

Rama Devi Vs. The State of Jharkhand

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Court : Jharkhand

Decided On : Aug-04-2015

Appellant : Rama Devi

Respondent : The State of Jharkhand

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI Cr. Revision No. 221 of 2015 ----- Rama Devi @ Ram Devi, wife of late Nirash Jha Resident of Quarter No.785/A, New Matkoria Railway Colony, P.O., P.S. and District-Dhanbad Petitioner Versus The State of Jharkhand Opp. Party ----- CORAM: HON'BLE MR. JUSTICE RAVI NATH VERMA For the Petitioner : Mrs. Jasvindar K. Majumdar, Advocate M/s Rajesh Kumar, Pratik Sen For the State : Mr. Shekhar Sinha, A.P.P. C.A.V. ON:

24. 06.2015 PRONOUNCED ON:- 04/08.2015 Challenge in this revision is to the order dated 10.02.2015 passed by learned Additional Sessions Judge-I, Jamtara in Sessions Case No.118 of 2014 whereby and whereunder the petition filed by the petitioner under Section 227 of the Code of Criminal Procedure (In short the Code) for his discharge, has been rejected.

2. A brief reference to the factual aspects would suffice the issue involved in this case. On the basis of the fardbeyan of the informant Pratap Narayan Jha, Jamtara P.S. Case No.112 of 2013 was instituted on 10.04.2013 under Section 304B of the Indian Penal Code with the allegation that on 09.04.2013 the informant had gone

to Jamtara court to attain a case instituted at the instance of his daughter Shiwani Jha under Section 498A of the Indian Penal Code against her husband Manoj Jha where the said Manoj Jha was also present and seeing the informant, the said Manoj Jha voluntarily uttered before him that he would never keep his daughter Shiwani Jha anymore. Whereafter the informant came back to his house and on being asked by his daughter Shiwani Jha he conveyed the message which was given by Manoj Jha (her husband) that he will not keep Shiwani Jha in his house. After hearing the said message, his daughter Shiwani Jha fell down and became unconscious but later on she regain her sense and in the night she slept with her mother but in the morning she was found 2 Cr. Revision No.221 of 2015 unconscious and thereafter she was brought to Jamtara Hospital where the doctor declared her dead.

3. After completion of the investigation, the police submitted charge-sheet under Section 304B of the Indian Penal Code against the present petitioner and other accused persons including the husband of the deceased. After commitment of the case, petitioner filed a petition under Section 227 of the Code for her discharge but the court below rejected her prayer holding that on perusal of the F.I.R. and the entire case diary, I find no prima facie case under Section 304B of the Indian Penal Code but there is sufficient prima facie evidence against the petitioner for committing offence under Section 306 of the Indian Penal Code and fixed the case for framing of charge on the next date under Section 306 of the Indian Penal Code. Hence, this revision.

4. Mrs. Majumdar, learned counsel appearing for the petitioner submitted that even if the case of the prosecution is accepted on its face value, still on the basis of the material brought on record by the prosecution, no offence under Section 306 of the Indian Penal Code is made out against this petitioner. It was also submitted that ingredients responsible to constitute offence under Section 306 of the Indian Penal Code of abetting suicide is completely lacking as abetment involves mental process instigating or intentionally aiding a person or doing of a thing and further submitted that in the instant case neither there is any instance of instigation attributable to the petitioner nor even there is an iota of evidence against this petitioner. Learned counsel for the petitioner in support of her contention relied on

a case *Chitresh Kumar Chopra V. State* (Government of NCT of Delhi) reported in (2009) 16 SCC605 and on another case of *M. Mohan Versus State* represented by the Deputy Superintendent of Police reported in (2011) 3 SCC626. Hence, the order impugned deserves to be set aside.

5. Contrary to the aforesaid submissions, the learned counsel representing the State seriously contended that the present case is an outcome of a case earlier instituted at the instance of the deceased against the present petitioner and her husband and other in-laws under 3 Cr. Revision No.221 of 2015 Section 498A of the Indian Penal Code and there is ample material on the record for presuming that the petitioner alongwith other accused persons including the husband of the deceased abetted the commission of suicide by the deceased. Learned counsel, thus, submitted that the court below has not committed any illegality in refusing to discharge the petitioner.

6. Before advertng to the rival submissions of the learned counsels, I may briefly notice the scope and ambit of powers of the court below under Section 227 of the Code. Chapter XVIII of the Code lays down the procedure for trial before the court of Sessions, pursuant to an order of commitment under Section 209 of the Code. Section 227 contemplates the circumstances wherein there can be a discharge of an accused at a stage of framing charge which provides that upon consideration of record of the case, the documents submitted with the police report and after hearing the accused and the prosecution, the court is expected and bound to decide whether there is sufficient ground to proceed against the accused and as a consequence thereof either discharge the accused or proceed to frame charge against him.

