

Rukma Singh Vs. State and anr

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Court : Delhi

Decided On : Aug-12-2014

Judge : Indermeet Kaur

Appellant : Rukma Singh

Respondent : State and anr

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Judgment reserved on :07.08.2014 Judgment delivered on :12.08.2014 + CRL.REV.P. 208/2011 & Crl .M.A.No.5206/2011 RUKMA SINGH Petitioner Through Mr.Satender Sharma and Mr.Yudhvir Sharma, Advs. versus STATE & ANR Respondents Through Ms.Fizani Hussain, APP for the State/R-1 along with Mr.Rajiv Ranjan, DCP and SI Vijay. Mr.Ramesh Gupta, Sr. Adv. with Mr.Manu Sharma, Advocate for R-2. + W.P.(CRL) 25/2013 & Crl .M.A.No.117/2013 SUHAIB ILYASI Petitioner Through Mr.Ramesh Gupta, Sr. Adv. with Mr. Manu Sharma, Advocates. versus STATE NCT OF DELHI Respondent Through Ms.Fizani Hussain, APP for the State/R-1 along with Mr.Rajiv Ranjan, DCP and SI Vijay Mr.Satender Sharma and Mr. Yudhvir Sharma, Advs. for the complainant. CORAM: HON'BLE MS. JUSTICE INDERMEET KAUR INDERMEET KAUR, J.

1. Criminal Revision Petition 208/2011 is directed against the impugned order dated 19.02.2011 wherein the application filed by the petitioner/complainant seeking framing of additional charge under Sections 302/468/471/201 of the Indian

Penal Code (IPC) against the accused stood dismissed.

2. Writ petition Crl.25/2013 has been preferred by the accused. He is aggrieved by the act of the Department of Health and Family Welfare who vide its letter dated 21.05.2012 had constituted a Medical Board of five doctors of the AIIMS Hospital pursuant to the letter of the Police dated 18.12.2011 requesting for constitution of such a Board.

3. The facts as emanating reveal that on 11.01.2000, an untoward incident had taken place. The victim Anju Ilyasi died at her residence i.e. B-13, IFS Flats, Mayur Vihar Phase-I. She was taken to the AIIMS Hospital by the accused/her husband where she was declared brought dead. Investigation was conducted by ACP Rajiv Ranjan and in the course of inquiry, a panel of three doctors namely Dr. R.K. Sharma, Dr. Alexnder F. Khala and Dr. L.C. Gupta on 12.01.2000 gave their report after examining the two injuries suffered by the victim. The cause of death was reported as hemorrhagic shock caused as a result of antemortem injury No.1. The Board had desired additional documents i.e. the crime scene, photographs, medical treatment received at the nursing home prior to having been brought to AIIMS Hospital, her viscera report, nail clippings etc. On 18.01.2000, the Board of doctors unanimously opined that the injuries noted on the victim appear to be self-inflicted and suicidal in nature.

4. The SDM Ravi Dadhich (PW-4) had recorded the statements of various witnesses including K.P. Singh, the father of the deceased, Prashant Singh, her brother, Rukma Singh, her mother, Rashmi Singh, sister of the victim as also Reeta another sister of the deceased. Statement of the accused Suhaib Ilyasi was also recorded.

5. After investigation Challan was filed. On 29.03.2003, charge was framed against the accused under Section 498-A and Section 304-B of the IPC.

6. The prosecution was not satisfied with the charge and accordingly learned public prosecutor filed an application dated 17.07.2003 seeking framing of additional charge/alternate charge under Section 302 of the IPC. In this application, the following additional facts were brought to the notice of the

