

Anokhe Lal and Another Vs. State

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Court : Delhi

Decided On : Feb-23-2000

Reported in : 2000IIIAD(Delhi)200; 84(2000)DLT538; I(2000)DMC314

Judge : M.S.A. Siddiqui, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 304-B and 498-A

Appeal No. : Crl. R. 221/95

Appellant : Anokhe Lal and Another

Respondent : State

Advocate for Def. : Mr. M.S. Butalia, Adv.

Advocate for Pet/Ap. : Mr. Meet Malhotra and;Mr. Raghvinder Singh Advs

Judgement :

ORDER

M.S.A. Siddiqui, J.

1. This revision is directed against the order dated 6.7.1995 passed by the Addl. Session Judge Delhi directing framing of the charges under Sections 304-B/498-A/34 I.P.C. against the petitioners.

2. Briefly stated, the prosecution case is that the accused Yogesh and the deceased Kavita were married on 15.2.1994. On 27.6.1994 at about 6.05 a.m., the deceased was found lying dead in a pool of blood in her bed room. The accused Yogesh was also present there. The police, on receipt of the said information, came to the spot. The deceased was removed to the hospital. Immediately thereafter, the deceased's father Hari Singh Sharma came to the hospital and noticed several injuries over the dead body of her daughter. Hari Singh Sharma made a statement before the S.D.M. that after marriage her daughter was being harassed in connection with dowry demand. On the basis of the said statement F.I.R. was registered at the Police Station Bhajanpura. Investigation pursuant thereto culminated in submission of a charge sheet under Sections 498-A/302/201/120-B/34 I.P.C. against the respondents and their son Yogesh. On a consideration of the materials collected by the prosecuting agency, learned Additional Sessions Judge framed charges under Sections 304-B/498-A/34 I.P.C. against the petition-ers. Aggrieved thereby, the petitioners have come up in revision before this Court.

3. Learned counsel for the petitioners has strenuously urged that the materials collected by the prosecuting agency did not constitute any offence against the petitioners and the learned Additional Sessions Judge has committed an illegality in framing the impugned charges against them. The ingredients necessary for the application of Section 304-B are:

- '(a) when the death of a woman is caused by any burns or bodily injury; are
- (b) occurs otherwise than under normal circumstances;
- (c) and the aforesaid two facts spring out of seven years or girl's marriage;
- (d) and soon before her death she was subjected to cruelty or harassment by her husband or his relative;
- (e) this is in connection with the demand of dowry.'

4. If the aforesaid conditions exist, it would constitute a dowry death; and, the husband and/or his relatives shall be deemed to have caused her death. In the

present case, the case diary indicates that on 27.6.1994, at about 6.05 a.m. the deceased Kavita was found lying dead in a pool of blood in her bedroom. The post-mortem report reveals that in all 15 anti-mortem injuries including incised wounds were found over the dead body of the deceased. Thus, the aforesaid circumstances clearly suggest that on the day in question the deceased Kavita was murdered in her matrimonial home. Unfortunately, the learned Additional Sessions Judge overlooked the aforesaid incriminating circumstances and declined to frame a charge under Section 302 against the accused Yogesh. In *Prakash Chand v. State 1* (1994) CCR 36, a Division Bench of this Court has held that Sections 302 and 304-B IPC are not mutually exclusive if in a case materials on record suggest commission of offence under Section 302 IPC and also commission of offence under Section 304-B IPC, the proper course would be to frame charges under both these sections and if the case is established then accused can be convicted under both the Sections but no separate sentence need be awarded under Section 304-B, in view of substantive sentence being awarded for the major offence under Section 302-IPC.

5. In the present case, it is not in dispute that the deceased Kavita died otherwise than under normal circumstances, and that the death was within a period of seven years of marriage. It is also undisputed that the petitioners are the parents of the deceased's husband Yogesh. The learned Additional Sessions Judge has held that the case diary statements of Hari Singh Sharma, Smt. Santosh Sharma and Parveen Sharma prima facie disclose that the deceased was subjected to cruelty by her husband and in-laws soon before her death and the same was for or in connection with the demand of dowry. At this stage, I do not want to make any observation on merits of the case as I am anxious not to prejudge or prejudice the case of other-wise. Suffice it to say that the case diary statements of the aforesaid witnesses creates a strong suspicion against the petitioners in respect of the offences punishable under Sections 304-B/498-A/34 IPC against the petitioners also. Thus, in my opinion, Learned Additional Sessions Judge has not committed any illegality in framing the impugned charges against the petitioners.

6. For the foregoing reasons, the revision is dismissed. Record of the trial court be returned forthwith. Parties are directed to appear before the trial court on 3.3.2000.

