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

% ***Reserved on: 12.12.2022***
Pronounced on: 13.12.2022

+ **CRL.REV. P. 73/2018**

UJJWAL GUPTA & ANR.

.... Petitioner

Through: Mr. Sunny Chaudhary, AOR,
Mr. Manoj Kumar and Mr.
Aditya Bhano Neekhara, Advs

versus

STATE (GNCTD) & ANR.

.... Respondents

Through: Mr. Naresh Kumar Chahar,
APP for the State.Mr. Amit
Kumar and Mr. Hemant
Kumar Srivastava, Advs. for
complainant/R-2

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The present revision petition under Sections 397/401 read with Section 482 of the Code of Criminal Procedure, 1973 ("Cr.P.C.") has been filed by the petitioners for setting aside the impugned order dated 23.11.2017 passed by learned Additional Sessions Judge-II, North-West District, Rohini Courts, New Delhi in case FIR bearing no. 765/2016, registered at Police Station Keshav Puram, Delhi for the offences punishable under Sections 498A/304B/302/34 of the Indian Penal Code, 1860 ("IPC") whereby charges have been framed against petitioners and other accused persons under Sections 498A/304B/302/34 IPC.

2. The brief facts of the case are that petitioner no. 1 and the deceased got married to each other on 28.01.2016. After marriage, both parties started living separately from the family of petitioner no. 1, till 10.11.2016, after which they shifted to the house of their parents i.e., matrimonial house of deceased as the deceased was pregnant. On 21.11.2016, at about 11:58 A.M., a PCR call, vide DD no. 27-A, regarding admission of deceased at Maharaja Agrasen Hospital, Punjabi Bagh, Delhi was received at P.S. Keshav Puram, Delhi. The concerned police officer went to the hospital and found that deceased was under treatment and was unfit for statement, as mentioned in MLC No. 904/16, but after sometime, she passed away during the course of being treated. An FIR bearing no. 765/2016 was registered on 22.11.2016, on the basis of statement of the mother of the deceased under Section 161 Cr.P.C.

3. The police after investigation submitted the charge sheet under Sections 498A/302/304B/34 IPC, whereupon cognizance was taken against the petitioners and the case was committed to the Court of Sessions for trial. The learned Trial Court *vide* order dated 23.11.2017 framed the charges against the accused persons, including the petitioners, relevant portion of which is as under:

“...This FIR was registered on-the statement of Smt. Shashi, who is the mother of deceased on 22/11/2016 but it is relevant here to state that during course of investigation IO has recorded her supplementary statement u/s 161 CrPC and also statement of other witnesses including her husband Ram Bilas, Shivang and Ujjwal both s/o Sh. Ram Bilas and others including neighbours Smt. Rama Gupta and Smt. Sana Gupta. All of them have averred that the deceased was

subjected to cruelty and harassment on account of demand of dowry. The-statement of the parents and brothers of the deceased are every detailed giving details of various incidents about such torture and harassment to the deceased at the hands of the applicants and the other family members. The deceased was having three months pregnancy and she expired within around 10 months of the marriage. The post mortem report and the subsequent opinion of the doctor taken by the investigating agency also goes against the accused persons. The circumstances argued by Ld. Counsel for the applicant to show that the injury on her face and lip could be the result of force applied during gastric lavage procedure is matter of trial.

It is settled law that, at the stage of consideration of charge, this court is not required to assess, evaluate and to weigh the prosecution evidence in a criminal case as it is done at the final stage. It is not open for this Court to sift and weigh the evidence as if a mini trial is being conducted and charge can be framed on the basis, of grave suspicion and the evidential value of the statement of witnesses recorded during the course of investigation is required to be seen at the time of appropriate trial. A roving and fishing inquiry is impermissible and it is sufficient if the prosecution is able to show prima facie the commission of offence and the involvement of the accused persons.

It has been clarified today by the IO that it has come in the investigation that on the fateful day only two accused i.e. Ujjwal Gupta and Smt. Santosh Gupta were at home and remaining accused persons were not present there

After going through the entire, material, there is prima facie ground to proceed against all the accused persons u/s 498A/304B/34 IPC and in alternative against accused Ujjwal Gupta and Santosh Gupta u/s 302/34 IPC...”