Sessions Judge: a. That Dr. L.C. Gupta has given his opinion in P.M. Report after examining the case that homicidal cannot be ruled out. b. PW Rashmi Singh has stated in her statement Under Section 161 Cr.P.C. that soon before receiving injuries by the deceased, the accused had told her on telephone that, Bullu (Anju) KA DEEMAG KHARAB HO GAYA HAI on this Anju had snatched the telephone receiver from the accused and requested her DIDI MUJHEY YAHA SE NIKAL LO, NAHIN TO YE LOG MUJHEY JAAN SE MAAR DENGE and the telephone was disconnected. This fact clearly shows that the accused was begging her life and had no intention of committing suicide. c. That PW Dr. K.P. Singh, the father of the deceased has stated in his statement Under Section 161 Cr.P.C. that her daughter Anju had visited to him at his residence in the evening of 10/01/2000 and till her departure she was quite normal and happy and he noticed nothing abnormal in her behavior. d. That PW-2 Parshant has stated in his cross examination, It is correct that my sister was very intelligent and strong but she was not short tempered which clearly shows that she has not committed suicide. e. PWs, Const. Raj Kumar and Const. Satrugan, the P.S.O.s of the accused have stated in their statements Under Section 161 Cr.P.C. that at the time of sustaining injuries on the person of the deceased, only accused and the deceased were present. They have further stated that they alongwith the accused took the deceased in injured condition to Virmani Hospital and during the way she was crying MUJHEY BACHA LO. They further stated that the doctor of the Virmani Hospital had enquired from the accused about his injured wife and the accused had replied that she has eaten something. But when doctors saw the wounds of the deceased. The accused said KOI NUKILI CHIJ LAG GAI HAI. The conduct of the accused and the statement of the above said eye witnesses shows that the accused has committed murder of the deceased. f. That as per established law, when accused and the deceased were alone present at the place of occurrence, then only the accused has to answer, how the deceased sustained injuries. In the present case in preliminary enquiry the accused had told the police that from the place of occurrence after stabling herself, Anju the deceased did not go anywhere. But during investigation it was revealed that blood of Anju was found on the bed in the bedroom of the deceased bed, her blood was also found from the bathroom of the house of the accused. It is also pertinent to note that there were number of other injury marks

on the person of the deceased as per her P.M. Report, which clearly indicates that there was scuffling between the accused and the deceased and the deceased tried to save herself. This fact can be presumed from the circumstances of the case and from the P.M. reports and from the opinion of doctor Dr. L.C. Gupta. g. That there were no fingerprints of the deceased on the revolver and knife used by her which indicates the accused has cooked up a false story of suicide by the deceased.

7. Vide order dated 03.02.2004 while noting these submissions of the learned public prosecutor as also the counter submissions made by the learned counsel for the accused, the Court had dismissed the application of the State. It was noted that the material on the basis of which the prosecution wanted framing of additional/alternate charge was available even at the time of framing of original charge which was framed on 29.03.2003 and since no fresh material was found against the accused, at that stage, the said application had been dismissed. Matter was thereafter listed for evidence.

8. The complainant on 12.07.2005 moved an application seeking fresh investigation into the matter. The application under Section 173 (8) of the Code of Criminal Procedure (Cr.PC) was filed by Smt. Rukma Singh (mother of the victim) praying that since the investigation in the instant case had not been conducted properly, fresh investigation be directed.

9. This application was dismissed on 04.08.2005.

10. An appeal was filed in the High Court vide W.P. (Crl.) 3020/2006. This writ petition was disposed off on 20.12.2006 noting the submission of the learned counsel for the petitioner that since the charge-sheet had already been filed, a direction for further investigation may, if at all, be given by the concerned Court. The writ petition was disposed off accordingly.

11. In these circumstances, a second application dated 15.01.2007 seeking further investigation under Section 173(8) of the Cr.P.C. was filed by the complainant before the trial Court. This application was dismissed on 08.08.2007. The Sessions Judge was of the view that since the order dated 04.08.2005 has not

been challenged, it has become final and the Sessions Judge cannot sit in appeal over the order passed by another coordinate Bench and accordingly the said application was dismissed. The Sessions Judge had failed to note that the High Court while disposing of W.P.(Crl.) 3020/2006 vide its order dated 20.12.2006 had granted liberty to the complainant to appear before the concerned Court before whom the charge-sheet was pending and to seek appropriate direction from him. The order dated 08.08.2007 in one part of its order had noted that the order dated 04.08.2005 had been challenged but at the same time while disposing of the application dated 15.01.2007 had dismissed it largely on the premise that the order dated 04.08.2005 not having been challenged has become a final order. This is clear from the observations of the Sessions Judge in para 9 of the said order. In fact it appears that the Sessions Judge was sitting in appeal over the order of the High Court and in para 8 had gone on to agree with the submission of the counsel for the accused that had he (the counsel for the accused) been present in the High Court, such a direction would not have been passed. This is a paternal and glaring illegality committed by the Sessions Judge in its order dated 08.08.2007.

