

Jatinder Kumar and Others Vs. State (Delhi Admn.) Delhi

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Court : Delhi

Decided On : Apr-24-1990

Reported in : 1992CriLJ1482

Judge : Y.K. Sabharwal, J.

Appeal No. : Crl. Revn. No. 195 of 1989

Appellant : Jatinder Kumar and Others

Respondent : State (Delhi Admn.) Delhi

Advocate for Def. : Mr. K.K. Bakshi, Adv.

Advocate for Pet/Ap. : Mr. R.K. Naseem, Adv

Judgement :

ORDER

1. Deceased Smt. Neelam was married to Petitioner No. 1 - Jatinder Kumar on 9th December 1985. Petitioner No. 2 Dina Nath and petitioner No. 3 - Mala Devi are parents to Jatinder Kumar. Petitioner No. 4 Kumari Veena and Petitioner No. 5 - Kumari Poonam are sisters of Jatinder. Neelam, according to the case of the prosecution, died of burn injuries on the night intervening 6th and 7th July 1986. By the impugned order dated 29th August 1989 the learned Additional Sessions Judge has directed that all the petitioners are liable to be charged under S. 498A IPC and under Ss. 302/34 IPC. the Additional Sessions Judge has further directed

that in the alternative petitioners be also charged under Ss. 306/498 IPC.

2. Petitioners 1 to 3 have no grievance in respect of that part of the order which directs framing of charge against them under Ss. 306 and 498A, IPC. The grievance of the said petitioners, however, is that there is no material justifying the part of the impugned order which directs that charge under S. 302 is liable to be framed. The other grievance pressed on their behalf is that, in no case, the charge under S. 306 IPC can be framed in the alternative. The contention is that the prosecution has to make up its mind whether the facts which can be proved justify framing of charge under S. 302 IPC or charge under S. 306 IPC. On behalf of petitioners 4 and 5, it is contended that there is no material whatsoever justifying the part of the order directing that the charge is liable to be framed against them.

3. First I will consider the contention that no charge is liable to be framed against petitioners 4 and 5. The learned counsel for the parties have taken me through the material on record. The only material to which the learned State counsel could draw my attention was to the statement of the father of deceased named Chander Prakash. The statement of Chander Prakash under S. 161 Cr.P.C. was recorded on 11th July 1989. Prior to the said date, on 9th July, 1989, statements of mother, father and uncle of the deceased under S. 161 Cr.P.C. had been recorded in which nothing has been stated against petitioners 4 and 5, who it appears, were young girls aged about 18 and 20 years respectively on the date of the incident. Chander Prakash in his statement has only stated that the behavior of there two girls was bad towards the deceased. Except this general and vague statement, no material has been shown to this court against the two girls Veena and Poonam to cast a suspicion that these girls are involved in commission of offence under any provisions of the IPC. Under S. 498A these girls could be charged if there was any evidence to prima facie show that they had subjected deceased to cruelty. 'Cruelty' for the purpose of S. 498A means any willful conduct which is of such a nature as is likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman or harassment of the women where such harassment is with a view to coercing her or any person related to her, to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such

demand. From a bare vague and general statement that the behavior of the two girls towards the deceased was becoming bad it cannot be said that prima facie the offence under S. 498A has been made out. Learned counsel for the State, assisted by learned counsel for the complainant, has also not been able to show any material from which the Court could come to the conclusion that grave suspicion against petitioners 4 and 5 exists and the charge under S. 302 IPC or 306 IPC is liable to be framed against the said two petitioners. Accordingly, the impugned order insofar as it directs that petitioners 4 and 5 are liable to be charged under S. 498A and Ss. 302/34 IPC or in the alternative under Ss. 306/498 A IPC is liable to be set aside.

4. Reverting to the grievance of petitioners 1 to 3 it was strenuously contended by Sh. Naseem, their learned counsel that the alternative charge of abetment of suicide under S. 306 IPC cannot be framed. The argument is that it is not permissible for the prosecution to say that the accused have committed murder and at the same time, take the alternative position that they have abetted the commission of suicide. The framing of charge in the alternative is permissible only within the parameters of S. 221 of Cr.P.C. which reads as under :-

'221. (1) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute the accused may be charged with having committed all or any of such offences and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offence.

