

Amar Nath Vs. State and ors.

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Court : Delhi

Decided On : Oct-23-2013

Judge : P.K.Bhasin

Appellant : Amar Nath

Respondent : State and ors.

Advocate for Def. : Mr. M.N. Dudeja, Mr. Vijay Dalal

Advocate for Pet/Ap. : Ms. Meenakshi Lekhi, Mr. Jeetendra Tripathi

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % CRL. REVISION PETITION NO.173/2007 Date of Decision:

23. d October, 2013 + # ! AMAR NATH Through: Petitioner Ms. Meenakshi Lekhi & Mr. Jeetendra Tripathi, Advocates versus \$ STATE & ORS. Through: * Respondents Mr. M.N. Dudeja, APP for State Mr. Vijay Dalal, Advocate for respondent Nos.2 to 7 CORAM: HON'BLE MR. JUSTICE P.K.BHASIN

ORDER

P.K. BHASIN, J: The petitioner is aggrieved by the order dated 26th February, 2007 passed by the learned Additional Sessions Judge whereby he discharged respondents 2 to 5 who were charge-sheeted by the police for having committed the offences punishable under Sections 304-B/498-A/34 of the Indian Penal Code(

IPC in short). The petitioner is aggrieved by their discharge since according to him they had caused the dowry death of his young daughter Sushma and had been wrongly discharged by the Additional Sessions Judge.

2. The daughter of the petitioner, Sushma, was married to respondent no.2 Mohan on 16th January, 2001 and within seven years of her marriage she died on 13th May, 2006. Her parents did not consider the death of their daughter to be a natural death. So, they complained that right from the second day of marriage of their daughter her husband and his parents had started harassing her because of her having brought insufficient dowry from her parental home and were demanding dowry in cash. The incidents of her harassment increased day by day and to such an extent that a case under Section 498-A IPC was got registered by her against her in-laws, respondent nos. 2 to 7 herein, in the year 2002 vide FIR No.550/2002. However, on the assurance being given by the accused persons that the deceased daughter of the petitioner shall not be harassed in future, which assurance according to the prosecution case was never intended to be honoured and was given only to get rid of the criminal case, there was a compromise between the complainant side and the accused in-laws of the deceased due to which that criminal case was quashed by this Court vide Crl. Rev. P. 173/2007 order dated 24th March, 2005 passed Crl.M.C.No.946/2005. Thereafter the in-laws of the deceased again started harassing her and did not even give her proper food to eat and was forced to starve. The petitioner further claimed that on 13th May, 2006 at about 4 p.m. he received a call from his son-in-law and first told him that his daughter was not well and then had said that she had died. In view of the aforesaid allegations leveled by the parents of the deceased the police registered a criminal case under Sections 304-B/498-A/34 IPC.

3. After investigation charge sheet under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C. in short) was filed in Court against the husband of the deceased, his mother, father and younger brother, respondent nos. 2, 3, 4 and 5 respectively and in due course the case came to be committed to Sessions Court.

4. The learned trial Court discharged all the four charge-sheeted accused vide impugned order. The father of the deceased then filed this revision petition

impleading not only the four acquitted accused but two more relatives of the husband of the deceased were also impleaded as respondent nos. 6 and 7 even though they were not even charge-sheeted by the police.

5. Relevant portions of the impugned order are being reproduced below:

6. It may be seen from the complaint made by father of the deceased to SDM, that in the early part of the marriage of Sushma, there was trouble and case u/s 498-A IPC was registered against all the accused at PS Rajouri Garden. It may be also seen from the very complaint that since the time matter was compromised Sushma was continuously living in her matrimonial house. There is no two option that Sushma was a patient of Anemia. The post mortem report of Sushma admittedly does not show any external injury. The viscera report is not incriminating to the accused. In the final opinion of the doctor given after collecting the viscera result the death is from anemia arising out of hypothyroidism a natural disease. This report from nowhere can be said to be against the accused persons. So far as contention of the APP that despite this fact the accused may still be charged and hauled up for the offence u/s 498-A/304-B IPC is only to be rejected as farfetched. This would rather be against the records. Undoubtedly past criminal litigation is there but in the statement of the complainant and his wife made to the SDM, there is nothing to reflect or suggest of any demand in the near past before taking place of the occurrence. The other allegations are general.

7. On the totality of the facts and medical record it cannot be presumed that there is sufficient material for framing of the charge u/s 498-A/304-B IPC against any of the accused. All the accused are discharged in this case. ..