12. The order dated 08.08.2007 was not the subject matter of challenge.

13. On 19.08.2010, the complainant thereafter moved an application under Section 216 of the Cr.PC for framing of an additional charge. It is this application which has been dismissed by the impugned order dated 19.02.2011.

14. In this application it has been averred that in view of the statements made by the witnesses of the prosecution and primarily of Rukma Singh (PW-6), Reeta (PW-18) and Rashmi Singh PW-20 (the sister of the victim) as also the subsequent opinion given by Dr.L.C.Gupta(one of the members of the Medical Board) dated 30.08.2011 wherein he had stated that in view of the injuries suffered by the victim, homicide cannot be ruled out. A clear case of murder is made out and accordingly prayer was made to add the offences under Sections 302/201/468/471 of the IPC.

15. The impugned order had dismissed this application. The Court was of the view that no new facts have emerged in the deposition of PW-6 (mother of the victim),

PW-18 & PW-20 (sisters of the victim) and the opinion of Dr. L.C. Gupta being dated 28.03.2001 which was prior to the date of filing of the charge-sheet, all this material was considered while framing of charge and order dated 03.02.2004 having dismissed the earlier application seeking an amendment in the charge, the present application was also liable to be dismissed. Accordingly the same was dismissed.

16. Arguments have been heard in detail. Both the parties have addressed their submissions and counter submissions.

17. The foremost submission of the learned counsel for the petitioner is that he has been running from pillar to post but has not got justice. Submission being that the charge under Section 304-B of the IPC against the accused is only to subvert the ends of justice as there was no material before the trial Court of a dowry demand; it is clear case where this charge has been framed to camouflage the real controversy as this is a glaring case of murder and the investigating agency and the accused being hand in glove with one another, arguments had not been addressed on the charge of murder. Submission being that the investigation right from the inception was tainted and the fact that the crime scene was tampered with was evident from the fact that there was blood found at different places for which there was no explanation; the finger prints of the accused could not be traced in the room where he was admittedly present, the post-mortem report had noted that the T-shirt worn by the victim who was admittedly brought to the hospital in dead condition did not have any tear marks which would falsify the version set up by the prosecution that the victim had herself inflicted stab wounds on her stomach. Additional submission being that the report of Dr. L.C. Gupta had also opined that the death of the victim could be homicide and was also not considered by the trial Court at the time of framing of charge. Further submission being that inspite of the complainant having approached the High Court and having obtained an order dated 20.12.2006 in W.P. (Crl.) No.3020/2006 wherein a direction had been given that the trial Court will consider his submission for a reinvestigation, no such opportunity was granted to him and the trial Judge had dismissed his second application under Section 173 (8) of the Cr.PC on 08.08.2007 without addressing these issues largely on the premise that the order

dated 04.08.2005 had become a final order. Submission at this stage of the learned counsel for the petitioner being that the statement of Rashmi (PW-20) recorded before the Court has clearly recited the motive for the murder of her sister. She has detailed the instances where the accused used to have frequent fights with the victim and the victim having recently decided to move to Canada along with her child because of her estranged relationship with the accused would not have committed a suicide and this version has been totally ignored by the Court; submission being that this version has also been fortified by the statement of PW-18 and this coupled with the dissenting opinion of Dr. L.C. Gupta that the death of the victim could have been homicidal, a case of framing of charge under Section 302 of the IPC is clearly made out. Learned counsel for the petitioner to support his submission has placed reliance upon the judgment reported as 2010 XII AD (S.C) 316 Rajbir @ Raju and Another Vs. State of Haryana wherein on 22.11.2010 while disposing off the Special Leave Petition, a direction had been given to the trial Courts to ordinarily add Section 302 as an alternate charge to Section 304-B of the IPC in order that death sentences could be imposed in heinous and barbaric crimes against women. Submission being that the impugned order has not noted this judgment in the correct perspective. Further submission being that the Court has ample powers to frame charge at any stage and this is a clear case where in the interest of justice, additional charge under Section 302 of the IPC be framed against the accused.

