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

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Reserved on: 02.08.2022
Pronounced on: 19.10.2022

+ **CRL.REV. P. 330/2018**

KAUSHALYA DEVI Petitioner
Through: Mr Manish Tanwar, Advocate
versus

THE STATE (GOVT. OF NCT OF DELHI) & ORS ... Respondents
Through: Mr Manoj Pant, APP for State with
SI Naresh, P.S. Dabri.
Mr Vikram Singh, Advocate

+ **CRL.REV. P. 363/2018**

STATE Petitioner
Through: Mr Manoj Pant, APP for State with
SI Naresh, P.S. Dabri.
versus

PANKAJ KUMAR & ORS. ... Respondents
Through: Mr Vikram Singh, Advocate

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

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1. This judgment shall govern the disposal of CRL.REV.P. Nos. 330/2018 and 363/2018 arising out of common set of facts, contentions and prayer, filed by the original complainant and the State respectively, whereby both the petitions assail the impugned order dated 12.01.2018. For the sake of uniformity, this judgment has been dictated from the perspective of the set of facts and contentions as raised in CRL.REV.P. No. 330/2018.

2. From the perusal of CRL.REV.P. No. 330/2018, it emerges that *vide* order dated 12.01.2018 passed by learned Additional Sessions Judge-02, Dwarka Courts, New Delhi, in FIR bearing no.90/2017 under Sections 498A/304B/302/120B/34 Indian Penal Code, 1860 ("IPC"), Police Station Dabri, respondent no. 2 to 6 have been discharged of the commission of offences under Sections 302/120B/34 IPC and respondent no. 3 to 6 have been discharged of the commission of offences under Sections 498A/304B IPC.

FACTUAL BACKGROUND

3. The brief facts pertinent to adjudication of the present matter are as under:

- (i) The marriage between the deceased-victim & respondent no. 2 was solemnized on 01.02.2017. However, 18 days later i.e., on 19.02.2017, the deceased-victim was found dead, hanging from the grill of the ventilation window of bathroom.
- (ii) FIR no. 90/2017 was registered on 20.02.2017 on the basis of statement of the petitioner Smt. Kaushalya Devi (mother of the deceased) under section 161 of the Code of Criminal Procedure (“Cr.P.C.”). The petitioner in her statement revealed that post-marriage, the deceased used to call her and even paid visit to her house wanting to reveal something which she couldn’t due to some reason. It was further stated that on 17.02.2017, the deceased started weeping while talking to the petitioner, pursuant to which the petitioner questioned her son about such a condition of the deceased. The petitioner was informed by her son that respondent no. 2 had demanded a car after their marriage and had threatened the deceased with dire consequences if the said demand was not met. It was also stated by the petitioner that on 18.02.2017, the deceased again called her and she appeared normal during the whole conversation. However on 19.02.2017, the petitioner received the

information of the passing away of her daughter. The petitioner stated that since her daughter was educated, she must not have committed suicide and that her death is a case of murder conspired by all the members present in the house at the time of her death as well as the respondent no. 2.

- (iii) The police after investigation submitted the chargesheet under sections 498A/304B/302/120B/34 of the IPC, whereupon cognizance was taken against respondent no. 2 to 6 and the case was committed to the Court of Sessions for trial. In the instant case, respondent no. 3 and 5 are the cousin brothers of respondent no. 2 and respondent no. 4 and 6 are the wives of respondent no. 3 and 5, respectively.
- (iv) The learned Trial Court, *vide* order dated 12.01.2018, discharged respondent no. 2 to 6 on the ground that there was no direct evidence or motive to frame charges under section 302 IPC. The observation of the Trial Court is as under:

1647576463. "11. Keeping in mind the aforesaid essential ingredients of offence of murder, it is to be note here that there is no direct evidence which may connect the accused persons with the alleged crime of murder of deceased Monica however, Prosecution has heavily relied upon following circumstantial evidence for showing the involvement of accused persons in the offence of murder:-

(i) No one can commit suicide by inserting towel in his/her mouth.

