impugned order has prima facie found that the father of the deceased had categorically alleged not only against the husband but also against the in-laws i.e. the petitioners. It is held that not only there were demands raised by the accused but the father of the deceased was even forced to meet the demands for happiness of his daughter. The Trial Court has noticed that the parents of the deceased had categorically alleged that a day prior to the incident the deceased had gone to the village at the house of the in-laws and they apprehended that the accused persons had killed their daughter and then bought her to Rohini.

13. The Trial Court has further held that since it was a case of unnatural death within seven years of marriage in view of provisions of Section 304B IPC read with Section 113B of Indian Evidence Act, prima facie case was made out against all the accused and accordingly charge was framed under Section 498A/304B read with Section 34 IPC.

14. Section 304B 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.”

15. Reading of Section 304B shows that the conditions precedent for establishing an offence under Section 304B are (i) that a woman has died otherwise than under natural circumstances, (ii) death was within seven years of marriage and the prosecution has established that there was cruelty and harassment in connection with demand for dowry soon before her death.¹

16. Section 498A 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 willful 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

¹ Baljeet Singh & Anr vs State Of Haryana, 2004 (3) SCC 122

security or is on account of failure by her or any person related to her to meet such demand.”

17. Section 498A defines cruelty to mean any conduct which is of such a nature as is likely to drive a woman to commit suicide or cause grave injury or death to life or harassment with a view to coerce her or any person related to her to meet any unlawful demand for any dowry or valuable security.

18. In the present case, the statement given by the father of the deceased is that the husband of the deceased initially was a farmer and after about 1½ years of marriage he got employed in Delhi Police as a driver. It is contended that upto about 5 – 6 months of marriage everything was normal but thereafter the in-laws used to harass the deceased on daily basis. It is alleged that not only the in-laws but the husband of the deceased also started harassing her and he used to make demands for money and that he used to satisfy the demands of his son-in-law. It is alleged that he had given a Santro car, however, his son-in-law wanted a bigger car. It is alleged that because of the daily bickering at home his daughter and son-in-law shifted to Rohini. After shifting to Rohini he used to meet all the household expenditure including getting the mobile phone recharged for the son-in-law. It is alleged that the son-in-law used to gamble and that is the reason he used to make a demand from his daughter for money and that the complainant used to pay money to his son-in-law.

19. It is a settled position of law that for framing a charge not only suspicion but grave suspicion is required. Perusal of the statements recorded by the father, mother and brother of the deceased show that the statements are identical. All of them have stated that the deceased along

with her husband had shifted out of the matrimonial home in village and they started living in Rohini. The allegation is that the husband of the deceased used to make a demand from the deceased for money for meeting his household expenses. The father of the deceased has categorically stated that he used to meet the expenses of the household of the deceased at Rohini and even bore the expenditure of the husband of the deceased like mobile phone recharge etc.

20. Perusal of the statements show that all the allegations are against the husband of the deceased. In so far as the petitioners are concerned, there is no material on record to show that they ever made a demand or any amount was paid to them for any purpose. Apart from making a bald allegation that there was bickering at the matrimonial home on account of which the deceased and her husband shifted out to Rohini, there is no evidence or material to substantiate the allegation that there was ever any demand for dowry made by the petitioners or any such demand was fulfilled or any harassment of the deceased by the petitioners for dowry.

21. To constitute an offence under Section 304B and Section 498A IPC, it not mere bickering which would amount to an offence but it should be harassment of such a nature that would drive a woman to commit suicide.

22. No allegation or incidence has been cited by any of the family members of the deceased of harassment or cruelty of a nature that would drive a woman to commit suicide or cause bodily harm.

23. It is not only a unnatural death within seven years of marriage that is required to be established, what is additionally required to be established and which was been lost sight of by the Trial Court, is that soon before the

death the deceased was subjected to cruelty or harassment and cruelty as defined under Section 498A should be of such a nature as is likely to drive a woman to commit suicide or cause grave injury.

24. The allegations made by the family of the deceased against the petitioners do not show that the deceased was subjected to cruelty of such a nature so as to qualify as an offence under Section 304B/498A IPC. Even the prosecution at the stage of investigation did not find any material against the petitioners.

25. Perusal of the record does not show grave suspicion, as is required for framing of a charge, arises against the petitioners.

26. In view of the above, the impugned order on charge dated 08.09.2015 and the consequent charge framed against the petitioners cannot be sustained and accordingly the same is quashed. The consequence to the same is that the petitioners are discharged of the offence under Sections 304B/498A/34 IPC.

27. It is clarified that this order shall have no bearing on the charge framed against the husband of the deceased and the consequent trial.

28. The petition is allowed in the above terms.

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

SANJEEV SACHDEVA, J

February 14th, 2019
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