18. Arguments have been countered. Learned counsel for the respondent points out that the order dated 03.02.2004 seeking amendment of charge wherein also the petitioner had sought framing of additional charge under Section 302 of the IPC had been dismissed way back on 03.02.2004 and that order has since become final. The same matter on the same material cannot be re-agitated. Further submission being that the fresh investigation has been sought for under Section 173 (8) of the Cr.PC on two occasions by the petitioner and on both the occasions, the prayer was declined. The first application declined on 04.08.2005 has been upheld by the High Court vide its order dated 20.12.2006. The second application had been declined on 08.08.2007 which order has also since attained finality. Learned counsel for the respondent has relied upon the judgment of the Apex Court reported as (2013) 7 SCC256Jasvinder Saini & Others Vs. State

(Govt. of NCT of Delhi). Submission being that a clarification had been made regarding the ratio of Rajbir (supra) relied upon by the learned counsel for the petitioner. Submission being that as a matter of routine, an alternate charge under Section 302 of the IPC cannot be framed and unless and until there is sufficient material for framing of a charge for the offence of murder, such a charge cannot be framed.

19. Record has been perused.

20. Section 216 of the IPC gives ample and unfettered powers to the Court to frame alternate or add any charge at any time before the judgment is pronounced. This alternation or addition of charge is subject to the limitation that the accused should not be prejudiced either because he is not fully aware of the charge made or has not been given an opportunity of meeting it and putting forward any defence open to him on the charge which is finally preferred. A new charge may be added or a charge may be altered if there is material before the Court to justify such an action.

21. Rashmi Singh, the sister of the victim has been examined as PW- 20. She was admittedly a resident of Canada. She had come into the witness box on 04.01.2010. Her deposition was long and had detailed the various incidents when quarrels used to take place between her sister and the accused. Evidence reveals that the parties who had been married on 18.11.1993 had a disturbed relationship while they were living in London and even afterwards when they shifted to Delhi. A child was born to them in 1997; the victim suspected the fidelity of the petitioner; she suspected his relations with another lady; tension between the victim and her husband continued. On 10.12.1999, her sister had moved to a new apartment in Mayur Vihar (which was the place of the incident). On 08.01.2000, she had spoken to her sister on telephone to wish her Eid and the victim told her that she would talk to her later as she was busy because of the various relatives of her husband who had come to visit them. On 09.01.2000, she again called her sister informing her that she is sending her ticket for her trip to Canada. On 10.01.2000, PW-20 was informed by her mother that the victim wanted to speak to her. PW-20 called her sister but her sister did not speak to her; at that point accused spoke to her.

She heard her sister crying; she stated that her husband is going to kill her; phone got disconnected. After couple of hours, she learnt that her sister has died. The trauma suffered by PW-20 has also been explained in her deposition. Statement of PW-20 was recorded before the SDM on 16.03.2000. Her version on oath in Court corresponded to this version, a lengthy cross-examination of the witness had also been conducted but she stuck to her stand.

22. The statement of the second sister of the victim Reeta examined as PW-18 was also to the effect that the victim and her husband used to have frequent fights; she has also deposed that on 10.01.2000 (the date of incident), she had called her sister but the accused came on the line; her sister did not speak to her because the accused informed her that she did not wish to talk to her. Phone was disconnected; the accused had told her that she was trying to kill herself with the revolver; 2-3 hours later, she learnt that her sister has died.

