

Mathura Dass and ors. Vs. State

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Court : Delhi

Decided On : Mar-17-2003

Reported in : 104(2003)DLT147; I(2003)DMC755; 2003(67)DRJ695; 2003(2)JCC639

Judge : R.C. Chopra, J.

Acts : [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 397 and 401; [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 306 and 498A

Appeal No. : Crl. Rev. No. 428/2001

Appellant : Mathura Dass and ors.

Respondent : State

Advocate for Def. : Pawan Sharma, Adv.

Advocate for Pet/Ap. : A.K. Singh and; Sanjay, Advs

Disposition : Criminal revision dismissed

Judgement :

R.C. Chopra, J.

1. This Revision under Sections 397/401 of the Code of Criminal Procedure (hereinafter referred to as 'the Code' only) is directed against an order dated

26.5.2001 by which learned Additional Sessions Judge had directed framing of charges under Sections 306/498-A read with Section 34, IPC against the petitioners.

2. The facts, relevant for the disposal of this petition, briefly stated, are that the deceased Ritu Sharma was married to petitioner No. 3 in the year 1987. On 20.5.2000, she suffered burn injuries in her matrimonial home. She was taken to the hospital where she succumbed to her injuries on 23.5.2000. While making a statement before the doctor at the time of admission as well as in her dying declaration recorded by the Investing Officer on 21.5.2000, she had stated that the burn injuries suffered by her were accidental. However, on 1.6.2000 Padam Sharma, brother of the deceased lodged an FIR alleging that since her marriage the deceased Ritu Sharma was being harassed and tortured by the petitioners and they used to raise various demands. It was also stated by him that while her sister was making a dying declaration on 21.5.2000, which was attested by him also as a witness, he had not made any allegations against the petitioners nor had objected to the statement being made by his sister as he believed that in case his sister survived, the petitioners would harass her further. Smt. Bimla Sharma, the sister of the deceased also made a statement on 1.6.2000 making allegations of harassment and cruelty against the petitioners saying that they used to make demands of cash as well as articles and used to maltreat her and give beatings even to her. She also stated that they had not made any statements against the petitioners in the hospital as they believed that Ritu Sharma would survive.

3. I have heard learned counsel for the petitioners and learned counsel for the State. I have gone through the records.

4. Learned counsel for the petitioners has assailed the impugned order framing charges against the petitioners, mainly on the ground that the earlier statement made by the deceased as well as her dying declaration dated 21.5.2000, which was attested even by the maker of the FIR, clearly indicated that the death of the deceased Ritu Sharma was accidental only and as such, the subsequent statements of the brother of the deceased and her sister could not be relied upon for framing charges under Section 306 or 498-A IPC against the petitioners. It is

also submitted that had there been any truth in the allegations that the petitioners used to harass, beat or make demands from the deceased, the deceased as well as her relatives ought to have made these allegations immediately after the incident and not after such a long delay. It is pointed out that in the discharge summary as well as inquest report, nothing was stated to indicate that the death of the deceased was on account of suicide. It is argued that the post-mortem report did not show smell of kerosene or petrol on the person of the deceased and as such, the death of the deceased could not be even prima facie held to be suicidal.

5. In support of his submissions, learned counsel for the petitioners has relied upon *Dilawar Balu Kurane v. State of Maharashtra*, : 2002 CriLJ980 in which the Apex Court while examining the parameters for exercise of discretion under Section 227 of the Code had held that a Judge is not to act merely as, a post-office or mouth-piece of the prosecution and he has to sift and weigh the evidence for the limited purpose of finding out as to whether a prima facie case has been made out or not. It was held that where two views were equally possible and evidence gave rise to some suspicion, but not grave suspicion, the accused should be discharged. The other judgment referred to by learned counsel for the petitioners is the Apex Court judgment in *Satish Mehra v. Delhi Administration and Anr.*, 1996 SCC 1104.