(ii) There was motive of the accused Pankaj behind the murder of his wife Monika as he was having suspect over the character of his wife as that she was allegedly having a

love affair with a boy namely Udit Kohli, who was running a beauty parlor and he also stated to his wife that he wanted to get her checked from a lady doctor in order to ascertain her pregnancy. As per the version of prosecution, the said fact are stated to be mentioned in bail application of accused Pankaj.

11. 12. Now, I take up the first circumstance shown by the prosecution regarding small towel-found in the mouth of the deceased. It is to be note here that initially the present case was registered for the offence punishable u/s 304B/498A of the Indian Penal Code, After conducting the postmortem of the deceased and taking opinion from the doctor to the effect that "the death of the deceased was homicidal" the offence u/s 302 IPC was added by the 10 in the present case. The said opinion of the doctor may be a foundation for the alleged offence u/s 302 IPC but prosecution has to ring the other material facts which may connect' the chain of circumstances indicating that accused are the ' only persons who committed the murder of Monica, In the present case, nobody had seen the accused persons while committing the offence of murder of deceased. No material like finger print or foot print of the accused were found at the place of occurrence which may connect, the accused with the crime. Further, there is no witness in the present case who suggest that he heard the voice of crying or weeping of the deceased Monika at the time of alleged commission of crime. Further there is also no injury mark on the body of deceased except the ligature mark.

11. 13. Now doming on the motive regarding alleged love affair of the deceased with the person namely Udit Kohli. I find that accused Pankaj has stated the said fact in his bail application in order to show a possibility of cause of suicide committed by his.wife, but the said fact may not be a conclusive fact for connecting the accused with the offence of murder of deceased, in the absence of cogent and other convincing material facts. With' the said

observations, I am of the view that there is no sufficient ground to presume that accused persons, after hatching a conspiracy, have committed the murder of deceased Monica. Accordingly, all the accused person are discharged for the offence punishable u/s 302/120B IPC. However police is at liberty to file supplementary charge sheet, if any sufficient material connecting the accused persons with the commission of murder of deceased Monica, are found.”

- (v) The learned Trial Court also held that there were no allegations against respondent no. 3 to 6 that soon before the death they subjected the deceased-victim to cruelty or harassment and hence, discharged them of offences under section 498A/304B IPC. The observation of the Trial Court is as under:

1647576463. “17. After having gone through the submissions of both the parties, I find that there| is no allegation against accused nos.2 to 5 namely Deepak Kumar, Vintee, Amit Kumar and Anuradha that soon before death of the victim she was subjected to cruelty or harassment by them, therefore, no offence u/s 498A/304B IPC is not made out against them. Accordingly, accuseds Deepak Kumar, Vintee, Amit Kumar and Anuradha are discharged for the offences punishable 498A/304B IPC”

- (vi) The learned Trial Court framed charges against respondent no. 2 i.e. husband of the deceased under sections 498A/304B IPC on the basis of the statement of the petitioner under section 161 Cr.P.C. and observed that there were sufficient grounds to presume that respondent no. 2

subjected the deceased-victim to cruelty and harassment on account of dowry shortly before her death, as a result of which she committed suicide. The observation of the Trial Court is as under:

1647576463. 18, As far as charge for the offence punishable u/s 498A/304B against accused Pankaj is concerned, I find that mother of deceased has alleged that on 17.02,2017, when she was talking with the deceased then she was weeping. She further stated that when she asked the reason of her weeping from his son Vijay, then he stated that accused Pankaj had demanded a car after the marriage and he also stated, that if the said demand is not fulfilled then they would face dire consequences. It is further to be note here that Vijay, brother of deceased had also stated the said fact in his statement recorded u/s 161 Cr.P.C. In view of the aforesaid facts, I find that there is sufficient ground to presume that victim was subjected to cruelty and harassment on account of demand of dowry by accused Pankaj, as a result of which she committed suicide, therefore,'offence u/s 498A/304B IPC is made out against accused Pankaj. Accordingly, charge for the offence punishable 498A/304 IPC be framed against accused Pankaj.