23. The post mortem report dated 12.04.2000 revealed that the victim had died as a result of two stab wounds. The weapon of the offence was not the revolver (as revealed by the petitioner on the phone) but a knife. This report had also noted that the T-shirt worn by the deceased had no cut marks in the corresponding area of the injury. On 30.08.2001 Dr.L.C. Gupta had also given a dissenting report on the opinion of the cause of death. He had categorically, after a detailed enquiry in various question-answer forms, concluded that keeping in view the nature of injuries suffered by the victim, homicide cannot be ruled out. Since the clothes worn by the victim also did not have cut marks; this would also be contrary to the theory of a suicide as the injuries were admittedly two injuries in the abdominal area and as has been argued by the learned counsel for the petitioner that if the injuries were self-inflicted by the victim, her clothes would have had cut marks but they were admittedly in an intact condition.

24. The order dated 03.02.2004 while disposing off the application of the State seeking amendment of charge had noted that there was no material at that stage for framing of fresh charge.

25. As noted supra, the powers of the Court are unfettered for framing of an additional charge and the same can be framed at any stage prior to the passing of

the judgment; the embargo being that there must be reasons justifying the framing of this additional charge.

26. This Court also notes that the judgment of Rajbir (supra) has been clarified in the subsequent judgment of Jasvinder Saini (supra) wherein the Apex Court had noted that the Courts may not mechanically frame an alternate charge under Section 302 of the IPC. This judgment however does not impose any rigors upon the Courts to add additional charge if there is material justifying it. 27 In this judgment of Jasvinder Saini (Supra), the Apex Court had held :

..The circumstances in which such addition or alteration may be made are not, however, stipulated in Section 216. It is all the same trite that the question of any such addition or alteration would generally arise either because the Court finds the charge already framed to be defective for any reason or because such addition is considered necessary after the commencement of the trial having regard to the evidence that may come before the Court. The question whether it is murder punishable under Section 302 IPC or a dowry death punishable under Section 304B IPC depends upon the fact situation and the evidence in the case. If there is evidence whether direct or circumstantial to prima facie support a charge under Section 302 IPC the trial Court can and indeed ought to frame a charge of murder punishable under Section 302 IPC, which would then be the main charge and not an alternative charge as is erroneously assumed in some quarters. If the main charge of murder is not proved against the accused at the trial, the Court can look into the evidence to determine whether the alternative charge of dowry death punishable under Section 304B is established. The ingredients constituting the two offences are different, thereby demanding appreciation of evidence from the perspective relevant to such ingredients.

28. In view of this Court, testimonies of PW-18 & PW-20 recorded on oath are relevant facts which (without this Court culling out inferences from them lest they influence the final judgment) are prima facie sufficient to constitute the framing of the additional charge under Section 302 of the IPC. There is no doubt that the dissenting opinion of Dr. L.C. Gupta dated 30.08.2001 holding that homicide cannot be ruled out was available even prior to the filing of the charge-sheet and

this was material available with the Sessions Court at the time of framing of the first charge but the deposition of Dr. L.C. Gupta (examined as PW10) shows that the first unanimous opinion which was given by all the three doctors did not have report of vaginal swab, nail clipping and clothes worn by the deceased. 29 This is also especially so, keeping in view the fact that the case is based on circumstantial evidence and at the time of framing of charge, it is only a prima facie view of the matter which has to be taken into account. The prima facie material collected by the prosecution justifies the framing of additional charge under Section 302 of the IPC. The revision petition is disposed of with a direction to the trial Court to frame additional charge under Section 302 of the IPC by following procedure under Section 217 of the Cr.PC.

30. The writ petition as noted supra has been filed by accused. He is aggrieved by the order No.F.342/MB-77/2011/H&FW/2815-21 dated 21.05.2012 issued by the Health and Family Welfare Department, Government of NCT of Delhi whereby a Medical Board comprising of five doctors had been constituted to reconcile the two dissenting opinions given by three earlier doctor constituting the Medical Board as admittedly two of the three doctors namely R.K. Sharma and Alexnder F. Khala had held the cause of death to be suicidal whereas Dr. L.C. Gupta in a subsequent opinion dated 30.08.2001 had concluded that the homicide cannot be ruled out.