4. In the aforementioned circumstances, the petitioners herein, being aggrieved by the decision of learned Trial Court to frame charges against them under Sections 498A/304B/34 and in alternative, under Sections 302/34 IPC, have challenged the legality and validity of the impugned order. Learned counsel for petitioners states that learned Trial Court has committed an error in framing of charges without appreciating the fact that there are no allegations or any material on record to make out a *prima facie* case against the petitioners that satisfies the ingredients of the offences under Sections 498A/304B/302/34 IPC. It is further stated by learned counsel for the petitioners that learned Trial Court has failed to appreciate that the material collected during investigation is not sufficient to raise any grave suspicion against the petitioners for having committed the offences they are charged with. Therefore, the impugned order dated 23.11.2017 is liable to be set aside.

5. *Per contra*, learned APP for the State strongly opposes the present petition and states that as per the post-mortem report, the cause of death was due to aluminum phosphide poisoning and the external injuries present over the body of the deceased were caused by blunt force trauma and the same can be caused due to application of force. It is stated that petitioners had administered the said poisonous substance to the deceased which caused her death. It is further stated by learned APP that the present FIR was registered on the statement of the mother of the deceased and the Investigating Officer had also recorded her supplementary statement as well as

statements of the neighbors. It is argued that all the statements on record clearly show that deceased was subjected to cruelty and harassment on account of demand of dowry. Learned APP submits that deceased was three-months' pregnant and she expired within ten months of the marriage. Therefore, the impugned order does not suffer from any illegality or infirmity.

6. I have heard the submissions on behalf of both the parties and have gone through the material on record.

7. The law dealing with discharge and framing of charge is provided under Section 227 and 228 of Cr.P.C., and the same is not being reproduced in this judgment for the sake of brevity. While deciding as to whether a charge be framed against an accused or not, it is necessary for the Court to look into the facts and circumstances of the case and due consideration needs to be given to the material placed on record along with the investigation and the facts determined therefrom. From information so gathered, the Court will be required to ascertain if the essential ingredients of an offence are *prima facie* made out or not. An in-depth appreciation of evidence and roving inquiry into the pros and cons of the case is not permitted as the Trial Court is not allowed to conduct a mini trial while passing an order on charge. [See *Sajjan Kumar v. C.B.I. (2010) 9 SCC 368*; *Amit Kapoor v. Ramesh Chander (2012) 9 SCC 460*; *Asim Shariff v. National Investigation Agency (2019) 7 SCC 148*; and *Dipakbhai Jagdishchandra Patel v. State of Gujarat (2019) 16 SCC 547*]

8. In *Manendra Prasad Tiwari v. Amit Kumar Tiwari and Anr.* 2022 SCC OnLine SC 1057, the Hon'ble Apex Court has explained the well-settled law on exercise of power under Section 397 and Section 482 of Cr.P.C. by the Courts while deciding as to whether the charges framed against an accused be quashed or not, as under:

“21. The law is well settled that although it is open to a High Court entertaining a petition under Section 482 of the CrPC or a revision application under Section 397 of the CrPC to quash the charges framed by the trial court, yet the same cannot be done by weighing the correctness or sufficiency of the evidence. In a case praying for quashing of the charge, the principle to be adopted by the High Court should be that if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not. The truthfulness, the sufficiency and acceptability of the material produced at the time of framing of a charge can be done only at the stage of trial. To put it more succinctly, at the stage of charge the Court is to examine the materials only with a view to be satisfied that prima facie case of commission of offence alleged has been made out against the accused person. It is also well settled that when the petition is filed by the accused under Section 482 CrPC or a revision Petition under Section 397 read with Section 401 of the CrPC seeking for the quashing of charge framed against him, the Court should not interfere with the order unless there are strong reasons to hold that in the interest of justice and to avoid abuse of the process of the Court a charge framed against the accused needs to be quashed. Such an order can be passed only in exceptional cases and on rare occasions. It is to be kept in mind that once the trial court has framed a charge against an accused the trial must proceed without unnecessary interference by a superior court and the entire evidence from the prosecution side should be placed on record. Any attempt by an accused

for quashing of a charge before the entire prosecution evidence has come on record should not be entertained sans exceptional cases...”

(Emphasis supplied)

9. Since the present petition assails the charge framed against petitioners under Section 304B IPC, among other provisions, it will be necessary to take note of the relevant provision of Section 304B which relates to Dowry Death.

“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 purposes 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.”

