

Kamal Pasricha and ors. Vs. State

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Court : Delhi

Decided On : May-01-1999

Reported in : 79(1999)DLT323; 1(1999)DMC676

Judge : N.G. Nandi, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34 304B and 498; Code of Criminal Procedure (CrPC) - Sections 161

Appeal No. : Crl. Revision Petition No. 55 of 1998

Appellant : Kamal Pasricha and ors.

Respondent : State

Advocate for Def. : M.S. Butalia, A.P.P.

Advocate for Pet/Ap. : K.K. Manan, Adv

Judgement :

N.G. Nandi, J.

1. Charges framed on 26.11.1997 for the offences under Section 34 IPC and under Section 498-A/34 IPC are sought to be revised by the petitioners by invoking the revisional jurisdiction of this Court under Section 397 of the Criminal Procedure Code (hereinafter referred to as 'the Code').

2. The prosecution case, briefly stated is, that Monika Pasricha wife of Kamal Pasricha was married on 26.10.1990; that this marriage was a love marriage but was later on regularized; that after 2-3 months of marriage, the father-in-law M.L. Pasricha, mother-in-law Veena Pasricha, brother-in-law Vineet and husband Kamal Pasricha started harassing Monika; that these people had been taking of the household work from Monika to such an extent that she was not able to do it physically and Monika used to be told bitter words; that these people had been asking Monika to bring Rs. 50,000/- for starting their own business and that Monika's parents had given them the money; that business did not run and Monika was again subjected to beatings; that the jewellery which Monika had got in marriage, was also retained by these people and did not return; that on being tired she had been residing at her parental house for the last one and half years along with her daughter aged four years; that a divorce case is also going on with the husband; that she had friendship with one girl Upasana, who has been staying as a tenant in her parental house; that on 1.10.1995 Upasana had demanded a Saree of Monika's mother for going to duty, which was taken back by Manoj; that on 3.10.1995 there was some hot discussion between Monika's mother and Upasana and when Monika talked to her mother on this, then inmates of the house starting talking filthy and gave beating to Monika; that her father told Monika that she is a call-girl and was given abuses in most filthy language, which she could not explain; that Monika is not in good terms with her mother and sisters; that due to this quarrel, she had been compelled to go to the kitchen and gas was ignited by the gas lighter and she put her shirt into the fire. It is further stated that she was very much tired by her father-in-law, mother-in-law, brother-in-law, husband and other family members.

3. The learned Additional Sessions Judge considering the evidence on record, framed the charge under Sections 304-B/498-A/34, IPC against all the accused persons. It is the framing of charge under Section 227 of the Code, which is sought to be revised in this petition.

4. It is submitted by Mr. K.K. Manan, learned Counsel for the petitioners-accused that the provisions of Section 304-B, IPC are not attracted inasmuch as it is not shown that soon before the death of Monika she was subjected to cruelty or

harassment by her husband or any relative for or in connection with any demand for dowry and that the death of Monika is not a dowry death within the meaning of Section 304-B, IPC; that according to the dying declaration of Monika recorded by the Sub Divisional Magistrate the deceased and her husband had separated in company for more than one and half years prior to the incident; that a divorce petition was pending between the deceased and her husband on the date of incident; that Monika committed suicide because she was frustrated with her life and because of the quarrel which took place at her parental house over the issue of demanding Saree of Monika's mother by Upasana, which was taken back by Manoj on 1.10.1995 and that Monika was abused in most filthy language by her father who had called her a call-girl; that the suicide committed by Monika at her parents' place can in no manner be attributed to any of the accused persons since there is no act on the part of the accused persons soon before the suicide committed by Monika and that the statement of Monika under Section 161 of the Code does not connect any of the petitioners with the incident of 3.10.1995.

5. The Trial Court record has been requisitioned. I have perused the same for the purpose of satisfying myself as to the legality, correctness and propriety of the framing of charge for the offences under Sections 304-A/498-A/34, IPC, framed by the Trial Court.

6. Section 228 of the Code, which deals with the framing of charge requires that on consideration of the evidence placed on record, the Court has to form an opinion that there is ground for presuming that the accused has committed an offence. In other words, the criterion for framing the charge under Section 228 of the Code is that the evidence relied on by the prosecution, if remains unrebutted, would warrant the conviction of the accused at the trial or not.

7. The Trial Court record contains the dying declaration of deceased Monika recorded by the Sub Divisional Magistrate on 3.10.1995 in Safdarjung Hospital, Burn Ward No. 11, wherein she is stated to have told that she is a divorcee; that previously there was a problem from her husband and his family but now there is no problem; that there are repeated harassment from husband and the other persons of the family on account of dowry; that she has burnt herself; that she was

frustrated with life; that her in-laws are troubling her and sometimes her father also; that she has been feeling upset thinking about her future; that she did not want to be with her husband nor she wanted him to be with her; that she does not have any complaint against anybody regarding this incident and she herself did it out of frustration.