7. The Honble Supreme Court in a case *State through Inspector of Police Vs. A. Arun Kumar and Anr.*; 2015(1) East Cr. C. 450 (S.C.), on consideration of several authorities about the scope of Sections 227 and 228 of the Code, held as follows:-
(i) The Judge while considering the question of framing the charges under Section 227 of the Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would

depend upon the facts of each case. (ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial. (iii) The Court cannot act merely as a Post Office or a mouth- piece of the prosecution but has to consider the broad probabili- ties of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and 4 Cr. Revision No.221 of 2015 cons of the matter and weigh the evidence as if he was conduct- ing a trial. (iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence. (v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of of- fence by the accused was possible. (vi) At the stage of Sections 227 and 228, the Court is required to evaluate the materials and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, to sift the evidence as it cannot be expected even at that 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. (vii) If two views are possible and one of them gives rise to sus- picion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.

8. In another case, Sajjan Kumar Vs. CBI; (2010) 9 SCC368 the Honble Supreme Court succinctly analyzed the law at this point and observed in Para 19 as under:

19. It is clear that at the initial stage, if there is strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is only for the purpose of deciding prima

facie whether the Court should proceed with the trial or not. If the evidence which the prosecution proposes to adduce prove the guilt of the accused even if fully accepted before it is challenged in cross- examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.

9. From the ratio decided by the Honble Supreme Court in the above two cases, it is clear that at the initial stage, the court has to 5 Cr. Revision No.221 of 2015 evaluate the materials and documents on record with a view to find out if the facts emerging from there taken at their face value discloses the existence of all the ingredients to constitute the alleged offence and also for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine a prima facie case or grave suspicion depends upon the facts of each case and at this stage, he has not to see as to whether the trial will end in conviction or not.

10. In the light of the aforesaid principle or the guidelines given by the Honble Supreme Court, it is necessary to examine whether or not in the present case the court below was justified in refusing to discharge the petitioner. Before I examine the material and evidence on record, a reference of Section 306 I.P.C. is necessary for better adjudication of the issue involved in this case. Section 306 I.P.C. reads as under:

306. Abetment of suicide- If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. From a bare reading of the provision, it is clear that to constitute an offence under Section 306 IPC, the prosecution has to establish: (i) that a person committed suicide, and (ii) that suicide was abetted by the accused. In other words, an offence under Section 306 would stand only if there is an abetment for the commission of the crime. The word abetment has been defined in Section 107 I.P.C. which reads as follows: 107.Abetment of a thing- A person abets the doing of that thing, who- First- Instigates any person to do that thing; or Secondly- Engages with one or more other person or persons in any conspiracy for the doing

of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or Thirdly- Intentionally aids, by any act or illegal omission, the doing of that thing. Explanation 1.- A person who, by willful misrepresentation, or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing. From bare perusal of the aforesaid provision, it is amply clear that a person can be said to have abetted in doing a thing, if he, firstly, instigates any person to do that thing; or secondly, engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act of illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or thirdly, intentionally aids, by any act or illegal omission, the doing of that thing. The question for consideration in the instant case is as to whether the allegations leveled against the petitioner in the F.I.R. which is an outcome of the earlier F.I.R. lodged against the petitioner and her son and other family members under Section 498A I.P.C. and the material collected during the course of investigations, would attract the ingredients of the abetment.

11. I have gone through the statement of the witnesses recorded during investigation in the case diary and especially the statement of the informant in her re-statement in Paragraph 10, another witness Ugra Narayan Jha examined in Paragraph 11 and 70 of the case diary which clearly indicates that the deceased was subjected to physical and mental torture at the hands of this petitioner, her husband and other accused persons due to nonfulfillment of demand of dowry for which a separate case was instituted earlier. From Paragraph 70 of the case diary, it is clear that after the marriage the informant had paid Rupees Three lacs and odd to the petitioner and her family members but even then there was demand of Scorpio car and cash amount and on the date fixed in the said case filed under Section 498A I.P.C. when the informant had gone to attain the said case in court, the husband of the deceased uttered before him that he will never keep his wife in his house. It also appear that the same statement was earlier given by this petitioner also when the demand of dowry and demand of Scorpio were not fulfilled and all the circumstances coupled with the statement 7 Cr. Revision No.221 of 2015 of the husband of the deceased made before the informant

instigated or abetted the deceased to commit suicide.

