

**Mohd.Rafiq and ors Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/924873](http://sooperkanoon.com/924873)

**Court :** Delhi

**Decided On :** Dec-15-2011

**Appellant :** Mohd.Rafiq and ors

**Respondent :** State

**Judgement :**

§~66 \* IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.REV. P. No.564/2011 % Judgment delivered on: 15th December, 2011 MOHD.RAFIQ and ORS. ....Petitioner Through : Mr. Kuldip Singh and Mr. Harpreet Singh, Advocates versus STATE ..... Respondent Through : Ms. Rajdipa Behura, APP with Inspector J.S. Mehta, PS Khazuri Khas. CORAM: HON'BLE MR. JUSTICE SURESH KAIT SURESH KAIT, J. (Oral) CRL.M.A. No.19416/2011 (exemption) Exemption allowed, subject to all just exceptions. The application is disposed of. CRL.REV.P. 564/2011.

1. Learned counsel for the petitioner submits that the petitioner No.

5. got married with Shama (now deceased) on 9th September, 2009 according to the Muslim rites and ceremonies. Crl.Rev. P.564 /2011 Page 1 of 10.

2. Learned counsel further submits that the said marriage was preceded by love affairs between the two. After marriage both the parties had been staying in a rented accommodation and there was no intervention from the side of either party to the life of the deceased. Before death, deceased Shama was suffering from

fever and abdominal pain as she was pregnant and having six and a half months' pregnancy. She was admitted in a nearby hospital i.e. Jag Parvesh Chandra Hospital, however the condition of the deceased became critical on 19 th June, 2010. Therefore, she was referred to GTB Hospital. On 20 th June, 2010, the deceased expired at GTB Hospital due to septicemic shock as per the MLC prepared at the GTB Hospital..

3. On hearing about death, the father of the deceased made a complaint with PS Khazuri Khas which was converted into an FIR No. 159/2010 dated 20th June, 2010 under Section 304B/498-A of the Indian Penal Code, 1860 where in the father allegedly levelled allegations that his daughter was subjected to cruelty and harassment as she telephoned him at night itself..

4. On 14th July, 2010 a supplementary statement of the father of the deceased was recorded wherein he stated that he got his daughter Crl.Rev. P.564 /2011 *Page 2 of 10* married to petitioner No.5 according to his capacity and with pomp and show and soon after marriage she was subjected to physical harassment in relation to dowry of Rs.1 lac and a car..

5. Learned counsel has drawn the attention of this Court to the first statement of the father of the deceased wherein he stated that after the marriage her daughter was living in her matrimonial home without any information to them. Her in-laws were not allowing him to meet with their daughter for demand of dowry. It is stated that he gave mobile phone to his daughter and the said mobile phone was further given by his son in law to his brother. His daughter was pregnant and was not aware of the same. After coming there, he came to know that his daughter was to be operated upon but her in-laws did not allow for the same due to which their daughter had died. It is further stated that he had doubt that his daughter had been killed due to harassment for dowry and due to perforation of mental agony and due to non- permission for her operation..

6. Learned counsel further drawn attention of this Court to the supplementary statement which was recorded on 14th July, 2010 wherein he made all the allegations against the petitioner and his Crl.Rev. P.564 /2011 *Page 3 of 10* family including that his daughter phoned him from mobile No. 9582132922 and she told

while weeping that since 19th June, 2010 evening, they were beating her. Her husband Sharif, her father-in-law Mohd. Rafiq, mother-in-law Mts. Shafikan, Devar Nabi and Nanand Hina had beaten her jointly with legs and fist blows and they have also hit with leg and fist blows in her stomach. Since then, there was a great pain in her abdomen. The child in the womb might have been killed by them..

7. Learned counsel further drew attention of this Court to the order on charge passed by the learned trial judge on 10th November, 2010 and it is recorded in the order while referring the post-mortem report that no injury was apparent, visible and cause of death is given as due to intra-uterine peritonitis of 6 month old at GTB Hospital. As per the death certificate given by GB Hospital, the cause of death is given as "Perforation Peritonitis with 6 months amenorrhoea with intra-uterine foetal death with septicemic shock". It is also recorded that post-mortem was conducted on the dead body where the history was recorded as deceased was pregnant for last 6 months and there was complaint of fever and pain in the abdomen for ten days. She was CrI.Rev. P.564 /2011 *Page 4 of 10* taken to Jag Parvesh Chandra Hospital where she was treated for nine days and on 19th June, 2010 she was referred to GTB Hospital where she was treated and expired on 20th June, 2010 at about 5:15 pm during the course of her treatment..

