

FaqrudIn Vs. State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Apr-18-1994

Reported in : I(1995)DMC26

Judge : V.S. Kokje, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302, 304B and 498A

Appeal No. : Crl. Rev. 55 of 1992

Appellant : FaqrudIn

Respondent : State of Madhya Pradesh

Advocate for Def. : N.K. Sharma, Adv.

Advocate for Pet/Ap. : J.P. Gupta, Adv.

Disposition : Revision dismissed

Judgement :

V.S. Kokje, J.

1. The applicants have challenged the framing of the charge by Court of Sessions against them Under Sections 498A, 304B and 302 I.P.C. The prosecution case is that deceased Saira Bano was married to applicant No. 1-FaqrudIn on 29.5.1986. The applicant No. 2-Noor Mohd. is the father of applicant No. 1. The applicants

Nos. 3 and 4-Mohd. Umar and Moinuddin are his brothers. They reside at 358, Jawahar Marg, Indore except Mohd. Umar who resides at 19, Champabag, Indore, half a kilometre away. On 7.5.1990 at about 1.30 p.m., applicant No. 1 Moinuddin reported to the Police that Saira Bano was lying dead having burn marks on the body on the roof of Ghorī Lodge. A merger was registered Under Section 471 Cr.P.C. The matter was investigated and a case Under Sections 498A and 306-B IPC was registered. The body was sent for Post Mortem and was handed over to Faqrudin for burial and it was accordingly buried. On 13.5.90, Rasul Ahmed, father of deceased Saira Bano complained to a Minister in the M.P. State Cabinet alleging that Saira Bano did not die a natural death but it was a case of dowry death. It was also written in the alleged complaint given to the Minister that the deceased Saira Bano was attacked with sharp edged weapon and then she was put a fire. In short, it was complained that it was a case of murder.

2. The dead body of Saira Bano was exhumed on 14.5.90 and on 15.5.90 second Post Mortem examination was performed. In this Post Mortem an incision mark from sternum down to pubic symphysis with stitches, a contusion extending across forehead was also noticed. Both these Post Mortem examinations were conducted by three Doctors. In the first P.M. examination the cause of death was found to be shock due to 85% burns. In the second P.M. examination it was observed that if skull has been earlier opened it might have revealed an injury if present. The prosecution collected some documentary evidence in the shape of letters written by Saira Bano. On this material on record the charges were framed. It is contended on behalf of the applicants that there is no direct evidence on record sufficient to implicate any of the applicants. It is submitted that the evidence on record does not prima-facie indicate that the case is of homicide and, therefore, charges Under Sections 302, 304B IPC should not have been framed. It was also submitted that there is no material for framing a charge Under Section 498A IPC also. It was contended relying on the decision of Supreme Court in State of M.P. v. Ramkrishna Ganpatrao Limse (AIR 1954 S.C. 20) that the result of the autopsy cannot be taken as conclusive. It was contended that when there is nothing to demonstrate positively that the death was homicidal, the acquittal must follow. Cause of death could not be a matter of speculation and has to be proved by cogent evidence. It was contended that this was not done in the case, there is no

ground for framing a charge. It was further contended relying on the Supreme Court decision in *Niranjan Singh v. State of Mah.* (AIR 1990 SC 1962) that at the stage of framing of the charge what is required is 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 the existence of all the ingredients constituting the alleged offence. In this decision it was further observed that the Court may for this limited purpose sift the evidence as it cannot be expected even at the 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. Decisions reported in 1992 Cr. L.J. 309; 1992(2) Crimes 746 were also cited along with some unreported decisions of this Court, in Cr. A. No. 39/91 Decided on 25.5.91 and Cr. A. No. 94/90 decided on 28.9.90. Relying on the decision in AIR 1972 SC 545 it was contended that if there is no ground for presuming that the accused had committed an offence, the charges must be considered to be groundless. It was further observed in this case that it cannot be said that the Court at the stage of framing charges has not to apply its judicial mind for considering whether or not there is a ground for presuming the commission of the offence by the accused. The order framing the charges thus, substantially affects the persons and it cannot be said that the Court must automatically frame the charge merely because the prosecuting authorities by relying on documents referred to in Section 173 Cr. P.C. consider it proper to institute the case. The responsibility of framing the charges is that of the Court and it has to judicially consider the question of doing so. Without fully advertent to the material on record it cannot blindly accept to the case of the prosecution.

3. The learned Counsel appearing for the State submitted that there was enough material for supporting the charges and the charges were not groundless. Relying on the decision of the Supreme Court in *State of U.P. v. Manmohan* (AIR 1986 SC 1652) the learned Counsel submitted that where Magistrate had formed the opinion that there was a ground to presume that the accused had committed the offence and that the prosecution was not frivolous or vexatious or one which was abuse of process of law, the High Court should not quash the charge in exercise of revisional powers.

4. In *Dilip Nathumal Chordia and Anr. v. State of Maharashtra* (1989 1 S.C.C. 715), it was held that when the Trial Court, finding a prima-facie case prefers to frame charges against the accused, High Court should not interfere by probing into sufficiency of grounds for conviction of the accused and ordering his discharge. It was further observed in this case that Section 227 itself contains enough guidelines as to the scope of inquiry for the purpose of discharging an accused... It provides that the Judge shall discharge when he considers that there is no sufficient ground for proceeding against the accused. The ground in the context is not a ground for conviction, but a ground for putting the accused on trial. It is in the trial, the guilt or the innocence of the accused will be determined and not at the time of framing of charge. The Court, therefore, need not undertake an elaborate inquiry in sifting and weighing the materials. Nor is it necessary to delve deep into various aspects. All that the Court has to consider whether the evidentiary material on record, if generally accepted, would reasonably connect the accused with the crime. It was further observed that Section 227 which confers power to discharge an accused was designed to prevent harassment to an innocent person by the arduous trial or the ordeal of prosecution. The power has been entrusted to the Sessions Judge who brings to bear his knowledge and experience in criminal trials. If the Sessions Judge after hearing the parties frames a charge and also makes an order in support thereof, the law must be allowed to take its own course. Self-restraint on the part of the High Court should be rule unless there is a glaring injustice staring the Court in the face.

5. Examining the facts of this case in the light of the aforesaid case law, it cannot be said that the charges are groundless and there is no material to support them. All the objections raised to the material on record by the applicants can only be part of their defence. The allegations made by witnesses specially the father of the deceased cannot be said to be opposed to common sense or the broad probabilities of the case. Whether the prosecution will be able to prove the allegations or not has to be seen only after the trial. It cannot be presumed that the prosecution will fail in proving the charges. On the charge of dowry and harassment for dowry and cruelty, statement of Rasul Mohd., the father of deceased Saira Bano, Ismail s/o Abdul Rahim cousin of the deceased, Ali Mohd. the elder brother of deceased and the mother of the deceased Basiran are on

record. On the question of homicidal nature of death, the medical evidence on record can be expected to be supported by medical evidence given by the prosecution. Examining the entire material on record, it cannot be said that there is no material to support the charges. On the charge Under Section 302 IPC it cannot be lost sight of that the doctors performing second Post-Mortem examination have reported evidence of injuries by hard and blunt object present on the body. The blood and viscera from the dead body had been sent to F.S.L. Sagar. In both the P.M. Examinations, body was found to be burnt and in the first P.M. Examination 85% burns injury was reported. The strong probability of death being homicidal cannot be ruled out.

6. For the aforesaid reasons the charges cannot be said to be groundless. The revision application therefore, fails and is hereby dismissed. Let the record be sent back immediately to the Trial Court.

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