12. The Honble Supreme Court in the case Ramesh Kumar v. State of Chhatisgarh reported in (2001) 9 SCC618 in Paragraph 19 of the judgment held as follows:

19. The picture which emerges from a cumulative reading and assessment of the material available is this: Presumably because of disinclination on the part of the accused to drop the deceased at her sister's residence the deceased felt disappointed, frustrated and depressed. She was overtaken by a feeling of shortcomings which she attributed to herself. She was overcome by a forceful feeling generating within her that in the assessment of her husband she did not deserve to be his life-partner. The accused Ramesh may or must have told the deceased that she was free to go anywhere she liked. May be that was in a fit of anger as contrary to his wish and immediate conveyance the deceased was emphatic on being dropped at her sister's residence to see her. Presumably the accused may have said some such thing-you are free to do whatever you wish and go wherever you like. The deceased being a pious Hindu wife felt that having being given in marriage by her parents to her husband, she had no other place to go excepting the house of her husband and if the husband had "freed" her she thought impulsively that the only thing which she could do was to kill herself, die peacefully and thus free herself according to her understanding of the husband's wish. Can this be called an abetment of suicide? Unfortunately, the Trial Court misapprehended the meaning of the expression attributed by the deceased to her husband as suggesting that the accused had made her free to commit suicide. Making the deceased free-to go wherever she liked and to do whatever she wished, does not and cannot mean even by stretching that the accused had made the deceased free "to commit suicide" as held by the Trial Court and upheld by the High Court.

13. Section 498A and 306 I.P.C. are independent and constitute different offences. Though, depending on the facts and circumstances of an individual case, subjecting a woman to cruelty may amount to an offence under Section 498A I.P.C. and may also, if a course of conduct amounting to cruelty is established

having no other option for the woman except to commit suicide, amount to abetment to commit suicide. In the instant case, as stated above, immediately after conveying the message of the husband by the informant to his 8 Cr. Revision No.221 of 2015 daughter, she fell down and became unconscious and in the night though she slept with her mother but in the morning she was found unconscious. Whereafter she was brought to Hospital but she was declared dead. The totality of the circumstances discussed hereinabove, the expression all the other circumstances of the case as envisaged in Section 113A of the Evidence Act clearly stipulates strong prima facie presumption thereunder being raised against the petitioner. Evidence and material available on record, if taken on its face value, clearly speaks strong prima facie case or grave suspicion against the petitioner. This is not a stage to make a roving enquiry into the matter or to see whether the trial will end in conviction or acquittal rather the court has to presume a strong suspicion or strong prima facie case or grave suspicion to proceed with the case. The judgments relied upon by learned counsel for the petitioner have no application at this stage. However, from the two judgments this much can be said that there should be clear mens rea to commit offence under Section 306 I.P.C. In the case at hand there appears to be a clear mens rea as after non- fulfillment of the demand of dowry, the deceased was conveyed through her father that her husband will never brought her back and the same statement were uttered by other accused persons before her also when she was in her matrimonial home.

14. In a case *Rajiv Thapar V. Madhu Lal Kapoor*; (2013) 3 SCC330 the Honble Supreme Court while dealing with the same issue of discharge in a complaint case, lodged at the instance of father of a deceased girl that he suspects that his daughter had been poisoned, has held in Paragraph-28 as follows:- This is not a stage of evaluating the truthfulness or otherwise of the allegations leveled by the prosecution/complainant against the accused. Likewise, it is not a stage for determining how weighty the defences raised on behalf of the accused are. Even if the accused is successful in showing some suspicion or doubt, in the allegations levelled by the prosecution/complainant, it would be impermissible to discharge the accused before trial. This is so because it would result in giving finality to the accusations levelled by the prosecution/complainant, 9 Cr. Revision No.221 of 2015 without allowing the prosecution or the complainant to adduce evidence to

substantiate the same. The converse is, however, not true, because even if trial is proceeded with, the accused is not subjected to any irreparable consequences. The accused would still be in a position to succeed by establishing his defences by producing evidence in accordance with law. There is an endless list of judgments rendered by this Court declaring the legal position that in a case where the prosecution/complainant has leveled allegations bringing out all ingredients of the charge(s) leveled, and have placed material before the Court, prima facie evidencing the truthfulness of the allegations leveled, trial must be held.

15. In view of the above discussion, I do not find any plausible ground to interfere in the order impugned. Accordingly, the revision application is, hereby, dismissed. (R.N. Verma, J.) Jharkhand High Court, Ranchi Dated, 4th August, 2015 Anit/N.A.F.R.

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