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Court : Delhi

Decided On : Aug-13-1996

Reported in : 1996IIIAD(Delhi)995; 1997(1)Crimes190; 64(1996)DLT781

Judge : N.G. Nandi, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 304B; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 228

Appeal No. : Criminal Revision Petition No. 43 of 1996

Appellant : Vipln Kumar and ors.

Respondent : State

Advocate for Pet/Ap. : A.K. Singh and; R.D. Jolly, Advs

Judgement :

N.G. Nandi, J.

(1) This criminal revision petition under Section 397 of the Code of Criminal Procedure (hereinafter referred to as ' the Code'), is directed against the framing of charge on 3.11.1996 u/Secs. 498-A/304-B/406 read with Section 34, Ipc against the petitioners.

(2) The prosecution case, shortly stated, is that Mithlesh, the daughter of the complainant was married to petitioner No. 1 who is the son of petitioners No. 2 and 3 and the brother of petitioners No. 4 to 6; that all the petitioners subjected Mithlesh to cruelty on the issue of dowry inasmuch as the petitioners demanded Maruti car as the dowry from Mithlesh and her father, the complainant; that on 19.7.1991 petitioner No. 1 brought his wife Mithlesh to the house of complainant and petitioner No. 1, as stated in the complaint, had allegedly told Mithlesh that she should come only with Maruti car and that otherwise he would not come to take her back nor he would see her face and so saying he left in anger; that in the night intervening 21 and 22 July, 1991, Mithlesh committed suicide by tying herself with the ceiling fan in the house other parents; that all the petitioners are alleged to have inflicted mental cruelty on Mithlesh and subjected her to torture over the demand for dowry articles.

(3) The learned Additional Sessions Judge found sufficient grounds to proceed against the accused persons and framed the charge for the aforesaid offences u/Section 228 of the Code. It is this framing of charge, which is sought to be revised by the petitioners in this petition.

(4) It is submitted by Mr. Singh, learned Counsel for the petitioner that Section 304-B, Indian Penal Code is not attracted inasmuch as there is no immediate cruelty allegedly inflicted by any of the petitioners; that the death occurred in the night intervening 21/22.7.1991 whereas the deceased came to her parents' place in the evening of 19.7.1991; that there was sufficient time for the deceased to cool down and reconcile and that there is no act of alleged cruelty soon before the commission of suicide by the deceased. In this regard reliance is placed on the decision reported in 1991 (3) Rcr 489

(5) Section 304-B, Indian Penal Code deals with dowry death. It reads as follows :

'304BDowrydeath.-(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called 'dowry

death', and such husband or relative shall be deemed to have caused her death. Explanationn.-For the purpose of this Sub-section, 'dowry' shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961). (2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life. Relying on the Supreme Court decision (supra) it has been contended that the act of cruelty in order to attract applicability of Section 304B, Indian Penal Code should be immediate prior to the death of a woman by burns or bodily injury or occurs otherwise than under normal circumstances..... In the instant case, the death of Mithlesh occurred admittedly within seven years of the marriage. The marriage between petitioner No. 1 and Mithlesh took place on 3.3.90 and Mithlesh died in the night intervening 21/22.7.1991. In the case (supra), in para 8, it is observed by the Supreme Court that 'when the question at issue is whether a person is guilty of dowry death of a woman and the evidence discloses that immediately before her death she was subjected by such person to guilty and/or harassment or in connection with any demand of dowry, Section 113B, Evidence Act provides that the Court shall presume that such person had caused the dowry death.Then we have a situation where the husband or his relative by his willful conduct creates a situation which he knows will drive the woman to commit suicide and she actually does so, the case would squarely fall within the ambit of Section 306, IPC. In such a case the conduct of the person would tantamount to inciting or provoking or virtually pushing the woman into a desperate situation of no return, which would compel her to put an end to her miseries by committing suicide. In the present case the facts clearly reveal from the divorce deed Ex. D-2 that the relations between the husband and the wife were strained even in 1977. There is intrinsic evidence in that document that the wife apprehended blood-shed and harm to her children. Before the execution of this document, she had sought police protection by her application/letter dated 12th October, 1977.The last straw on the camel's back fell when she was severely beaten on the previous day i.e. 6th June, 1983 as is evident from her letter of 7th June, 1983. An atmosphere of terror was created to push her into taking the extreme step. It would seem it was a carefully chalked out strategy to provoke her into taking the extreme step to kill herself and her children as she apprehended that they will be much more

miserable after she is dead and gone. In this fact, situation can it be said that the husband had not been responsible in creating circumstances which would provoke or force her into taking the only alternative left open to her, namely suicide? Can it be said that the husband did not realise where he was leading her by his willful conduct? ' In light of these facts and circumstances, the Supreme Court found the conviction of the accused u/Section 306, Indian Penal Code proper.

(6) In the present case, the statement of the complainant, the father of Mithlesh, suggests that from the beginning there was demands of dowry and on that Mithlesh was subjected to mental and physical cruelty by all the petitioners. There was a demand for Maruti car as suggested from the statement of the complainant and in the evening of 19.7.91 Mithlesh was brought by petitioner No. 1 to the parents place and complainant tried to persuade him but of no avail and petitioner No. 1 is stated to have told Mithlesh not to return without Maruti car and that he would not come to take her back nor would he see her face. Thereafter, two days i.e. 20th and 21st passed and in the night intervening 21/22.7.1991, Mithlesh hanged herself by tying with the ceiling fan. I do not find any substance in the submission that Section 304-B would not be attracted for the purpose of framing of charge u/Section 228 of the Code for the simple reason that the death of Mithlesh has to be appreciated in the light of incident dated 19.7.91 and that petitioner No. 1 did not come to take her back for two full days, the death occurred. The cruelty by petitioner No. 1 cannot be, for the present limited purpose, said to have not extended beyond the evening of 19.7.1991 and the inflicting of cruelty would be right up to the moment petitioner No. 1 did not come to take back Mithlesh and the child. In my opinion, sufficient ground exists for framing charge u/Section 304-B, Indian Penal Code in light of the facts and circumstances, as aforesaid.

(7) As far as charge u/Section 406, Indian Penal Code is concerned, in the statement of the complainant, there is no iota of the word to suggest that there was demand of dowry articles by either Mithlesh or the complainant and that the petitioners failed to return or account for the same. Learned App Mr. Jolly stated that ingredients of Section 406, Indian Penal Code are not attracted, looking to the police papers. Under the circumstances, the charge u/Section 406, Indian Penal Code has to be deleted.

(8) As far as the charge u/Section 498-A, Indian Penal Code is concerned, the complaint filed by the father of deceased Mithlesh clearly suggests that Mithlesh was subjected to cruelty by all the petitioners right from the day of the marriage by the husband as well as the relatives of the husband of Mithlesh. Complaint suggests sufficient grounds to proceed against the accused persons as regards the alleged cruelty u/ Section 498-A, Indian Penal Code is concerned.

(9) The above discussion would reveal that the only revision/modification in the charge dated 3.1.1996 framed u/Section 228 of the Code by the Addl. Sessions Judge, Delhi is the deletion of charge u/Section 406, Indian Penal Code whereas rest of the charge framed against the petitioners does not call for any interference in the present revision.

(10) In the result the present revision petition is partly allowed. The petitioners-accused persons shall be tried for the offence charged u/Section 498-A read with Section 34, Indian Penal Code and for the offence u/Section 304-B read with Section 34, IPC.

(11) Order accordingly.

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