

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO. 320 OF 2023

Nilind Govind Solanki and Ors.

...Applicants

vs.

Union Territory of Daman and
Diu and Dadra and Nagar Haveli
and Ors.

...Respondents

Shri Pawan Mali - Advocate for the Applicant

Mr. H. S. Venegavkar a/w Ms. Priya Dubey - Advocate for the
Respondent No. 1.

Mr. S. R. Agarkar - APP for the Respondent-State

CORAM : S. M. MODAK, J.

DATE : 01st DECEMBER, 2023

P. C. :-

1. Heard learned Advocate Shri Mali for the Applicant-accused, learned Advocate Mr. Venegavkar for Respondent No. 1 and learned APP.

2. Considering limited issue involved, by consent the matter is heard finally. Gone through the records filed alongwith revision application. All these Applicants were charge-sheeted for the offence punishable under Sections 498-A, 304-B of the Indian Penal Code. Before the trial Court, they have filed an application for discharge under the provisions of Section 227 of the Criminal Procedure Code.

3. Learned Sessions Judge has refused to discharge them.

The grievance was restricted only about application of provision of the Section 304-B of the Indian Penal Code.

4. The prosecution is launched in respect of death of Kinjal Nilind Solanki for the offence punishable under Section 498A, 304-B read with Section 34 of the Indian Penal Code by Diu Police Station. Deceased committed suicide by hanging on 24/10/2019. Initially, an entry was taken in accidental death register on the complaint of her mother Smt. Daxaben Solanki. Subsequently FIR was registered. The death took place within three years of marriage and deceased was subjected to cruelty by these Applicants. They are the husband and in laws of the deceased.

5. Prima-facie learned Sessions Judge came to conclusion that the ingredients of Section 498-A, 304-B and 306 of the Indian Penal Code are made out. The Applicants are aggrieved about observations pertaining to justification of Section 304-B of the Indian Penal Code.

6. Learned Advocate Shri Mali has invited my attention to the charge-sheet, the F.I.R. and the statements. According to him, even if the allegations without admitting is considered in *toto*, the ingredients of Section 304-B of the Indian Penal Code are absent. According to him, even if the death was within a period of seven years from the marriage and even though the

death was not in normal circumstances, the main ingredient that deceased must have been subjected to the cruelty and the harassment in connection with demand of dowry is absent.

7. Learned Advocate Mr. Venegavnkarn laid emphasis on the wordings 'in connection' and according to him, the facts and circumstances warrant invocation of Section 304-B of the Indian Penal Code. According to him the phrase "in connection" is of wider amplitude.

8. As per explanation to the Section 304-B of the Indian Penal Code, the meaning given in Section 2 of the Dowry Prohibition Act for the word 'dowry', has to be considered. The meaning of the word dowry is as follows:-

"Dowry means any property or valuable security given or agreed to be given either directly or indirectly

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by other person, to either party to the marriage or to any other person,

at or before (or any time after the marriage) [in connection with the marriage of the said parties but does not include] dower or mahr in the case of persons to whom the Muslim Personal Laws (Shariat) applies."

9. Dowry is any property or the valuable security either was

given or agreed to be given by one party to the marriage to another party or by parents. It contemplates present delivery or delivery in future but presently agreed. Such agreement may be at the time of the marriage, before the marriage or after the marriage. The dower or Mahr is excluded from the meaning of the dowry.

10. With the assistance of both of them, when I have read the papers, I do not find any reference that the deceased was harassed for bringing any amount by way of dowry. There are no allegations that the relatives of the deceased has agreed to provide a dowry in either form. No documents from chargesheet papers were pointed out to me.

11. I am not agreeable to the contention raised by learned Advocate Mr. Venegavkar that if the harassment in connection for any other cause, it will be covered within the meaning of Section 304-B of the Indian Penal Code. It is true that either there may be allegation that money is demanded or it may be true that there may be harassment by not specifically referring the dowry but there has to be some material to show that there is demand for dowry. The allegations do suggest that there is harassment but it does not suggest that harassment was for fulfilling the demand for dowry. So ingredients of Section 304-B are absent. The phrase “for connection” cannot be interpreted

independent of “dowry”. Either ill treatment may be for dowry or it may be due to other reasons but it must have connection with dowry.

12. As per provision of Section 227 of the Criminal Procedure Code if there is no sufficient ground for proceeding against the accused on the basis of charge-sheet trial Court is empowered to discharge accused either totally or in respect of the particular Section. It is also true that as per Section 228 of the Criminal Procedure Code, after hearing the parties, the Court is empowered to frame the charges. It is also true that even if investigating agency has not applied particular Section and trial Court is of the opinion that facts and circumstances warrant invocation of the particular Section, the Court is justified in framing the charge after hearing the parties.

13. In this case, the Police have not applied Section 306 of the Indian Penal Code. Learned Sessions Judge while hearing the discharge application has observed that the ingredients of Section 306 of the Indian Penal Code are made out. This finding is not challenged. So learned Sessions Judge is justified in framing the charge under Section 306 of the Indian Penal Code. In view of that following order is passed:-

ORDER

(a) Revision application is allowed.

(b) The Order dated 24/03/2021 thereby rejecting the discharge prayer is set aside.

(c) All the Applicants are discharged for committing offence punishable under Section 304-B of the Indian Penal Code.

(d) Let learned Sessions Judge, Diu to frame charge for offence punishable under sections 498-A and 306 read with Section 34 of the Indian Penal Code.

14. Learned trial court may not be influenced by these observations.

[S. M. MODAK, J.]