

Bhagwanti Vs. State

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Court : Delhi

Decided On : Oct-01-2001

Reported in : 94(2001)DLT632; 2001(60)DRJ603

Judge : Mr. S.K. Agarwal, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 161, 227, 397 and 401; ;[Indian Penal Code \(IPC\), 1860](#) - Sections 34, 304-B and 498-A; Evidence Act - Sections 113-B

Appeal No. : Crl. R. No. 486/97

Appellant : Bhagwanti

Respondent : State

Advocate for Def. : Mr. Pawan Sharma and ; Ms Kiran Singh, Adv.

Advocate for Pet/Ap. : Mr. Jayant K. Sud, Adv

Judgement :

S.K. Agarwal, J.

1. This revision petition u/ss. 397/401 of the Code of Criminal Procedure (for short 'Cr.P.C.') is directed against the order dated 10th September, 1997 framing charges u/ss. 304-B/498-A r/w Section 34 IPC passed by the court of Ms.

Indermeet Kaur Kochhar, Addl. Sessions Judge, New Delhi, against the petitioner (mother-in-law of the deceased), in the case FIR No. 112/90 u/ss. 498-A/304-B IPC P.S. Hazrat Nizamuddin.

2. Prosecution allegations in brief are: on 27th September, 1984 Rajni (deceased) was married to Dharamapal Dhamija. On 18th April, 1990 she committed suicide by hanging. On the same day, statement of Balram Singh Anand, father of the deceased, was recorded by the SDM, who stated that Dharampal Dhamija (husband), had been torturing his daughter as he was having illicit relations with his cousin Sunita Gandhi. Whenever, there was dispute between husband and wife, she used to come to her parents' house and he would send her back after consoling her; that on 10th February, 1989 in the marriage of his younger daughter, he had given scooter, on which his son-in-law Dharampal Dhamija taunted him, thereafter he had given a fridge to Dharamapal so that they can live happily. About two months prior to the incident, her daughter came and told him that she would not go back because her husband abuses her: despite that, he along with his wife and brother-in-law Sabharwal and Mrs. Sabharwal took her back, and made her apologies so that they can live together. On 13th April, 1990, when the deceased came again she told them that she had been asked to bring Rs. 20,000/- because her husband was constructing a house. She was advised to request Dharampal Dhamija, to ask the money himself, and that on 18th April, 1990 at about 8.15 P.M. he received information that his daughter has committed suicide. On his statement, above noted case was registered by the police. The matter was investigated. After investigations challan was filed. By impugned order dated 10th September, 1997, learned trial court found that there is sufficient material for framing charge against Dharampal Dhamija (husband of the deceased) and against the petitioner (mother-in-law).

3. Learned counsel for the petitioner argued that the essential ingredients of the offence for dowry death are not made out. It was argued that death in the present case is not attributable to the cruelty emanating from demand of dowry; as per the allegations deceased committed suicide as she suspected that her husband was having illicit relations with his cousin even after the marriage and not on account of demand of dowry; that from the request for loan for improvement/addition to

house, demand of dowry cannot be inferred; and that the vague allegations contained in the subsequent statements u/s. 161 Cr.P.C. are liable to be rejected. Reliance was placed on the decision of this court in *Miss Archana Aggarwal v. State*, 1993 JCC 400. Learned APP for the State argued to the contrary.

4. Admittedly, neither the parents of the deceased in their statement dated 18 April, 1990 nor the brother of the deceased in his statement dated 19 April, 1990 before the SDM made any allegation regarding demand of dowry or cruelty against the petitioner. These statements were recorded in detail. There are allegations that husband was having illicit relations with his cousin, that he used to harass or quarrel with the deceased, and the matter was reconciled by the parents on number of dates and that on 13th April, 1990, (five days before she committed suicide) husband of the deceased through his wife raised a demand of Rs.20,000/- for construction of the house, and that earlier he (husband) had taunted the complainant regarding the scooter given in the marriage of the younger sister of the deceased. Nothing was alleged against the petitioner in their statements recorded by the SDM. Before there must be allegations that death of woman was caused by burns or bodily injury otherwise than in normal circumstances, within seven years of her marriage, that she was subjected to cruelty or harassment by her husband or any relation of her husband, for or in connection with the demand of dowry, and that she was subjected to cruelty soon before her death. Illicit intimacy of the husband with another woman may constitute a cruelty by the husband against the wife but cannot constitute harassment or cruelty for the purpose of demand of dowry by the relatives. Under Section 113-B of the Evidence Act, presumption as to the dowry death can be raised where it is shown, that soon before her death, she was subjected to cruelty or harassment, in connection with any demand for dowry and not otherwise. Learned APP for the State referring to supplementary statement dated 19th April, 1990 argued that Dharampal Dhamija and his mother used to taunt and harass the deceased for getting insufficient dowry which is enough for framing the charge. The question here is: whether the subsequent Statement recorded by the police under section 161 Cr.P.C., containing vague allegations regarding demand of dowry should be accepted in the face of detailed statements recorded by SDM.

5. The Judge while considering the question of framing the charges u/s. 227 of the Cr.P.C. has the undoubted power to examine the material on record for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. In cases where material placed before the court raise a grave suspicion against the accused which has not been properly explained only then it can be held that prima facie case for framing the charge is made out. There can be no straight jacket formula for the same. The courts are not expected to act as the mouthpiece of prosecution. At the stage of framing of charge, broad probability of the case and total effect of the evidence and documents produced before it and any basic infirmity appearing in the case can be considered. However, appreciation of evidence, which is required to be done at the final stage is not permissible at the time of framing of charge. The Supreme Court after referring to its several earlier decision in *Union of India, v. Prafulla Kumar*, : 1979 CriLJ154 held as under:-

'Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under section 227 of the Code has the un-doubted 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;

(2) 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;

(3) That 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.

(4) 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 mouthpiece 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.'

(emphasis supplied).

6. Now, applying the above principles, in this case, deceased (Rajni), was married to Dharampal on 27.9.1984; she committed suicide on 18.4.1990, after six years of her marriage. The statements of the parents and brother of deceased were recorded before SDM on 18.4.1990 and 19.4.1990 respectively. In their statements, they did not make any allegations against the petitioner. Their case was that the deceased being harassed by her husband as he was having illicit relations with his cousin Sunita Gandhi. In the backdrop of these clear statements, considering broad probabilities and nature of the case, subsequent statements of the parents of the deceased under Section 161 Cr.P.C. recorded by the police during investigation, containing vague allegations to the effect that petitioner used to taunt the deceased for inadequate dowry are liable to be rejected. These statements may give rise to some suspicion but not grave suspicion. I would hasten to add that the situation may have been different if the statements of the parents and brother of the deceased before the SDM were not in detail or if in the subsequent statements u/s 161 Cr.P.C. there were some specific instances. The focus of the allegations appear to be against the husband and not against the petitioner. In view of the above, no case for framing of charge against the petitioner is made out.

7. For the forgoing reasons, impugned order dated 17.9.1997, framing the charge against the petitioner under Section 498-A/304-B IPC, is set aside and petitioner is ordered to be discharged. Trial court record be sent back, for further proceedings against the other accused Dharampal Dhamija, in accordance with law. Any

observations made herein shall not affect the merits of the case during the trial.
Petition stands disposed of.

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