

**Pradeep Kumar Vs. State**

**Pradeep Kumar Vs. State**

**SooperKanoon Citation :** [sooperkanoon.com/694953](http://sooperkanoon.com/694953)

**Court :** Delhi

**Decided On :** Jan-07-1994

**Reported in :** 1994IAD(Delhi)217; 53(1994)DLT318; 1994RLR117

**Judge :** Anil Dev Singh, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 379/401

**Appeal No. :** Criminal Revision Appeal Nos. 48 and 227 of 1992

**Appellant :** Pradeep Kumar

**Respondent :** State

**Advocate for Pet/Ap. :** D.C. Mathur,; R.K. Naseem,; Neelam Grover,;

**Judgement :**

**Anil Dev Singh, J.**

(1) This is a criminal revision against the order of learned Asj dated 20th March, 1992 whereby charge under Section 306 read with Section 34 Indian Penal Code was framed against the petitioners.

(2) Smt. Veena was married to Subhash Chand sometime in January 1986 according to Hindu customs. The allegation against the revisionists, namely Pradeep Kumar, brother-in-law of the deceased, Km. Shashi and Km. Suman,

sisters-in-law of the deceased and Smt.Raj Rani, mother-in-law of the deceased and Subhash Chand, husband of the deceased is that they used to harass the deceased and treated her with cruelty which drove her to despair resulting in her suicide.

(3) According to the dying declaration of the deceased, she resided in the house of her in-laws along- with her husband Subhash Chand, mother-in-law, two sisters-in-laws and brother in-law. There used to be altercations on small and trivial matters. Sisters-in-law used to quarrel with her and the mother-in-law & the husband did not cooperate with her. Suman, petitioner No. 4 slapped her about three and a half months before the incident and also pushed her and threw soap water in her eyes. Thereafter the deceased started living separately on the first floor of the house Along with her husband and children. This did not diminish the tension in the family. On 4th June, 1989, the deceased asked Subhash Chand to accompany her to the 'chola ceremony of her sister's son. But the husband refused to go with her. This resulted in a quarrel between the husband & wife and the former slapped the latter. The deceased thereupon consumed 'Def', an insecticide, and then poured kerosene oil over her body and set herself ablaze. According to the dying declaration the deceased took this step as being wary of daily quarrels.

(4) The deceased sustained 90% burn injuries to which she succumbed on 5th June, 1989. The dying declaration of the deceased was converted into the First Information Report and case under Section 306 Indian Penal Code was registered. On completion of investigation, the petitioners Along with co-accused Subhash Chand were charge sheeted and on commitment the case came up before the Court of Smt. Sharda Aggarwal, Asj, Delhi for trial. The learned Trial Court on 20th March, 1992 passed an order framing charge against the petitioners under Section 306/34 IPC. It is this order against which the petitioners have come up in revision for quashing of the said order.

(5) Learned Counsel appearing for the petitioner submitted that the order of the learned Asj is not a speaking order and has been passed without discussing the respective arguments of the Counsel for the parties. He urged that from the order

it is not possible to discern as to on what basis the learned Asj came, to the conclusion that a Prima facie case was made out against the petitioners. Learned Counsel further argued that the accusations as contained in the dying declaration do not constitute an offence of abatement to commit suicide on the part of the petitioners nor is there an allegation that the petitioners goaded Veena to commit suicide. Commenting upon the dying declaration, learned Counsel high lighted the fact that only two specific instances of harassment had been stated by the deceased. First incident took place three and a half months before the occurrence for which Suman has been named and the second incident took place on the fateful day when Subhash Chand is said to have given a slap to the deceased. Learned Counsel submitted that the first incident was too remote and could not be a cause of suicide of the deceased and the second incident does not involve the petitioners at all as there is no allegation of the deceased that the petitioners were instrumental in the quarrel which took place between her and Subhash. He added that the petitioners were not even present when the second incident took place. As a consequence it was urged that when accused were not present at the time of commission of the offence, how could they be charged under Section 34 IPC. Even if the dying declaration is accepted to be correct, none of the allegations made therein fall within the purview of 'abatement', contended the learned Counsel. In support of his submissions, he relied upon the following decisions:- (i) Brij Lal and Another v. State, 1984 (2) Crimes 987. (ii) Ganga Dev and Others v. State : 28(1985)DLT35a . (iii) Shiv Prasad Chuni Lal Jain & Others v. State of Maharashtra, : 1965 CriLJ249 .