10. The Hon’ble Supreme Court in ***Preet Pal Singh v. State of Uttar Pradesh &Anr. (2020) 8 SCC 645***, highlighted the essential ingredients of an offence under Section 304B as under:

“9. The most fundamental constituent for attracting the provisions of Section 304-B IPC is that the death of the woman must be a dowry death. The ingredients for

making out an offence under Section 304-B have been reiterated in several rulings of this Court. Four prerequisites for convicting an accused for the offence punishable under Section 304-B are as follows:

(i) that the death of a woman must have been caused by burns or bodily injury or occurred otherwise than under normal circumstance;

(ii) that such a death must have occurred within a period of seven years of her marriage;

(iii) that the woman must have been subjected to cruelty or harassment at the hands of her husband, soon before her death; and

(iv) that such a cruelty or harassment must have been for or related to any demand for dowry.”

11. Further, the Hon’ble Supreme Court in *Devender Singh and Others v. State of Uttarakhand 2022 SCC OnLine SC 489*, in relation to Section 304B IPC and its presumption under Section 113B of Indian Evidence Act, 1872, observed as under:

“11. Section 304B IPC read along with Section 113B of the Indian Evidence Act, 1872 makes it clear that once the prosecution has succeeded in demonstrating that a woman has been subjected to cruelty or harassment for or in connection with any demand for dowry soon after her death, a presumption shall be drawn against the said persons that they have caused dowry death as contemplated under Section 304B IPC. The said presumption comes with a rider inasmuch as this presumption can be rebutted by the accused on demonstrating during the trial that all the ingredients of Section 304B IPC have not been satisfied. [Ref. : Bansi Lal v. State of Haryana, Maya Devi v. State of

*Haryana, G.V. Siddaramesh v. State of
Karnataka and Ashok Kumar v. State of Haryana]...*”

12. The petitioners in the present case have also been charged with the offence under Section 498A, along with 304B IPC. An offence under section 498A IPC is committed when a woman is subjected to cruelty by her husband or his relative and such cruelty either causes a woman to gravely injure herself or is a harassment with regard to demand of dowry.

13. In alternative to the aforesaid charges, charge under Section 302/34 IPC has also been framed against the petitioners herein by the learned Trial Court. In the given facts and circumstances, it would be appropriate to refer to the decision of the Hon’ble Supreme Court in ***Rajbir @ Raju v. State of Haryana, (2010) 15 SCC 116*** whereby the Court had directed that all trial courts in India should ordinarily add section 302 IPC to the charge of section 304B IPC, so that death sentences can be imposed in such heinous and barbaric crimes against women. However, this should not be done in a mechanical manner, rather after considering the nature of evidence available in the case, as clarified by the Apex Court in ***Jasvinder Saini v. State (Govt. of NCT of Delhi), (2013) 7 SCC 256***.

14. The Hon’ble Supreme Court in the case of ***Vijay Pal Singh v. State of Uttarakhand (2014) 15 SCC 163*** made certain important observations while dealing with framing of charges under section 302 and 304B IPC. The observations are as under:

“16. Since, the victim in the case is a married woman and the death being within seven years of marriage, apparently, the court has gone only on one tangent, to treat the same as a dowry death. No doubt, the death is in unnatural circumstances but if there are definite indications of the death being homicide, the first approach of the prosecution and the court should be to find out as to who caused that murder. Section 304B of IPC is not a substitute for Section 302 of IPC...”

18. ...In cases where there is evidence, direct or circumstantial, to show that the offence falls under Section 302 of IPC, the trial court should frame the charge under Section 302 of IPC even if the police has not expressed any opinion in that regard in the report under Section 173(2) of the Cr.PC. Section 304B of IPC can be put as an alternate charge if the trial court so feels. In the course of trial, if the court finds that there is no evidence, direct or circumstantial, and proof beyond reasonable doubt is not available to establish that the same is not homicide, in such a situation, if the ingredients under Section 304B of IPC are available, the trial court should proceed under the said provision...”

15. Coming back to the facts at hand, it is noted that post-marriage, both petitioner no. 1 and deceased started living separately from the family of petitioner no. 1 i.e., from 28.01.2016 till 10.11.2016, after which they shifted to the house of parents of petitioner no. 1 as the deceased was pregnant. However, on 21.11.2016, deceased had to be taken to hospital where she passed away while being treated.

