

Gyan Parkash and Ors. Vs. State

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Court : Delhi

Decided On : Feb-10-2015

Judge : S. P. Garg

Appellant : Gyan Parkash and Ors.

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI DECIDED ON : FEBRUARY10 2015. + CRL.REV.P. 80/2015 & Crl.M.A.Nos.2012/2015 and 2013/2015 GYAN PARKASH & ORS. Through : Petitioners Mr.S.Khan with Ms.Sushmita Das and Ms.Jyoti, Advocates. VERSUS STATE Through : Respondent Ms.Kusum Dhalla, APP SI Babu Lal, PS R.K.Puram. CORAM: HONBLE MR. JUSTICE S.P.GARG S.P.GARG, J.

(ORAL) 1. Present revision petition has been preferred to challenge the legality and correctness of an order dated 24.12.2014 of learned Additional Sessions Judge by which charge under Sections 498A/304B/406/34 IPC was ordered to be framed against the petitioners.

2. Learned counsel for the petitioner urged that there was no material before the learned Trial Court to proceed against the petitioners for the commission of aforesaid offences. In the suicide note recovered at the spot, the victim did not held anyone responsible for her death. Statements given by the witnesses are

highly improbable and selfcontradictory. Allegations levelled by the victims parents after the occurrence are vague in nature and do not indicate involvement of either of the petitioners. Ingredients of Section 304B are lacking as there is no evidence on record to show if soon before her death, the victim was subjected to cruelty or harassment for or in connection with dowry demands. The victim lived alone in Delhi and was never harassed on account of non-fulfillment of dowry demands. Reliance has been placed on P.Vijayan vs. State of Kerala & Anr. 2010 CRI.L.J.1427; Raman Kumar vs. State of Punjab 2009 CRI.L.J.3034; Biswajit Halder alias Babu Halder & Ors. vs. State of West Bengal 2007 CRI.L.J.2300; Sarbans Singh & Ors. vs. State of NCT of Delhi 2005 CRI.L.J.2625; Kartar Singh & Ors .vs. Central Bureau of Investigation 2006 CRI.L.J.4099.

3. Admitted position is that Anuradha married to the petitioner- Gyan Parkash on 31.10.2010 committed suicide on 28.12.2010 in her rented room at Delhi where she lived alone. It is also true that in the suicide note purportedly executed by her, she did not held anyone responsible for her death. Undisputedly, she was in employment with M/s Jasmin Water Plant, Motia Khan near Oriental Bank, Delhi. DD No.24A was recorded on 28.12.2010 at Police Station R.K.Puram regarding death of a woman in House No.128/2, 2nd floor, village Mohammadpur, R.K.Puram. The police went to the spot where Prashant Gautam, victims cousin met. Contents of DD No.24A dated 28.12.2010 reveal that information was conveyed by the victims employer to the police when she did not report for duty for the last two days. Victims parents had attempted to reach her on phone during the relevant time, but were unable to contact her. When Prashan Gautam received information from victims mother that she was not answering calls on phone and asked him to check, he sent Pankaj and his wife to the residence of the victim where she was found dead. The parents of the victim Arjun Prasad and Shakuntala Devi levelled serious allegations of physical and mental torture to the victim by the petitioners during her stay at the matrimonial home. During investigation, police also recorded statements of other witnesses including that of Sangita and Prashant Gautam. Specific instances were given by them as to how and under what circumstances, the victim was physically beaten on account of non-fulfillment of dowry demands. Reference was made to one SMS sent by the victim to Sangita on 11.11.2010 on her mobile No.9889049367 informing her

about physical torture. It has further come on record that during investigation, victims parents had lodged complaint to the mediator of the marriage and other relatives and on 14th November, 2010 a meeting took place. Thereafter, the victim was brought by her parents. On 17.11.2010, she came to Delhi to join her duties. It is alleged that even on phone victims in-laws used to harass her. Allegations are that the victim was being forced not to do her job at Delhi. In her statement under Section 161 Cr.P.C., victims mother Shakuntla disclosed that her husband had also received message from the victim on his phone to reach immediately. Her husband went thereafter to Shakti Nagar. The victim informed her father that had he not arrived, she would have been killed and that she saved her life after coming to balcony. The victim was brought at her parents house by her father. There are allegations that dowry articles given to the victim were retained by her in-laws. FIR was lodged on the complaint of the victims father Arjun Prasad recorded by concerned SDM Sh.Ashwani Kumar in the proceedings under Section 176 Cr.P.C. The petitioners were named in the FIR and specific role was assigned to them. The petitioners did not give plausible explanation as to what prompted or forced the victim to take extreme step and to put an end to her life within two months of her marriage. It is unbelievable that in normal circumstances, victims in- laws would not remain in contact with her on phone and would not come to know about her death for two or three days.

4. It is true that in suicide note, the victim has not implicated anyone for her death but at the same time allegations of her family members cannot be brushed aside at this stage. I find no merit in the contention of the learned counsel for the petitioners that ingredients of Section 304B IPC are not attracted. It is well-settled that soon before is a relative term and it would depend upon the circumstances of each case and no straightjacket formula can be laid down as to what would constitute a period of soon before the occurrence. The expression soon before her death used in Section 304B IPC and Section 113 B of the Evidence Act is present with the idea of proximity test. In the instant case, the marriage lasted only for about two months. So it cannot be assumed that there existed no live link between the effect of cruelty based on dowry demand and the death concerned. The pleas raised by the petitioners for discharge are primarily the arguments on the merits of the case which are to be taken into consideration after the parties are given

opportunity to establish their respective case during trial.

5. At the stage of framing of charge, the court has no jurisdiction to go into the merits of the allegations, and is only 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 disclose in existence of all ingredients constituting the alleged offence. The Trial Court was not required to weigh the evidence as if it was for conviction or acquittal. In *State of Maharashtra vs. Som Nath Thapa & Ors.* 1996 Cr.5, 2448, the Supreme Court observed:

If on the basis of materials on record a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently if the court were to think that the accused might have committed the offence, it can frame the charge, though for conviction, the conclusion is required to be that the accused has committed the offence. It is apparent at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage.

6. In *Amit Kapoor vs. Ramesh Chander & Anr.* (2013) 1 SCC (Cri) 986 the Supreme Court observed as under: 7. Framing of charge is a kind of tentative view that the trial court forms in terms of Section 228 which is subject to final culmination of the proceedings. The legislature in its wisdom has used the expression 'there is ground for presuming that the accused has committed an offence'. This has an inbuilt element of presumption once the ingredients of an offence with reference to the allegations made are satisfied, the Court would not doubt the case of the prosecution unduly and extend its jurisdiction to quash the charge in haste, A Bench of this Court in the case of *State of Maharashtra v. Som Nath Thapa* and referred to the meaning of the word 'presume' while relying upon the *Black's Law Dictionary*. It was defined to mean 'to believe or accept upon probable evidence'; 'to take as proved until evidence to the contrary is forthcoming'. In other words, the truth of the matter has to come out when the prosecution evidence is led, the witnesses are cross-examined by the defence, the incriminating material and evidence is put to the accused in terms of Section 313

of the Code and then the accused is provided an opportunity to lead defence, if any. It is only upon completion of such steps that the trial concludes with the court forming its final opinion and delivering its judgment. Merely because there was civil transaction between the parties would not by itself alter the status of the allegations constituting the criminal offence.

8. In the light of the above discussion, the revision petition filed by the petitioners lacks merits and is dismissed. All pending applications also stand disposed of.

9. Observations in the order shall not have any impact on the merits of the case.
(S.P.GARG) JUDGE FEBRUARY 10 2015/sa

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