(2) If in such a case the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of sub-section (1), he may be convicted of the offence which he is shown to have committed, although he was not charged with it.'

5. A bare reading of the aforesaid section shows that the doubt has to be as to the nature of the offence and not about the facts. If in a given case, on the facts which can be proved by the prosecution, it is doubtful which of the offence the said facts will constitute the framing of charge in the alternative is permissible. Section 221 is

not intended to be applied to a case where facts are in doubt. Ordinarily, an alternative charge cannot be framed in respect of distinct offences. The offence under S. 302 IPC and the offence under S. 306 are distinct. The ingredients of the two provisions are altogether different. The prosecution has to take a stand whether it is a case of murder or suicide. The prosecution cannot say that the accused has murdered the deceased and if the deceased has committed suicide, the accused has abetted the commission of suicide. The framing of such charge is not permissible under S. 221 of Cr.P.C., as there is a doubt about the facts which can be proved and in that eventuality S. 221 of the Code has no application.

6. The facts which can be proved may constitute offence under one or other provision which is in doubt. The accused may be charged with having committed all or any of such offences or charged in the alternative for having committed some one of the said offences. However, the question of framing of charge in alternative can arise when there is no doubt about facts which can be proved but doubt is as to what offence will be constituted on those facts. It is not permissible, in law, to frame a charge of murder and a charge in alternative for accused having abetted the suicide, as it shows doubt as to facts. As stated earlier, the offences under Ss. 302 and 306 are diametrically opposed to each other. The ingredients of two sections are different. The framing of charge in alternative, as directed in the impugned order is likely to prejudice the accused. Accordingly, it is not possible to sustain the impugned order in so far as it directs framing of the alternative charge under S. 306 IPC.

7. Learned counsel for the petitioner contended that, on facts on record, only charge under S. 306 IPC is liable to be framed and the order directing framing of charge under S. 302 is liable to be set aside. It was urged that material on record does not justify the conclusion that there exists a suspicion of the petitioners accused having committed murder of Neelam. Counsel had no objection to the charge under S. 306 being framed against petitioners Jatinder Kumar, Dina Nath and Smt. Mala Devi. He contended that there is material whatsoever against petitioners Veena and Poonam for framing charge under S. 306 IPC.

8. The contention of learned counsel in so far as it relates to petitioner Veena and Poonam is well founded. As noticed earlier, no material has been brought to the notice of this court which could in any manner connect Veena and Poonam with offence under S. 30 or 302 IPC. It cannot be said that there exists any grave suspicion that the said two petitioners had committed the offence under S. 302 IPC or under S. 306 IPC and to that extent, the impugned order is liable to be reversed.

9. Turning now to the case of the other three petitioners. I do not find any substance in the contention of the learned counsel for the petitioner that charge under S. 302 IPC against them is not liable to be framed. Petitioners 1 to 3 have not been able to make out any case for interference with the conclusion of learned Additional Sessions Judge that charge under S. 302 is liable to be framed against the said petitioners. The evidence on record and in particular the circumstantial evidence do cast a grave suspicion of the petitioners 1 to 3 having committed offence under S. 302 IPC. It is not necessary at this stage to discuss the evidence in detail. The Additional Sessions Judge has rightly concluded that perusal of the post mortem report, inquest report and the presence of blood lying near the dead body raised a suspicion of offence under S. 302, as ordinarily blood would not start oozing out from the burns. Learned counsel for the State also contended that if this court comes to the conclusion that in law charge under S. 306 cannot be framed, the facts amply justify the conclusion that there is a grave suspicion of petitioners having committed offence under S. 302 IPC. I agree with the contention of the learned counsel for the State. In my view, no case has been made out for setting aside the impugned order in so far as it directs framing of charge under S. 302 against petitioners 1 to 3.

10. For the foregoing reasons the revision petition is partly allowed. The impugned order directing framing of charge against petitioner Veena and Poonam is set aside. The said petitioners are discharged. The order directing framing of charge in alternative under S. 306 IPC against petitioners Jatinder Dina Nath and Smt. Mala Devi is set aside. However, the order directing framing of charge under Ss. 302/34 IPC and S. 498A IPC against the said three petitioners is maintained. The petition is disposed of in the above terms. The record be sent back immediately.

11. Order accordingly.

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