6. Learned counsel for acquitted accused supported the impugned order while the learned counsel for the revisionist strongly prayed for setting it aside and for ordering framing of charges under Sections 304-B/498-A/34 IPC against respondents 2 to 5. Learned additional public prosecutor submitted that since the State had decided not to challenge the impugned order this Court may take any decision the matter which is considered appropriate.

7. After going through the trial Courts record I find that the record contains the entire material submitted by the prosecution alongwith the charge-sheet which included the statements of the parents of the deceased made before the Sub-Divisional Magistrate, their statements recorded by the police under Section 161 Cr.P.C. as well as of many other relatives of the deceased, inquest report, seizure memo showing recovery of blood-stained clothes of the deceased from her matrimonial home. Learned trial Judge, however, had confined his zone of consideration of the material on record to the statements of the parents of the deceased made by them before the SDM and which had formed the basis of the formal FIR and the opinion of the autopsy surgeon regarding the cause of death of the deceased being anemia and hypothyroidism and ignoring all other material jumped to the conclusion that no case was made out against any of the accused either for the offence under Section 304-B or 498-A IPC. For discharging an accused the Court is expected to give some reasons and reasons can be given if the entire material in support of the prosecution case submitted with the report under Section 173 Cr.P.C. is referred to and considered by the trial Judge. If that is not done then there is no consideration of the material brought on record by the prosecution.

8. Ms. Meenakshi Lekhi, learned counsel for the petitioner had pointed out that as far as the requirement of Section 304-B IPC that there should have been harassment of the deceased daughter-in-law in connection with the demand of dowry by her in-laws soon before death is concerned and which requirement according to the trial Judge was not satisfied in the present case on a reading of the statements of the parents of the deceased before the SDM that aspect had to be decided only after evidence had been led by the prosecution. It was pointed out that one of the witnesses Meera Devi, grand-mother of the deceased, had claimed before the police that she had met the deceased in the first week of 2006, which is the year of death of the deceased, when she had gone to the her matrimonial home and at that time her husband, father-in-law, mother-in-law and devar had said that bina dahej ke ladki nahin chahiye(without dowry they did not want the deceased) and then the deceased was slapped also by her devar Ashu. The witness further claimed that she was told by the deceased that day that she was being harassed by her in-laws and she was not even being given food to eat, That

statement had not even been referred to by the trial Judge which should have been done and if it had been considered, counsel argued, the accused would not have been discharged for the reason that there was no allegation of cruelty soon before the death of the deceased. In support of the submission that without evidence being allowed to be adduced it could not be said at the stage of charge that in this case there was no harassment of the deceased by the accused in connection with the demands of dowry and that whether soon before death there such a harassment of the victim depends on the facts of each case and there is no fixed time period in this regard counsel cited two judgments of the Apex Court reported 2009(1)JCC540 and 2001 Law Tech (SC) 23870.

9. Learned counsel for the petitioner had also argued that the trial Judge has also not considered the circumstances showing that the death of the deceased had occurred under abnormal circumstances and the accused could not be discharged solely relying upon the medical opinion that cause of death of the death was anemia and hypothyroidism and closed the case as being a case of natural death. Learned counsel submitted that there were allegations against the accused that the deceased was not being given food and so even if she was suffering from anemia though according to her parents she was not suffering from any disease at the time of her marriage, her death due to anemia cannot be said to be a normal death. It was also submitted that even the opinion of the autopsy surgeon that the deceased died of anemia is not correct since as per the post-mortem report the body of the deceased was found to be pale while as per the medical texts her colour would have been blue in case she had died of anemia. Another circumstance ignored by the trial Judge, as per Ms. Lekhi, was that even though the deceased was declared as brought dead by the hospital doctor at 1.30 p.m. on 13th May, 2006 the petitioner was informed of the death of his daughter at 4.30 p.m. As per the inquest report blood was seen coming out of the mouth of the deceased and from her matrimonial home her blood stained clothes were also seized by the police and these circumstances also, according to the counsel for the petitioner, have been totally ignored by the trial Judge. It was submitted that the accused would have explained during trial as to how clothes of the deceased came to be stained with blood if there was nothing abnormal in her death. In the end, Ms. Lekhi also submitted that nothing had been said in the impugned order

as to why even the offence under Section 498-A IPC was not made out and the accused were discharged without application of mind by the trial Judge.

