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Alka Sharma Vs. the State

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Court : Delhi

Decided On : Apr-19-2006

Reported in : 129(2006)DLT642

Judge : Badar Durrez Ahmed, J.

Acts : Indian Penal Code (IPC) - Sections 34, 315, 406, 498A, 503, 506 and 511

Appeal No. : Crl. Rev. (P) No. 821/2005

Appellant : Alka Sharma

Respondent : The State

Advocate for Def. : V.K. Malik and ; S.K. Saxena, Advs.

Advocate for Pet/Ap. : Sidharth Luthra and; Anurag Ahluwalia, Advs

Judgement :

Badar Durrez Ahmed, J.

1. By virtue of these petitions, the petitioners are challenging the order on charge dated 03.08.2005 as well as the formal charge which has been drawn up against them on 08.08.2005. The petitioners are the sister-in-law (Alka Sharma), father-in-law (Om Dutt Sharma), brother-in-law (Arun Sharma) and mother-in-law (Krishna Kumari Sharma) and the husband (Manoj Kumar Sharma) of the complainant (Smt

Kamini Sharma). The charges have been framed against all these petitioners by virtue of the impugned orders, firstly under Sections 498A/34 IPC and, secondly, under Sections 315/34 IPC and, thirdly, under Sections 506/34 IPC. Insofar as the mother-in-law, namely, Krishna Kumari Sharma is concerned, an additional charge under Section 406 IPC has also been framed.

2. Mr Luthra, who appears for all the petitioners, submits that, first of all, the case under Section 315 IPC is not made out inasmuch as before it could be said that the offence under Section 315 IPC is made out, it must be established that the child has either been prevented from being born or has died after his birth. He states that the factual position is that the child was born and is still alive, thereforee, the basic ingredients of Section 315 IPC have not been satisfied. As such, the charge under Section 315 IPC requires to be done away with. As regards this submission, Mr Malik, who appears for the State, submitted that while it is a fact that the child was born and that the child is still alive, as is borne out from the charge-sheet itself, the offence under Section 315 IPC is still made out. According to him, it is not at all necessary that the child ought to have died for the formation of the offence under Section 315 IPC. I have examined the provisions of Section 315 and I find that the arguments advanced by Mr Luthra are tenable and those by Mr Malik are not tenable. The said Section 315 reads as under:-

315. Act done with intent to prevent child being born alive or to cause it to die after birth.--Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

Reading the above Section, it becomes clear that it pertains to two stages, one prior to birth of the child and the other after the birth of the child. Insofar as the stage prior to birth of the child is concerned, if an act is done with an intention to prevent the child from being born alive, the offence is made out only if by such act, the child is prevented from being born alive. In the present case, the allegation is

against the mother-in-law and the sister-in-law to the effect that on 26.03.2003, they gave her (the complainant) one sachet containing some powder / medicine which she was required to take. This was administered to her on the ground that it would be good for her. However, the petitioner's case is that it was some sort of medication or drug to induce abortion in the said Smt Kamini Sharma. In fact, the prosecution's case is that after she took the said substance, it induced bleeding and she was taken to hospital and she was treated there. The child, however, was born on 19.08.2003. thereforee, the twin conditions of doing an act to prevent the birth of the child and the actual prevention of birth of the child have not been satisfied. As such, on a reading of the material on record itself, the offence under Section 315 is not made out. However, since as per the allegation, there was an attempt to carry out an intention which might have resulted in the offence under Section 315, it would be appropriate if the charge is modified to one under Section 315 read with Section 511 and 34 IPC as against the mother-in-law and the sister-in-law. Insofar as the other petitioners are concerned, there is no such allegation against them and, thereforee, this charge against them requires to be dropped.

4. Coming now to the other contention of Mr Luthra with regard to the charge framed under Section 506/34 IPC. He referred to the statement of the complainant dated 22.09.2003 to show that the prosecution's case itself is that the threat and / or intimidation, if at all, that was meted out was on the part of the husband alone. According to him, the threat that was allegedly meted out was also not one which could be covered under Section 506 IPC inasmuch as it is not in the nature of a threat which would have normally caused alarm as to amount to intimidation as explained in Section 503 IPC.

5. Mr Malik, on the other hand, also referred to the statement of Smt Kamini Sharma recorded on 22.09.2003 to point out that the threat was not just a bald threat, but was of the nature, which, in the normal circumstances would have caused intimidation as indicated under Section 503 IPC. He said this because this threat has to be read not in isolation, but coupled with the fact that hot water was allegedly poured by the brother-in-law and the sister-in-law of the complainant. In such circumstances, when an overt act had been done, a threat would definitely amount to intimidation.

6. I am in agreement with the submissions made by the learned Counsel for the State that the threat was not just a bald threat not amounting to intimidation. Since the threat was meted out by the husband and the act of pouring hot water was completed by the brother-in-law and the sister-in-law, the charge under Section 506/34 IPC would definitely stand insofar as the husband, brother-in-law and the sister-in-law are concerned. There is no allegation discernible from the material on record with regard to any threat having been meted out by the mother-in-law or the father-in-law of the complainant. thereforee, to this extent, the charge framed against the petitioners has to be modified such that the charge under Section 506/34 IPC shall not be held against the mother-in-law and the father-in-law, but shall remain against the other accused persons, i.e., the sister-in-law and the brother-in-law of the complainant.

With these modifications, these revision petitions are partly allowed.

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