(6) On the other hand learned Counsel for the respondent submitted that there was ample material on record to justify the charge framed against the petitioner. Learned Counsel invited my attention to the statement of the father of the deceased Pooran Chand and submitted that from his statement it was clear that the petitioners were present when the incident took place and they were instrumental in the quarrel which took place between the deceased and her husband Subhash Chand. It was the petitioners who did not allow Veena to go for the 'chola ceremony' Along with her husband. He further argued that it was the petitioners and Subhash Chand whose persistent harassment led her to feel totally disgusted with life. It was their conduct which made her life intolerable resulting in

her taking the ultimate step of committing suicide. Learned Counsel submitted that a reading of the dying declaration as also the other material on record prima facie leads to the irresistible conclusion that it was the petitioners and Subhash Chand who instigated and provoked the deceased to commit suicide. He also submitted that at this stage the Court has not to go into the merits of the prosecution case nor it is open to weigh the evidence collected by the prosecution for the purpose of framing a charge. It was pointed out that the deceased died within 7 years of her marriage and the presumption under Section 113A of the Evidence Act would have to be drawn. In support of his submissions, learned Counsel relied upon the decisions of the Supreme Court in *Brij Lal v. Prem Chand & Another*, : [1989]2SCR612 and *Union of India v. Prafulla Kumar Samal and Another*, : 1979 CriLJ154 .

(7) In *Union of India v. Prafulla Kumar Samal and Another* (supra) the Supreme Court laid down the following principles which must be taken into consideration while examining the question of framing the charges:-

' (i) That the Judge while considering the question of framing the charges under Section 227 of the Code 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; (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 test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused; (iv) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced Court cannot act merely as a Post Office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving

enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.'

(8) Thus the Trial Court while considering the question of framing the charges, has not to act as the mouth-piece of the prosecution and has to consider the broad probabilities of the case and the total effect of the material collected by the prosecution. The Judge has 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. therefore, the Court is not to act mechanically in framing the charge. It must apply its mind to the material on record and the arguments of the parties. Short reasons must be given by the Court so that on-the reading of the order one can perceive clearly as to how and on what basis the Trial Court came to the conclusion that a prima facie case was made out against the accused. The matter of framing of the charge is surely within the purview and power of the Trial Court but Trial Court while exercising its jurisdiction must be guided by the aforesaid well settled principles of law. The learned Asj in her order has merely stated to the effect that she has gone through the material on record and finds that a primafacie case under Section 306 read with Section 34 Indian Penal Code was made out against each of the accused. The order does not disclose the mental process of reasoning of the learned trial Judge and as to how and on what basis it could be said that a primafacie case was made out against each of the accused. The learned Asj should have examined and discussed the arguments of learned Counsel for the parties on the question of framing of the charge and should have passed an order giving short reasons in support of her conclusions. Section 227 of the Code of Criminal Procedure provides for discharge of an accused in case there is no material to show his involvement in the commiss.ion of the crime. This section confers a very valuable right on the accused. therefore, at the stage of the framing of the charge the accused is entitled to argue that he should be discharged as there is no material against him and for this purpose arguments on his behalf must be considered as otherwise this leads to manifest injustice, the accused being exposed to hazard of criminal proceedings as it cannot be denied that criminal proceedings cause anxiety, worry and mental tension and the sword of democles remains hanging and fear of punishment in the shape of incarceration looms large on the person accused of an

offence. In view of the above discussion, the charge against the petitioners is quashed and the case is remanded back to the Trial Court with the direction to pass a fresh order in accordance with law.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**