- (vii) In the aforementioned circumstances, the petitioner, being aggrieved by the decision of Trial Court to discharge the respondents herein, has challenged the legality and validity of the impugned order.

SUBMISSIONS OF LEARNED COUNSELS

4. The learned counsel for the petitioner/complainant challenged the impugned order on ground that the post-mortem report has opined

that the death is homicidal as it was caused due to asphyxia caused by ligature hanging by using *chunni* like material and gagging of mouth caused by insertion of towel, and that the door of the bathroom where the deceased was found was not closed from the inside. It was argued by the learned counsel that the photographs taken by the police during investigation also reveal that the death was due to murder. The learned counsel also contended that even though the deceased was a well-educated girl, no suicide note was found and that respondent no. 3 to 6 were present at the time of commission of the alleged offence as per their phone location. It was further submitted that the deceased died within 18 days of marriage and she was subjected to cruelty & harassment soon before her death by the respondents as per the statement of the petitioner under section 161 Cr.P.C.

5. Learned APP for the State echoed the arguments advanced on behalf of the complainant and has prayed for setting aside the impugned order.

6. In response to the aforesaid contentions, learned counsel for the respondent nos. 2 to 6 argued that the whole case is based on circumstantial evidence. It was argued that since an application for addition of charge under section 302 IPC is pending before the learned Trial Court, the appellant cannot approach the Hon'ble High Court for the same relief. The learned counsel further submitted that there is no sufficient reason to frame charges under sections 302/304B/498A/34/120B IPC against respondent no. 3 to 6 as the deceased and respondent no. 2 were merely staying at their house. It was also argued that respondent no. 2 was not in Delhi at the time of

commission of the offence and the same is verified by Call Detail Records (“CDR”) of respondent no. 2. The learned counsel also submitted that it would be unjust to add the charge under section 302 IPC and restart the whole proceedings at the end of trial.

POSITION OF LAW

i) Framing of Charge and Discharge

7. As provided under Section 228 Cr.P.C., the Court shall proceed to frame charge against an accused if it is of opinion that there is ground for presuming that the accused has committed an offence. Section 228 Cr.P.C. is reproduced as under:

“ 228. Framing of charge.

(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant- cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.”

8. An accused can also be discharged as per provision of Section 227 Cr.P.C. However, for discharge of an accused there must be grave

suspicion that the accused has not committed the offence. Section 227 Cr.P.C. is reproduced as under:

"Discharge — If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

9. In the case of ***Union of India v. Prafulla Kumar Samal & Anr, (1979) 3 SCC 4***, the Hon'ble Supreme Court dealt with the scope of enquiry a judge is required to make with regard to the question of framing of charges. The following principles were laid down by the Court:

"10. ... (1) That the Judge while considering the question of framing the charges under section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be, fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

10. The Apex Court, in the case of **Sajjan Kumar v. C.B.I. (2010) 9 SCC 368**, held that at the time of framing of charge, the Court has to look at all the material placed before it and determine whether a *prima facie* case is made out or not and serious doubt has to be raised against the accused. The court need not consider the evidentiary value of the evidence as any question of admissibility or reliability of evidence is a matter of trial. The relevant portion of the judgment is reproduced below:

“21. On consideration of the authorities about scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 of the Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.

(iii) *The Court cannot act merely as a Post Office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.*

(iv) *If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.*

(v) *At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.*

(vi) *At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.*

(vii) *If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.”*

(emphasis supplied)

11. In ***Amit Kapoor v. Ramesh Chander (2012) 9 SCC 460***, the Hon'ble Supreme Court while underlining the scope of Section 227 and 228 of Cr.P.C., made the following observations:

“17. Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the ‘record of the case’ and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the Section exists, then the Court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case. There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code.”