10. After giving thoughtful consideration to the entire aspects of the matter this Court is also of the view that the learned trial Judge has passed the order on charge without even considering the entire material on record and so without expressing any opinion in respect of the aforesaid circumstances highlighted by the counsel for the petitioner as to whether they would be sufficient to frame charges against the acquitted accused as proposed by the prosecution the matter deserves to be remanded back to the trial Court for passing a fresh order on charge after considering the entire material on record as also the aforesaid various circumstances highlighted by the counsel for the petitioner. In this regard a useful reference can be made to a judgment dated 4 th December, 2006 passed by a Single Judge Bench of this Court in Crl. Rev. P. No.184/2004 Subhash Chand Gupta Vs. State of Delhi & Ors.

I(2007) Divorce and Matrimonial Cases 394 wherein almost under similar circumstances the matter was remanded back to the trial court for passing of a fresh order on charge after setting aside the order of discharge passed by the Sessions Court for an offence under Sections 304-B IPC on the ground that the death of the deceased was not under unnatural circumstances. Para nos. 2 to 4 of the said judgment being relevant for the ordering remand in the present case also are re-produced below:

2. The learned Counsel for the respondents submitted that before a case can be brought within the provisions of Section 304B, IPC, three ingredients have to be cumulatively established. Those three being that the death should have occurred within seven years of the marriage; secondly, the death should have taken place under unnatural circumstances; and thirdly, that the death should have been connected or related to cruelty and harassment pertaining to demands for dowry just before the death of the woman. According to him, and rightly so, even if one of these ingredients is missing, then the case cannot be brought within the sweep of Section 304B, IPC. He submitted that the trial Court had examined the aspect of unnatural death and having come to the conclusion that the death occurred under

natural circumstances, there is no way in which it could have framed charges under Section 304B, IPC.

3. The learned Counsel for the petitioner, however, placed reliance on the decisions of the Supreme Court in the cases of *Anant Chintaman Lagu v. The State of Bombay* and *Om Wati (Smt) and Anr. v. State (Through Delhi Admn.) and Ors.* , to show that the postmortem report would not be conclusive at the stage of framing of charges because there could be other evidence to establish the circumstances under which the death took place. As an example, he read out a portion from *Anant Chintaman Lagu (supra)* which referred to a medical text wherein the example of carbon monoxide poisoning was given. It was indicated that if a person dies due to carbon monoxide poisoning and tests are not done within 24 hours of the death, there would be no trace of it in his blood. Therefore, although the person would have died due to the poison, since the postmortem was conducted subsequent to 24 hours, the report would not indicate the presence of any poison. Taking this example, the learned Counsel for the petitioner submitted that the post-mortem report in the present case merely said common poisons were not found. He submitted that there could be uncommon poisons and, secondly, there could be poisons which went undetected in the postmortem examination. Thus, in view of the Supreme Court decisions, the post-mortem report taken in isolation without examination of the other material on record cannot form the basis of an order of discharge under Section 304B, IPC. The learned Counsel for the respondents submitted that even if the postmortem report is not taken into consideration and it is assumed without admitting, of course, that the death was not a natural one, the third ingredient of allegations of cruelty and harassment connected with demands for dowry soon before the death was also missing. But, I find that this aspect has not been discussed in the impugned order, which has proceeded merely on the basis of the post mortem report and the finding with regard to Kavita's death being natural.

4. After having made these submissions, the learned Counsel for the parties agreed that the matter required a further and fresh look in the light of the discussion above. The impugned order passed by the learned Additional Sessions Judge is accordingly set aside. The matter is remanded to the learned Additional

Sessions Judge for hearing arguments afresh on all aspects of the matter and to frame charges, if any, in accordance with law.

11. This petition, therefore, is allowed and the order dated 26th February, 2007 passed by the Additional Sessions Judge discharging respondent nos. 2-5 is set aside and the matter is remanded back for passing of a fresh order on charge in accordance with law after giving fresh hearing to the parties and considering the entire material on record highlighted by the counsel for the petitioner. It is, however, made clear that this Court has not gone into the merits of the prosecution case and the matter is being remanded back only for the reason that the trial Judge has not passed the impugned order of discharge after considering the entire material submitted by the prosecution with the charge-sheet the trial Judge shall be at liberty to pass the fresh order totally uninfluenced by the setting aside of the impugned order.

12. The trial Court shall take up the matter now on 18th November, 2013 at 2 p.m. for fixing the date for fresh arguments on charge the hearing should be concluded as early as possible considering the fact that the case is quite old and is still at the stage of charge. P.K. BHASIN, J OCTOBER23 2013

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