

28.03. 2022
item No.5
n.b.
ct. no. 34

CRR 2597 of 2019

**Goutam Ghosh & Anr.
Vs.
The State of West Bengal**

Mr. Sandip Kumar Bhattacharyya,
Mr. Apalak Basu,
Mr. Dipta Dipak Banerjee,
.....for the Petitioners

Mr. Arijit Ganguly,
Ms. Debjani Sahu
.....for the State

The petitioners before this Court are the husband of the sister in law and the sister in law herself who have been implicated in connection with the Sessions Trial No.27 of 2018 arising out of Shibpur Police Station case no.1283 of 2013.

Mr. Bhattacharjee, learned advocate appearing for the petitioners draws the attention of this Court to the difference of statement which have been relied upon by the prosecution under Section 207 of the Code of Criminal Procedure as also the dying declaration and the injury report as also post mortem report. Learned advocate submits that a thorough assessment of the materials available in the Case Diary prima facie do not make out any case under Section 302 of Indian Penal Code so far as the present petitioners are concerned.

Ms. Sahu, learned advocate appearing for the State produces the Case Diary and draws the attention of this Court to

the statement of three neighbors as also the statement recorded by the Investigating Officer at the Hospital on December 20, 2013 and the Injury Report which incorporates the statements of the deceased before the Doctor on December 21, 2013 at 10.40 P.M.

Mr. Bhattacharjee, learned advocate has relied upon a decision of *Jasvinder Saini & Ors. Vs. State (Govt. of NCT of Delhi)* reported in (2013) 3 SCC (Cri) 295 drawing the attention to paragraph 15 of the said judgment which is set out as follows:

“15. It is common ground that a charge under Section 304-B IPC is not a substitute for a charge of murder punishable under Section 302. As in the case of murder in every case under Section 304-B also there is a death involved. The question whether it is murder punishable under Section 302 IPC or a dowry death punishable under Section 304-B IPC depends upon the fact situation and the evidence in the case. If there is evidence whether direct or circumstantial to prima facie support a charge under Section 302 IPC the trial court can and indeed ought to frame a charge of murder punishable under Section 302 IPC, which would then be the main charge and not an alternative charge as is erroneously assumed in some quarters. If the main charge of murder is not proved against the accused at the trial, the court can look into the evidence to determine whether the alternative charge of dowry death punishable under Section 304-B is established. The ingredients constituting the two offences are different, thereby demanding appreciation of evidence from the perspective relevant to such ingredients. The trial court in that view of the matter acted mechanically for it framed an additional charge under Section 302 IPC without adverting to the

evidence adduced in the case and simply on the basis of the direction issued in Rajbir case. The High Court no doubt made a half-hearted attempt to justify the framing of the charge independent of the directions in Rajbir case, but it would have been more appropriate to remit the matter back to the trial court for fresh orders rather than lending support to it in the manner done by the High Court.”

Learned advocate submits that the caution spelt out by the Hon'ble Supreme Court must be considered in the instant case.

Each case has to be considered in respect of the materials collected by the Investigating Agency and the probable charges, which can be framed on the materials so collected. In the present case, there is allegations against the present petitioners so far as the neighbours are concerned at least it spelt out that when the present petitioners came down to the matrimonial home of the deceased, there was an aggravated scenario, therefore, the involvement of the petitioners at this stage cannot be ruled out.

The second issue is regarding the observation of the learned Trial Court in respect of the concluding paragraph in the order dated 17.8.2019 where in the learned Trial Court was pleased to observe “there is sufficient prima facie evidence and in the Case Diary to frame charges under Section 498A/304B /34 of the Indian Penal Code and alternate charge under Section 302 of the Indian Penal Code against the accused persons”.

In view of the materials appearing in the Case Diary and considering the overall factual matrix and keeping in mind the principles and purpose for which charges were framed where the

materials appearing or relied upon by the prosecution are accepted to be true, the charges are tentative in nature. In this case the statement of the victim assumes immense importance as such, at the inception abundant caution has been exercised by the learned Trial Court, however, unnecessary addition of higher charges until and unless the materials surface out may have an impact on the petitioners. Regard being had to the materials available in the Case Diary, I am of the opinion, that so far as the accused, Surojit Ghosh and Anita Ghosh are concerned an alternate charge under Sections 302/34 of Indian Penal Code is maintainable alongwith Section 498A/304B/34 of the IPC. In respect of the petitioners charge should be framed under Sections 498A/304B/34 of the Indian Penal Code. The learned Trial Court would be at liberty to frame charges under Sections 302/34 of the Indian Penal Code against the petitioners only, if some materials surface out in course of evidence.

With the aforesaid observations, the part of the order which related to the observation of the learned Trial Court dated 17.8.2019 regarding charges to be framed under Sections 498A/304B/34 of the Indian Penal Code and alternate charge under Section 302 of the Indian Penal Code is hereby set aside.

The learned Trial Court would frame charges so far as the present petitioners are concerned under Section 498A/304B/34 of the Indian Penal Code.

Accordingly, CRR 2597 of 2019 is partly allowed.

All pending connected applications, if any, are consequently disposed of.

Interim order, if any, is hereby vacated.

The learned Trial Court is directed to progress with the trial as the case was registered in the year 2013.

In case prosecution intends to rely upon documents which was not supplied to the accused persons under Section 207 of the Code of Criminal Procedure learned Trial Court would ensure that the same is supplied to the accused prior to cross-examination in this case.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Tirthankar Ghosh, J.)