(emphasis supplied)

12. Further, in ***Dipakbhai Jagdishchandra Patel v. State of Gujarat (2019) 16 SCC 547***, the law relating to the framing of charge and discharge was discussed extensively by the Apex Court. The relevant portions of the same are reproduced as under:

“15. We may profitably, in this regard, refer to the judgment of this Court in State of Bihar v. Ramesh Singh wherein this Court has laid down the principles relating to framing of charge and discharge as follows:

“4...Reading Sections 227 and 228 together in juxtaposition, as they have got to be, it would be clear that at the beginning and initial stage of the trial the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the court should proceed with the trial or not. If the evidence which the

prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.... If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under Section 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section 227.”

“23. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the Court is expected to do is, it does not act as a mere post office. The Court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the Court dons the mantle of the Trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the Court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material. The material must be such as can be translated into evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain

the prima facie view that the accused has committed the offence.”

13. It was observed by the Hon’ble Supreme Court in ***Asim Shariff v. National Investigation Agency, (2019) 7 SCC 148***, that at the stage of framing of charge, the trial court is not expected or supposed to hold a mini trial for the purpose of marshalling the evidence on record. The relevant observations is as under:—

“18. Taking note of the exposition of law on the subject laid down by this Court, it is settled that the Judge while considering the question of framing charge under Section 227 CrPC in sessions cases(which is akin to Section 239 CrPC pertaining to warrant cases) has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the material placed before the Court discloses grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing the charge; by and large if two views are possible and one of them giving rise to suspicion only, as distinguished from grave suspicion against the accused, the trial Judge will be justified in discharging him. It is thus clear that while examining the discharge application filed under Section 227 CrPC, it is expected from the trial Judge to exercise its judicial mind to determine as to whether a case for trial has been made out or not. It is true that in such proceedings, the Court is not supposed to hold a mini trial by marshalling the evidence on record.”

(emphasis supplied)

14. It is not necessary that the evidence presented must be enough to convict the accused rather the evidence must be sufficient enough to proceed against the accused. The same was held by the Hon’ble

Supreme Court in the case of *State of M.P. v. Mohanlal Soni*, (2000) 6 SCC 338 which is reproduced below:

“8. The crystallized judicial view is that at the stage of framing charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused.”

15. Thus, in order to establish charge against an accused, it is necessary to look into the facts and circumstances of each case to determine whether a *prima facie* case is made out or not. At the time of framing of charge, due consideration needs to be given to the material placed on record along with the investigation and the facts determined therefrom, and only the information gathered from the aforementioned sources should be used to ascertain if the essential ingredients of an offence can be *prima facie* made out or not. The Court, however, is not permitted to examine the probative value of evidence while deciding as to whether a charge be framed or not, as the court is not allowed to conduct a mini trial at this stage.

16. Having noted the principles enunciated above that are to be considered while deciding whether or not to frame charges against an accused, we may now refer to the necessary constituents of the offences alleged to have been committed by the respondents in the present case.

ii) Offence under Section 302, 304B and 498A IPC

17. The basic constituent of an offence under section 302 IPC is homicidal death within the meaning of Section 300 IPC, which lays

down the cases as to when culpable homicide amounts to murder. The relevant part of the provision is as under:

“300. Murder. ...if the act by which the death is caused is done with the intention of causing death, or—

(Secondly) —If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

(Thirdly) —If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

(Fourthly) —If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.”

18. For constitution of an offence under section 302 IPC, the injuries as well as the intention ought to be looked into. However, intention or motive is a matter of trial and has to be deciphered during the trial proceedings as such. A charge is framed when the factual ingredients point towards commission of offence. The Court has to apply its mind to the question whether or not there is enough ground to presume that the accused has committed the offence.

