

CNo. 62/2022
STATE Vs. PAWAN TIWARI & Ors.
FIR No. 32 /2021
PS Sonia Vihar
U/sec. 498-A/34 and 304-B/34 of IPC.

19.09.2022

ORDER ON CHARGE

1. Brief facts of the case are that FIR has been registered on the statement of mother of the deceased. On completion of investigation, the charge sheet against all the accused has been filed U/sec. 498-A/34 and 304-B/34 of IPC.
2. When, the matter was fixed for hearing arguments on the charge, I have heard the Ld. Counsels for the parties.
3. Ld. Additional Public Prosecutor for State has submitted that FIR has been registered on the statement of Ms. Subhashini, who is the mother of the deceased, who has categorically stated that the marriage of deceased was solemnized with the accused Pawan Tiwari on dated 22.11.2019 and she has also alleged that accused Vidya Devi was harassing her daughter and some time she used to pick her hand to beat her daughter Kanchan (deceased). The mother of the deceased has also stated in her statement that the deceased was harassed by the accused Pawan Tiwari and he used to say that he would not allow Kanchan (deceased) to return in her matrimonial house, in case, she would go to her parental house. She has also alleged that accused

Pawan Tiwari also used to make demand of bullet motorcycle, mobile phone, expensive shoes of Rs.3,500/- and music system and in view of said demands, the son of the complainant had purchased and had given music system to this accused. She has further stated that keeping in mind the demands, they had also paid Rs. 5,00,000/- in cash, in addition to the Santro Car, ornaments of gold and other household articles. The Ld. Additional Public Prosecutor has further submitted that mother of the deceased has also stated in her statement recorded by Executive Magistrate that she suspects that husband of the deceased Pawan Tiwari, her Nanad Kajal and Dever Satyam had killed the deceased. He has further submitted that postmortem report reveals that cause of the death of deceased was due to asphyxia as a result of antemortem hanging. He has further submitted that similar allegations have been leveled by Sh.Vinay Pandey, Hari Kishan Pandey and Hari Om Pandey, who are brothers of the deceased, Sh. Raj Kumar Pandey (who is father of the deceased) in their statements recorded U/sec. 161 Cr.P.C. and since, the deceased had committed suicide within seven years of marriage, so, presumption of dowry death is there and submitted that prima facie case punishable U/sec. 498-A/34 and 304-B/34 of IPC is made out against all the accused and submitted that at the time of framing of charge only *prima facie* case is required to be seen and prayed for framing of charges in the present case against all the accused U/sec. 498-A/34 and 304-B/34 of IPC.

4. On the other hand, the Ld. Counsel for all the accused

has submitted that there is no incriminating evidence against the accused Kajal, who is sister-in-law of the deceased who is an unmarried girl, who has recently completed her study and accused Satyam who is brother-in-law of the deceased and submitted in the absence of any specific allegations against accused Kajal and Satyam, both are liable to be discharged, as on the basis of the mere suspicion, no charge can be framed, so, he has prayed for discharge of accused Kajal and Satyam, as no *prima facie* case is made out against both of them.

5. I have given thoughtful consideration to the submissions made by the Ld. Counsels for the parties and have perused the record.

6. The perusal of the record reveals that in the case in hand FIR has been registered on the statement of mother of the deceased recorded by the Executive Magistrate, which reveals that marriage between the accused Pawan Tiwari and the deceased was solemnized on dated 22.11.2019 and deceased is alleged to have committed suicide on dated 29.01.2021. She has alleged that the marriage of deceased was solemnized with the accused Pawan Tiwari on dated 22.11.2019 and she has also alleged that accused Vidya Devi was harassing her daughter and some time she used to pick her hand to beat her daughter Kanchan (deceased). The mother of the deceased has also stated in her statement that the deceased was harassed by the accused Pawan Tiwari and he used to say that he would not allow Kanchan (deceased) to return in her matrimonial house, in case,

she would go to her parental house. She has also alleged that accused Pawan Tiwari also used to make demand of bullet motorcycle, mobile phone, expensive shoes of Rs.3,500/- and music system and in view of said demands, the son of the complainant had purchased and had given music system to this accused. She has further stated that keeping in mind the demands they had also paid Rs. 5,00,000/- in cash, in addition to the Santro Car, ornaments of gold and other household articles and mother of the deceased has also stated in her statement recorded by Executive Magistrate that she suspects that husband of the deceased Pawan Tiwari, her Nanad Kajal and Dever Satyam had killed the deceased.

7. This court has perused the chargesheet, which reveals that statements of the complainant, her sons and her husband were recorded wherein they have leveled the allegations of cruelty and harassment and demands of dowry against this accused Pawan Tiwari and Vidya Devi and the complainant and the other witnesses of the prosecution merely suspected the involvement of accused Kajal and Satyam in the murder of the deceased Kanchan. Since, for framing charge against the accused strong suspicion is required, which may lead the court to think that there is ground for presumption that an accused has committed an offence and mere suspicion is not sufficient to frame the charge against an accused.

8. As their Lordship of Supreme Court in case *“Dilawar Balu Kurane v. State of Maharashtra Appeal (Crl.) 8*

of 2002” was pleased to hold

“In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section has the undoubted 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; 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; by and large 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 justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge 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 but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial [See Union of India versus Prafulla Kumar Samal & Another (1979 3 SCC 5)]”.

9. Therefore, relying upon the judgment passed by their Lordship of Supreme Court in ***Dilawar Balu Kurane***

(Supra), I am inclined to hold that grave/strong suspicion against the accused Kajal and Satyam for committing any offence is not found. In the absence of grave/strong suspicion against accused Kajal and Satyam, I am inclined to hold that no case is made out against accused Kajal and Satyam as the law is well settled by their Lordship of Supreme Court that where two views are possible then, the view in favour of the accused has to be adopted. Therefore, this court is inclined to hold that on the mere basis of suspicion, no charges U/sec. 498-A and 304-B/34 of IPC can be framed against accused Kajal and Satyam. Therefore, **accused Kajal and Satyam are discharged.**

10. Since, from the statement of the complainant, her husband and sons recorded during the investigation it is clear that marriage between the accused Pawan Tiwari and the deceased was solemnized on dated 22.11.2019 and deceased Kanchan had committed suicide on dated 29.01.2021 and thus it is clear that the death of the deceased is within seven years of marriage, and from the report of the postmortem of the deceased, it is clear that cause of death of deceased was asphyxia as a result of antemortem hanging. Thus, the death of the deceased is otherwise than under the natural circumstances and from the allegations leveled by the mother, father and brothers of the deceased, it is *prima facie* clear that deceased was dealt with cruelty and harassment in connection with demands of dowry by accused Pawan Tiwari and his mother Vidya Devi. Therefore, in the considered opinion of this court, **prima facie case U/sec.**

498-A/34 and 304-B/34 of IPC is made out against accused Pawan Tiwari and accused Vidya Devi.

11. Accordingly, charges thereunder are liable to be framed.

**ANNOUNCED IN THE OPEN
COURT ON 19.09.2022**

**(PAWAN KUMAR MATTO)
Addl. Sessions Judge (Special Judge NDPS)
North East/KKD Courts/Delhi/19.09.2022**