8. The I.O. of the case made request to CMO of Jag Parvesh Chandra Hospital for providing the complete details of the treatment of deceased. After perusal, the Ld. Judge has recorded in its order that the photocopy of the casualty ticket shows that she came to the hospital on 19th June, 2010 at about 12:30 pm with history of pain abdomen and patient was referred to GTB Hospital for further management on the same day. She was admitted in GTB Hospital on 19th June, 2010 and died in the same hospital at 5:15 am on 20th June, 2010..

9. The learned Judge has also recorded the allegations of the father of the deceased that he had received telephonic call of his daughter (deceased) on 20th June, 2010 in the night at about 1:30/2 AM wherein she had told him that she had been given beatings since evening and they had hit her with legs and fists which resulted in suffering pain in the abdomen. The Ld. Judge has recorded that it appears to be falsified as at the very time she was being examined by senior

resident, Surgery CrI.Rev. P.564 /2011 Page 5 of 10 at 12:30 a.m..

10. It is further recorded that the post-mortem report has not revealed any external injury. As regards the internal injury, on examination of abdomen, there was more than two litre pus present. Perforation of size of 1 cm present over the posterior wall of first part of duodenum. This itself shows that there was no internal injury. Therefore, the Id. Judge has concluded that the deceased had died during the course of the treatment..

11. Finally the trial Judge has given opinion on Sec.

304. B Indian Penal Code, 1860 that she died on account of the disease which comes under the category of natural death, therefore, no offence under Sec. 304B made out and the petitioner was discharged..

12. Learned counsel or the petitioner further submits that keeping in view the first statement of the father of the deceased, the petitioner cannot be even prosecuted under Sec. 498-A. First of all, the marriage between the petitioner No.5 and the deceased is a love marriage. At the time of Nikah, no one from the family of the deceased was available there. They were opposing this marriage, therefore, after marriage till her death, there was no relation and no visit to each other's family; no CrI.Rev. P.564 /2011 Page 6 of 10 communication at all and the only allegation that the deceased made telephonic call to her father in the morning (night) of 19 th/20th June, 2010 is false, because of the fact in the MLC and in the post-mortem report, there is no such type of injury recorded..

13. Learned APP submits that admittedly, the marriage was of the choice of petitioner No.5 and the deceased. The family of the deceased did not attend the marriage however it is the fact that on 19/20th June, 2010 (the intervening night) the father of the deceased received telephonic call. The charges against the petitioner have been framed. Let the petitioner prove their defence during trial, because at the stage of framing charge the trial judge has to see prima facie the allegations against the petitioner. The allegations against the petitioner are that in the intervening night of 19th and 20th June, 2010 at about 12:30, the father of the deceased received phone regarding beating of the deceased by the petitioners..

14. After hearing both Id. Counsels appearing for the parties, I note that the allegations are falsified as recorded by the learned Judge that there was no external injury at all and she remained in the hospital and was getting treatment during the time of allegation. She died with Crl.Rev. P.564 /2011 *Page 7 of 10* natural death. The trial Judge has recorded each and everything in the order on charge. He has gone through the record of the hospital produced by the I.O., he has also perused the post-mortem report of the deceased..

15. Therefore, in my opinion, the charge under Sec. 498-A is not made out as there was no communication from the date of marriage till death of the deceased, from both the families. More so, she has been regularly taken to hospital for the check up as she was at the advanced stage of pregnancy i.e. six and a half months. When there is no communication at all, there is no question of demand for dowry by the petitioners' family..

16. Law is settled on exercising power under section 482 Cr.P.C. in the case of State of Haryana and other v. Bhajan Lal and others 1990 (002)-SCALE-1066-SC as under:- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused. (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under S.

156. (1) of the Code except under an order of a Magistrate within the purview of S.

155. (2) of the Code. Crl.Rev. P.564 /2011 *Page 8 of 10* (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused. (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under S.

155. (2) of the Code..

379. (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused. (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and / or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party. (7) Where a criminal proceeding is manifestly attended with mala fide and / or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge..

17. In the instant case the complaint and evidence on record do not disclose the commission of offence even without controverting. The allegations are so absurd and inherently improbable, no prudent person can say that there are sufficient ground to proceed with..

18. Allowing this case to continue for trial would be futile exercise and it would cause harassment only to the petitioners..

19. Keeping the above discussion into view, I am of the opinion the CrI.Rev. P.564 /2011 *Page 9 of 10* case under Section 498-A is not made out against the petitioners..

20. Consequently, the impugned order dated 14.07.2010 is set aside. The petitioners are discharged from the charges..

21. Accordingly, CrI. Rev. P. No. 564/2011 is allowed. SURESH KAIT, J  
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