19. While hearing an appeal against the order of discharge, the Hon'ble Apex Court in ***Ghulam Hassan Beigh v. Mohammad Maqbool Magrey & Ors.*** 2022 SCC OnLine 913 made the following observations in regard to framing of charge under section 302 IPC: -

“32. ...It is a settled position of law that in a criminal trial, the prosecution can lead evidence only in accordance with the charge framed by the trial court. Where a higher charge is not framed for which there is evidence, the accused is entitled to assume that he is called upon to defend himself only with regard to the lesser offence for which he has been charged. It is not necessary then for him to meet evidence relating to the offences with which he has not been charged. He is merely to answer the charge as framed. The Code does not require him to meet all evidence led by prosecution. He has only to rebut evidence bearing on the charge. The prosecution case is necessarily limited by the charge. It forms the foundation of the trial which starts with it and the accused can justifiably concentrate on meeting the subject matter of the charge against him. He need not cross-examine witnesses with regard to offences he is not charged with nor need he give any evidence in defence in respect of such charges.

33. Once the trial court decides to discharge an accused person from the offence punishable under Section 302 of the IPC and proceeds to frame the lesser charge for the offence punishable under Section 304 Part II of the IPC, the prosecution thereafter would not be in a position to lead any evidence beyond the charge as framed. To put it otherwise, the prosecution will be thereafter compelled to proceed as if it has now to establish only the case of culpable homicide and not murder. On the other hand, even if the trial court proceeds to frame charge under Section 302 IPC in accordance with the case put up by the prosecution still it would be open for the accused to persuade the Court at the end of the trial that the case falls only within the ambit of culpable homicide punishable under Section 304 of IPC. In such circumstances, in the facts of the present case, it would be more prudent to permit the prosecution to lead appropriate evidence whatever it is worth in accordance with its original case as put up in the chargesheet. Such approach of the trial court at times may prove to be more rationale and prudent.”

(emphasis supplied)

20. On the other hand, according to Section 304B IPC, a married woman must have died an unnatural death within 7 years of her marriage and she must have been subjected to cruelty or harassment soon before her death by her husband or any member of his family on account of demand of dowry. In ***Biswajit Halder@Babu Halder and Ors v. State of W.B., (2008) 1 SCC 202***, the Apex Court expressly stated the ingredients of Section 304B IPC as under:

“The basic ingredients to attract the provisions of Section 304B are as follows: -

- (1) The death of a woman should be caused by burns or fatal injury or otherwise than under normal circumstances;*
- (2) Such death should have occurred within seven years of her marriage;*
- (3) She must have been subjected to cruelty or harassment by her husband or any relative of her husband; and*
- (4) Such cruelty or harassment should be for or in connection with demand for dowry.*

Alongside insertion of Section 304B in IPC, legislature also introduced Section 113B of Evidence Act, which lays down when the question as to whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.

Explanation appended to Section 113 B lays down that "for the purpose of this section 'dowry death' shall have the same meaning as in Section 304 B of IPC".

If Section 304 B IPC is read together with Section 113 B of the Evidence Act, a comprehensive picture emerges that if a married woman dies in an unnatural circumstances at her matrimonial home within 7 years from her marriage and there are allegations of cruelty or harassment upon such married woman for or in connection with demand of dowry by the husband or relatives of the husband, the case would squarely come under "dowry death" and there shall be a presumption against the husband and the relatives."

21. 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. Thus, for charge to be framed, the basic components of section 498A should be considered, which were also discussed by the Apex Court in the case of ***Bhaskar Lal Sharma and Anr v. Monica, (2009) 10 SCC 604***, which are:

"Thus, the essential ingredients of the aforementioned provisions are:

- 1. A woman must be married.*
- 2. She must be subjected to cruelty.*
- 3. Cruelty must be of the nature of:*
 - (i) any willful conduct as was likely to drive such woman:*
 - a. to commit suicide;*
 - b. cause grave injury or danger to her life, limb, either mental or physical;*
 - (ii) harassment of such woman,*
 - (1) with a view to coerce her to meet unlawful demand for property or valuable security,*
 - (2) or on account of failure of such woman or by any of her relation to meet the unlawful demand,*
 - (iii) woman was subjected to such cruelty by:*
 - (1) husband of that woman, or*

(2) any relative of the husband.

For constitution an offence under Section 498A of the IPC, therefore, the ingredients thereof must be held to be existing.