31. On the first date, noting these submissions of the learned counsel for the petitioner, the letter of the Police dated 08.12.2011 requesting for constitution of a Medical Board had been stayed.

32. Submissions and counter submissions have been heard. Learned counsel for the petitioner points out that in view of the judgment of Apex Court reported as 2013 (2) ABR36Vinay Tyagi Vs. Irshad Ali @ Deepak and Others, no investigating agency is empowered to conduct fresh or denovo investigation into the matter under Section 173 of the Cr.PC unless it is directed by the higher Court for which also reasons have to be given. Learned counsel for the petitioner has placed reliance upon 2008 5 SCC413Rama Chandran vs. R. Udhay Kumar & Others as also another judgment reported as (2009) 9 SCC129Reeta Nag Vs. State of West Bengal and others to support his submission. It is pointed out that in this view of

the matter on the letter of the DCP Rajiv Ranjan who himself was a witness and the Investigating Officer of this case (examined as PW-13), the order directing a fresh Medical Board to be constituted suffers from an illegality.

33. Submissions have been countered by the learned counsel for the respondent who has pointed out that in view of the judgment of the Apex Court reported as AIR 2008 SC1052 State of A.P. Vs. A.S. Peter further investigation can be carried out after filing of the charge-sheet; this is a statutory right of the Police and it cannot be curtailed.

34. Record shows that on 30.09.2011 DCP Rajiv Ranjan had sent a letter to the DCP requesting for constitution of a Board of five doctors to reconsider the split opinion given by earlier Board constituted for the opinion on the death of the victim namely Anju Ilyasi. This was reiterated by the subsequent letter dated 31.10.2011 and another letter dated 01.11.2011. The Home Department vide letter dated 07.08.2012 had constituted this Board comprising of five doctors namely Dr. Anil Aggarwal, Dr. Sunil, Dr. Sone Lal, Dr. Vijay Dhankar and Dr. Akash Jhanjee. This writ petition has been filed on 05.01.2013.

35. Sub para K of the writ petition discloses that the petitioner/accused has in fact filed complaints against three of the doctors (new Medical Board) as they attempted to extort money from him.

36. The law on this point is well settled. Section 173 (8) of the Cr.PC empowers fresh reinvestigation to be carried out. Powers of the police are unfettered. This is clear from the judgment of A.S. Peter (supra). This has been answered by the Apex Court relying upon (1980) 1 SCC5541 State of Bihar and Another Vs. J.A. C. Saldanha in the following words:

This provision does not in any way affect the power of the investigating officer to further investigate the case even after submission of the report as provided in Section 173(8). Therefore , the High Court was in error in holding that the State Government in exercise of the power of superintendence under Section 3 of the Act lacked the power to direct further investigation into the case. In reaching this conclusion we have kept out of consideration the provision contained in Section

156(2). That an investigation by an officer in charge of a police station, which expression includes police officer superior in rank to such officer, cannot be questioned on the ground that such investigating officer had no jurisdiction to carry on the investigation; otherwise that provision would have been a short answer to the contention raised on behalf of Respondent 1.

37. The judgment of Vinay Tyagi (supra) relied upon by the learned counsel for the respondent was delivered on 13.12.2012; the letter of the Health and Family Welfare Department directing constitution of a Medical Board pursuant to the letters of the DCP dated 30.09.2011, 31.10.2011 and 01.11.2011 are all prior in time. The opinion of the newly constituted Medical Board would in fact assist the Court in coming to a conclusion as to whether the death of the victim was suicidal or homicidal. This opinion would be a relevant fact especially keeping in view the dissenting opinion given by the earlier Board i.e. Dr. L.C. Gupta on the one hand and the opinions of Dr. R.K. Sharma & Dr. Alexnder F. Khala on the other side.

38. This writ petition is without any merit. It is dismissed.

39. Parties to appear before the concerned trial Court at 10:30 am on 25.08.2014.
INDERMEET KAUR, J AUGUST12 2014 A

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