The Trial Court record also contains the statement of Monika recorded under Section 161 of the Code wherein she has stated that she was married on 26.10.1990; that this marriage was a love marriage but was later on regularized; that after 2-3 months of marriage, the father-in-law M.L. Pasricha, mother-in-law Veena Pasricha, brother-in-law Vineet and husband Kamal Pasricha started harassing Monika; that these people had been taking of the household work from Monika to such an extent that she was not able to do it physically and Monika used to be told bitter words; that these people had been asking Monika to bring Rs. 50,000/- for starting their own business and that Monika's parents had given them the money; that business did not run and Monika was again subjected to beatings; that the jewellery which Monika had got in marriage, was also retained by these people and did not return; that on being tired she had been residing at her parental house for the last one and half years along with her daughter aged four years; that a divorce case is also going on with the husband; that she had friendship with one girl Upasana, who has been staying as a tenant in her parental house; that on 1.10.1995 Upasana had demanded a Saree of Monika's mother for going to duty, which was taken back by Manoj; that on 3.10.1995 there was some hot discussion between Monika's mother and Upasana and when Monika talked to her mother on this, then inmates of the house started talking filthy and gave beating to Monika; that her father told Monika that she is a call-girl and was given abuses in most filthy language, which she could not explain; that Monika is not in good terms with her mother and sisters; that due to this quarrel, she had been compelled to go to the kitchen and gas was ignited by the gas lighter and she put her shirt into the fire. It is further stated that she was very much tired by her father-in-law, mother-in-law, brother-in-law, husband and other family members. The lower Court record also contains the statement of Ms. Upasana daughter of A.S. Kharbanda, which also suggests the incident of 1.10.1995 and 3.10.1995, as stated by the deceased in her statement under Section 161 of the Code.

8. As far as the statement of deceased recorded by the Sub Divisional Magistrate on 3.10.1995, which is the dying declaration in view of the subsequent death of victim Monika, as pointed out above, indicates the reason for her committing suicide on 3.10.1995 was because of frustration; the frustration because she left her matrimonial home because of the discord with her husband and the alleged treatment meted out to her by the accused persons as suggested from the statement before the Sub Divisional Magistrate and her statement under Section 161 of the Code as regards demand of dowry and the spouses separated in company and she was required to stay at her parental house with her daughter, aged about 4 years. All these made her feel upset thinking about her future and that was the frustration. So, the frustration was the consequence of what happened earlier requiring her to stay at her parents' place with her daughter. It is also suggested at the same time that about one and half years prior to the incident she had been staying at her parents' place. It is not suggested from the record that even during this period of one and half years any of the petitioners were meeting the deceased and were making demands of dowry or that she was subjected to cruelty or harassment by her husband or any relative of her husband for or in connection with any demand of dowry. There is no evidence on record to the effect pointed but above. The demand of dowry or the alleged ill treatment/harassment by the petitioners were atleast before one and half years of the incident and the matrimonial discord led to the filing of the divorce petition between the spouses. The statement of Monika recorded by the Sub Divisional Magistrate clearly suggests that there were repeated harassment from the husband and other relations on account of dowry and previously' there was problem from her husband and his family but now there is no problem, meaning thereby that till she separated in company from her husband and came to her parental house there was repeated harassment from her husband and the family members on account of demand of dowry but all these problems were not there around the date of incident on 3.10.1995.

Section 304-B, IPC provides that the death of a woman caused by any burn or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it should also be 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 of dowry, such death shall be called 'dowry death' and such husband or relative shall be deemed to have caused her death.

In the instant case at least for the last one and half years prior to the incident, there does not appear any harassment caused by any of the petitioners as required under Sections 304-B IPC. The allegation as regards cruelty on account of demand of dowry as far as the offence under Section 498-A IPC is concerned is a different matter. The statement of Monika, recorded under Section 161 of the Code and by the Sub Divisional Magistrate rules out any reason to presume that soon before 3.10.1995 any harassment was caused by any of the petitioners as contemplated under Section 304-B IPC. On the contrary, the reason, which led Monika to commit suicide was other than the harassment by any of the petitioners as contemplated under Section 304-B IPC and as far as incident of 3.10.1995 is concerned, the petitioners are not even remotely referred to by Monika. Thus, the lower Court record does not suggest any evidence to presume any act or omission on the part of any of the petitioners soon before 3.10.1995 which led Monika to commit suicide on 3.10.1995. The alleged treatment before one and half years bringing Monika to her parents' house with her small daughter can not be considered as an act soon before the death of Monika on 3.10.1995.

The statement of Monika under Section 161 of the Code and the statement recorded by the Sub Divisional Magistrate on 3.10.1995 at the same time suggest that there are clear allegations of the petitioners having caused repeated harassment to Monika on account of dowry. It is also suggested that earlier there were problem from her husband and his family members on account of dowry but no such problem on or soon before 3.10.1995. It is also suggested that the frustration with life was because of the trouble by the in-laws. This may be appreciated in light of matrimonial discord, the alleged harassment on account of demand of dowry, requiring Monika to come to her parents' house with her small daughter and the divorce petition pending. But, that can not be regarded as cause leading her to commit suicide and cannot be recorded as a cause proximate of her death. Naturally any lady with a daughter aged 4 years with her required to stay at her parents' place and the atmosphere at the parents' place not congenial, would

feel frustrated and upset thinking about her future.

9. Considering all this, I am of the view that the framing of charge against the petitioners for the offence under Section 304-B/34 IPC can not be regarded as legal and correct since the death can not be attributed to any act or omission of any of the petitioners, which is proximate cause of the death.

10. As far as the charge framed for the offence under Section 498-A/34 IPC against the petitioners is concerned, even the statement of deceased Monika recorded by the Sub Divisional Magistrate and her statement under Section 161 of the Code sufficiently suggest grounds to exist to presume the petitioners having committed the offence under Section 498A, IPC.

11. It, therefore, follows from the above that the Criminal Revision Petition deserves to be partly allowed to the extent that the charge for the offence under Section 304-B/34 IPC framed against the petitioners/accused by the learned Addl. Sessions Judge, Delhi is liable to be set aside as the same can not be regarded as legal and correct considering the record and this revision petition would partly fail to the extent that there is no illegality committed by the Trial Court in framing the charge against the petitioners for the offence under Section 498-A/34, IPC inasmuch as this part of the impugned order is legal and correct, considering the Trial Court record.

12. The petition is disposed of accordingly. The petitioners shall appear before the trial Court on May _____, 1999.

13. Trial Court record be returned forthwith.