For proving the offence under Section 498A of the IPC, the complainant must make allegation of harassment to the extent so as to coerce her to meet any unlawful demand of dowry, or any willful conduct on the part of the accused 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.”

22. It is to be noted that the ingredients of an offence under section 302 IPC are different from those of an offence under section 304B IPC, and that later is not a minor offence under the former. These offences are different and belong to two different categories. This view has also been upheld by the Hon’ble Supreme Court in ***Shamnsaheb M. Multtani v. State of Karnataka (2001) 2 SCC 577.***

23. Further, the Hon’ble Supreme Court in ***Rajbir @ Raju v. State of Haryana, (2010) 15 SCC 116*** has 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 held by the Apex Court in ***Jasvinder Saini v. State (Govt. of NCT of Delhi), (2013) 7 SCC 256.***

24. 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...”

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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...”

25. In ***State of Punjab v. Iqbal Singh & Ors. (1991) 3 SCC 1***, the Apex Court had discussed the interplay of Section 304B of IPC with Sections 302, 498A of IPC, in the following manner:

"8. The legislative intent is clear to curb the menace of dowry deaths, etc., with a firm hand. We must keep in mind this legislative intent. It must be remembered that since crimes are generally committed in the privacy of residential homes and in secrecy, independent and direct

evidence is not easy to get. That is why the legislature has by introducing Sections 113-A and 113-B in the Evidence Act tried to strengthen the prosecution hands by permitting a presumption to be raised if certain foundational facts are established and the unfortunate event has taken place within seven years of marriage. This period of seven years is considered to be the turbulent one after which the legislature assumes that the couple would have settled down in life. If a married women is subjected to cruelty or harassment by her husband or his family members Section 498-A, IPC would be attracted. If such cruelty or harassment was inflicted by the husband or his relative for, or in connection with, any demand for dowry immediately preceding death by burns and bodily injury or in abnormal circumstances within seven years of marriage, such husband or relative is deemed to have caused her death and is liable to be punished under Section 304-B, IPC. When the question at issue is whether a person is guilty of dowry death of a woman and the evidence discloses that immediately before her death she was subjected by such person to cruelty and/or harassment for, or in connection with, any demand for dowry, Section 113-B, Evidence Act provides that the court shall presume that such person had caused the dowry death. Of course if there is proof of the person having intentionally caused her death that would attract Section 302, IPC...”

OBSERVATIONS AND FINDINGS

26. We shall now apply the principles enunciated above to the present case in order to find out whether or not the learned Trial Court was legally justified in discharging the respondents.
27. Coming to the facts of the present case, body of the deceased was found hanging from grill of the window of bathroom, and the door of bathroom was not closed from inside. The deceased was found hanging

from a window that was located at a height of 6 feet whereas the height of the deceased was 5 feet 5 inches. According to the post-mortem report of the deceased, the manner of death was termed as 'homicidal'. The mouth of the deceased was gagged with towel which was later revealed as one of the reasons for her death. Even no suicide note was found in the present case. All these facts, along with the photographs taken by the investigating agency at the scene of crime, highlight the manner in which the deceased had died. A prima facie view of this makes it apparent that the death does not appear to be a simple case of suicide.

28. However, except the fact that the deceased was found dead under unnatural circumstances, there is nothing on record to show that respondent no. 2 to 6 committed the murder of deceased by hatching a conspiracy. Admittedly, the respondent no. 2 i.e., husband of the deceased was not present at the spot of incident and was, in fact, out of Delhi. As regards the role of respondent no. 3 to 6, the allegations against them are that the deceased and respondent no. 2 had come to their house on 15.02.2017 and was living there till the death of the deceased on 19.02.2017, and thus, only respondent no. 3 to 6 could have committed the murder by entering into a conspiracy with respondent no. 2. But, nothing can be left solely on presumptions in criminal trial. It is a matter of fact that the present case was registered under section 304B/498A IPC by the Investigating officer and no investigation was initially carried out in respect of commission of offence under Section 302 IPC. Section 302 IPC was added only after the post-mortem report termed the death as 'homicidal'. Considering the circumstances under

which the body of deceased was found as well as the post-mortem report, further investigation should have been conducted by the Investigating agency, as was also expressed by the learned Trial Court. But, on the basis of the material available on record, no prima facie case is made out against respondent no. 2 to 6, and thus, they cannot be charged for commission of offence under section 302 IPC, and the decision of learned Trial Court in this respect is correct and valid as per law.