16. The case of petitioners is that there were no allegations or material on record before the learned Trial Court so as to warrant the

framing of charge against them in present case. To consider the said contentions, this Court has perused the statements of the witnesses recorded by the prosecution. The statements of the mother, father and brothers of the deceased are very detailed, narrating several incidents of harassment by the petitioners, including harassment in relation to demand of dowry. As per their statements, certain amount of cash as well as gifts were given to the husband and in-laws of deceased as per their demand at the time of marriage, and subsequent to the marriage, the accused persons used to say bad things about the said gifts. It was also stated that deceased used to tell her mother that her mother-in-law always used to give examples of dowry articles received by other persons such as their neighbours and that deceased's parents did not give anything to them. Specific incidents have been narrated regarding demand of cash and gifts at the time of festivals, and even after fulfilling the said demands, the accused persons were not satisfied. It is further alleged that father-in-law of the deceased used to ask her to get her share in the parental property. It was also stated that the deceased's parents had handed over a cash amount of Rs. 1 lakh to petitioner no. 1, around 8 days prior to the death of the deceased.

17. The deceased in the present case was in the first trimester of her pregnancy. As per the Viscera report obtained from FSL, Rohini, Delhi, the deceased had died due to poisoning of aluminum phosphide. The gastric lavage report was also obtained wherein aluminium phosphide was detected. The post-mortem report further notes three external injuries on the deceased, which are as under:

“EXTERNAL INJURIES:

- 1. Reddish contusion of size 0.3 x 0.1 cm was present over the right side of face, situated 2.1 cm above and 0.5 cm away from the symphysis menti.*
- 2. Reddish contusion of size 0.2 x 0.1 cm was present over the right side of face, situated 2.1 cm above and 0.3 cm away from the symphysis menti.*
- 3. Resh superficial laceration of size 01 x 0.5 cm was present over the inner aspect of lower lip.”*

The subsequent opinion regarding the cause of the death was obtained on 06.02.2017 wherein the Autopsy surgeon opined that *“(i) Cause of death in this case is Aluminium Phosphide poisoning, (ii) External injuries present over the body mentioned in PM Report 1304/16 are caused by blunt force trauma.”*

18. The argument of the learned counsel for the petitioner that the injuries which are mentioned in the post-mortem in the first MLC prepared where the deceased was taken to i.e. Maharaja Agrasen Hospital, Punjabi Bagh, Delhi and thereafter cannot be relied upon has no force. The argument of the learned counsel for the petitioner that these injuries have been caused during the course of treatment at Maharaja Agrasen Hospital, Punjabi Bagh, Delhi since they were trying to treat the deceased and were trying to wash the stomach of the deceased. They have also pleaded that they may be caused by the fact that the deceased was put on ventilator and the injuries near the lips could have been caused by that. The opinion of the doctor concerned, however, does not mention that such injuries could have been caused by the ventilator, the specific word used is these injuries were caused by blunt force trauma which will become clear only

during the trial. At this stage, there was nothing before the learned Trial Court or before this Court to hold this opinion. If the doctors who were treating the deceased at Maharaja Agrasen Hospital, Punjabi Bagh, Delhi did not note the injuries so suffered and were found near the lips by the doctor conducting post-mortem report, the same will become clear only during trial. Moreover, at this stage, it will be difficult to comment for the learned Trial Court or to reach a conclusion as to whether these injuries were caused while administering the poisonous substance forcibly or were caused by the doctors themselves which will become clear only after cross-examination of the doctors concerned and other material witnesses. At this stage, the specific report and opinion of the doctor concerned regarding these injuries is sufficient for the Court to conclude that a strong suspicion arises against the accused persons regarding administration of the poisonous substance, therefore there is no illegality or infirmity in the order of the learned Trial Court.

19. A perusal of the statements on record *prima facie* reveal that the deceased was subjected to harassment and cruelty, including harassment in relation to demand for dowry, by the petitioners and other accused persons. The death of the deceased occurred within 10 months of her marriage. As per post-mortem and FSL report, the death was caused due to aluminum phosphide poisoning and some external injuries, probably caused by application of force as per subsequent medical opinion, were also present on her body, which is reflective of unnatural death. The sufficiency of the material on record, and *pros* and *cons* of the same, cannot be considered at the

stage of framing of charges. The observations of the learned Trial Court for the purpose of framing charges against the petitioners under Sections 498A/304B/302/34 IPC do not suffer from any error or infirmity.

20. Considering the overall facts and circumstances of the case and the allegations and material available on record, this Court finds no reason to interfere with the impugned order dated 23.11.2017 passed by the learned Trial Court.

21. Accordingly, the present petition stands dismissed.

22. It is however, clarified that the observations made by this Court are only for the purpose of deciding the present petition and shall have no bearing on the merits of the case during the trial.

SWARANA KANTA SHARMA, J

DECEMBER 13, 2022/ns

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