6. On the other hand, learned counsel for the State has opposed the prayer made by learned counsel for the petitioners contending that at the stage of framing charge, neither appreciation nor weighing and sifting of prosecution evidence is permissible. It is submitted that charge has to be framed if there exists a strong suspicion to indicate that the accused might have committed the offence alleged against him. Standard of test, proof and judgment to be applied to the prosecution evidence at the final stage is not to be applied at the stage of framing charge and the Court can form a presumptive opinion also regarding the existence of factual ingredients constituting the offence alleged and order framing of charge and trial. Learned counsel for the State relies upon *Smt. Om Wati and Anr. v. State*, through *Delhi Admn. and Ors.*, 2001 DLS 154 SC. *Munna Devi v. State of Rajasthan and Anr.*, 2001 DLS 355 SC and *Ram Kumar Laharia v. State of Madhya Pradesh and Anr.*, 2001 DLS 22 SC. Learned counsel for the State argues that the statements

made by the brother of the deceased Padam Sharma on the basis of which FIR was registered and the sister Bimla Sharma, cannot be rejected at this initial stage. He refers to the Explanationn given by both of them for not making the allegations at the earliest as they were under the hope that their sister Ritu Sharma would survive and in case they make allegations against the petitioners, they would harass her more. The absence of smell of kerosene or petrol at the time of post-mortem is stated to be on account of the lapse of time between the incident and the death. It is also argued that one may commit suicide by using LPG also in the kitchen. It is submitted that at this stage, the Court must not draw presumptions in favor of the accused/petitioners and must give opportunity to the prosecution to establish its case by leading evidence.

7. After considering the submissions made by learned counsel for the parties and examining the material on record, this Court is of the considered view that a Judge, at the time of framing of charge, is not to act merely as a post-office or mouth-piece of the prosecution, but has powers to sift and weigh the evidence but for a limited purpose only. This exercise has to be undertaken by him only with a view to find out as to whether a prima facie case is made out or not. The existence of a prima facie case may be found even on the basis of strong suspicion against an accused. The assessment, evaluation and weighing of the prosecution evidence in a criminal case at the final stage is on entirely different footing than it is at the stage of framing a charge. At the final stage if two views are possible, one of which suggests that the accused may be innocent, then the view favorable to the accused has to be accepted whereas at the stage of framing of the charge, the view which is favorable to the prosecution, has to be accepted for the purpose of framing charge so that in the course of the trial, the prosecution may come out with its Explanationns in regard to the draw-backs and weaknesses, if any, being pointed out by an accused,

8. In the present case, contention of learned counsel for the petitioners that the statements of the brother and the sister of the deceased, which were belated and were running contrary to the statements made by the deceased in her MLC and in her dying declaration, are liable to be rejected on the ground that an Explanationn has come in the statements of Padam Sharma as well as Bimla Sharma that they

had not made the allegations against the petitioners earlier as they were under a hope that their sister Ritu Sharma may survive and in case they made allegations against her in-laws, they would harass the deceased more and it would become difficult for her to live with them. The statement made by the deceased before the doctors in her MLC as well as her dying declaration made on 21.5.2000, could also be for the same reason as no woman having young children would like to invite a break-down of her marriage. In many cases even after suffering such injuries of a woman entertains some hope of survival, she likes to avoid the implication of her husband and in-laws in a criminal case because such implication would wreck her marriage and family life. thereforee, neither the statements made by the deceased in MLC nor her dying declaration nor the delay in making of the statements by her brother and sister are sufficient to hold that the death of the deceased was only accidental and not suicidal. The absence of any smell of kerosene oil or petrol on the body of the deceased does not support the case of the petitioners in any manner for the reason that there was considerable gap between the date of the incident and the date of post-mortem and as such, the smell could not have remained on the body. Moreover, a suicide may be committed with the help of LPG also and as such, it would be a matter of trial only to find out as to whether it was a case of suicide or accidental death.

9. In view of the statements of the P.Ws. Padam Sharma and Smt. Bimla Sharma, the brother and sister of the deceased, in which categorical allegations have been made against the petitioners in regard to harassment and torture of the deceased in connection with dowry demands, the charges, as framed against the petitioners, under Sections 498-A as well as 306 read with Section 34 IPC were fully justified. The delay in making of the statements is well explained. Where a woman has suffered injuries and the family hopes for her survival, the allegations are avoided with a view to protect her matrimonial home. Even after her death the family of such a woman is in a dilemma to make or not to make allegations against the in-laws with whom the children of the deceased have to live. Thus, this Court has no grounds to hold that the charges, as framed against the petitioners, are absolutely groundless and no prima facie case exists against the petitioners for framing the charges against them and putting them to trial. At this stage, benefit of doubt cannot be given to the accused.

10. In the result, this Court is of the considered view that the impugned order passed by learned Trial Judge does not suffer from any legal infirmity or jurisdictional error. There are no good grounds for interfering with the same. The petition stands dismissed.

11. Nothing stated herein shall be taken as an expression of opinion on the merits of the case pending before learned Trial Judge.

Crl. M. No/794/2001

Dismissed.

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