29. The observations of the learned Trial Court to the extent of discharging the respondent no. 3 to 6 for offences under section 498A/304B IPC also do not suffer from any error or infirmity, since there is nothing on record to show any act of demand of dowry on part of these respondents. Even as per the statements under sections 161 Cr.P.C. of the brother and mother of the deceased, the demand for dowry was made by the husband of the deceased i.e., respondent no. 2 herein. Even this demand, as per statement of brother of deceased, was made on 08.02.2017 by respondent no. 2, and he along with the deceased had visited the house of respondent no. 3 to 6 on 15.02.2017. After this, there is no allegation whatsoever regarding any demand of dowry. Thus, there exists no prima facie case against respondent no. 3 to 6 for them to be charged for an offence under section 498A IPC. Consequently, when there is no allegation or evidence regarding demand for dowry or harassment by these respondents, it is not possible to charge them for offence punishable under Section 304B IPC since for the application of Section 304B, a deceased should have been subjected to cruelty or harassment for the purposes of demand for

dowry soon before her death. It is true that the deceased died within 18 days of her marriage in circumstances which appear to be unnatural, and that too, in the house of respondent no. 3 to 6, but in absence of any evidence or even an allegation against these respondents with respect to demand for dowry or harassment related to it, the essential ingredients of Section 304B are not made out. Therefore, the learned Trial Court has rightly discharged them for offences under section 498A/304B IPC.

30. Further, considering the allegations and the material available on record, the learned Trial Court has rightly framed the charge against respondent no. 2 for offences punishable under Sections 498A/304B IPC.

31. However, the Trial Court shall be at liberty, during trial, to consider as per law the additional material, if any, brought on record by the investigating agency on the basis of any further investigation in respect of commission of offence under Section 302 IPC and the role of respondent no. 2 to 6 in the same. After observing so, I am also of the opinion that the observations made by this Court in the preceding Para No. 27 have to be kept in mind and the investigating agency should have conducted investigation in this regard, more so, since the learned Trial Court held in the impugned order itself that further investigation in this regard may be carried out in light of the report of postmortem and supplementary charge-sheet may be filed by the investigating agency. It is thus clear that even the learned Trial Court had taken note of this fact and the investigating agency was thereafter required to conduct further investigation in light of the observations of the learned Trial Court and the postmortem report. It is not clear from the record as

to whether supplementary charge-sheet has been filed till date or not. It will be for the learned Trial Court to decide and pass an order regarding commission of offence under Section 302 IPC in case supplementary charge-sheet is filed after collecting evidence incriminating respondent no. 3 to 6, pointing out towards their role in hatching a conspiracy for commission of murder of the deceased or in the alternative take recourse to Section 319 as per law in case such circumstances so arise during the course of trial on the basis of evidence led or produced on record by the prosecution. The fact however, remains that at this stage on the basis of evidence collected by the investigating agency and produced before the learned Trial Court, the Trial Court did not have enough evidence or material on record to have formed a *prima facie* view that the deceased was murdered by respondent no. 3 to 6. Therefore, there is no illegality or infirmity in the order of the learned Trial Court in this regard.

32. In view of the foregoing discussion, this Court finds no reason to interfere with the impugned order.

33. Accordingly, the present petition stands disposed of in above terms. No order as to costs.

34. It is however, clarified that the observations made by this Court are only for the purposes of deciding the present petitions against order of discharge, and shall have no bearing on the merits of the case during the trial.

SWARANA KANTA SHARMA, J

OCTOBER 19, 2022/zp