

**IN THE COURT OF SHRI PAWAN KUMAR MATTO,
ADDITIONAL SESSIONS JUDGE (SPECIAL JUDGE NDPS),
NORTH EAST DISTRICT, KARKARDOOMA COURTS, DELHI**

SC No. 393/2022

State Vs. Dharamraj Mishra & ORS.

FIR No. 356/2022

PS: Sonia Vihar

U/s: 302/304-B/498-A/34 of IPC

10.02.2023

ORDER ON CHARGE

1. Brief facts of the case are that the present FIR has been registered on the statement of complainant Sh. Ashok Tiwari. On completion of investigation, the charge sheet against all the accused, namely, Dharam Raj, Usha Mishra, Karuna Mishra, Radhey Shyam Mishra and Shyam Sunder Mishra has been filed U/sec. 302/304-B/498-A/34 of IPC.

2. When the matter was fixed for hearing arguments on the charge, I have heard the learned Additional Public Prosecutor for State and learned Counsels for the accused persons.

3. Sh. Sukhbeer Singh, learned Additional Public Prosecutor for State has submitted that in the case in hand, all the accused in furtherance of their common intention had beaten to the deceased at the roof of the house of the accused, strangled her and, thereafter, she was thrown in a vacant plot adjoining to their house and submitted that one day prior to this occurrence, the brother of the deceased had also gone in the house of accused, in view of birthday party and even on that night a quarrel had happened and on the intervening night of 2/3

June 2022, the accused have mercilessly beaten to the deceased, strangled her and thrown in the plot adjoining to their house and in order to create false story, accused Karuna also jumped from the said roof and submitted that,thereafter, all the accused have tried to concoct a story that the deceased had fallen from the roof and initially the accused had misled to the brother and father of the deceased and this deceased had fallen from roof and in view of the same, accused Karuna had also jumped and in view of such misleading, the statements of father and brother of the deceased recorded by SDM,do not reveal anything incriminating against the accused, but, after seeing the dead body of the deceased on dated 04.06.2022, they found that multiple injuries were present on the body of the deceased and in view of the same, a request was made to the SDM and SDM again recorded their statements on dated 04.06.2022 and IO had also recorded the statements of father and brother of the deceased on dated 30.06.2022 and submitted that postmortem of the body of the deceased Akansha was done and the report of postmortem reveals 60 injuries were found on the body of the deceased and the cause of death is Asphyxia as a result of combined effect of compression of neck structures (throttling) and submitted that marriage between the accused Dharamraj and the deceased was solemnized on dated 05.06.2015 and murder of the deceased was committed on dated 03.06.2022 and postmortem report was received on dated 16.06.2022 and, thereafter, FIR was registered on dated 20.06.2022 and submitted that from the statements of

father and brother of the deceased recorded by the SDM on dated 04.06.2022 and statements of brother of the deceased Shivam and father of the deceased recorded U/sec. 161 of Cr.P.C. on dated 30.06.2022, it is clear that this accused were not satisfied with dowry articles, which were given in the marriage of the deceased with accused Dharamraj and also submitted that in view of the same, the accused used to taunt and treated to the deceased with cruelty and from the statement of brother of the deceased Shivam Tiwari recorded U/sec. 161 of Cr.P.C., it is clear that on the night of occurrence, this accused Dharamraj was earlier sleeping with him and he had also mentioned in his statement that this accused Dharamraj was going and coming in the room and at about 1:00 AM, it was told by the accused Usha Mishra that deceased had fallen from roof and submitted that from the statement of father and brother of the deceased, it also becomes clear that this witness Shivam Tiwari had not believed the story concocted by the accused regarding falling of the deceased from the roof and he has suspected that the accused Dharamraj, Smt. Usha Mishra, Karuna Mishra Radhey Shyam Mishra and Shyam Sunder Mishra had killed to the deceased and thereafter they had thrown his sister from the roof and further submitted that if the statement of this Shivam Tiwari and the postmortem report of the deceased are, read together, it becomes clear that it is not a case of suicidal death, but, it is a case of homicidal death as the cause of death is Asphyxia as a result of combined effect of compression of neck structures (throttling)

and submitted that no doubt, nail clipping report is yet to be received, but, at the same time, he has also submitted that after going through the statements of father and brother of the deceased, postmortem report, subsequent opinion and statements of other prosecution witnesses, it is clear that this is a case of murder of the deceased that too within 7 years of her marriage with the accused Dharamraj, so, prima facie case U/sec.302/304-B/498-A/34 of IPC is made out against all the accused and the charges therein are liable to be framed.

4. On the other hand, Sh. Vidhya Bhushan, the Ld. Counsel for the accused Dharam Raj, Usha Mishra and Karuna Mishra has submitted that nothing incriminating is collected by the IO during investigation and submitted that nail clippings report is yet to be received and in the absence of any cogent evidence, no charge can be framed against the accused Dharam Raj, Usha Mishra and Karuna Mishra. He has also submitted that there is no direct evidence regarding any offence alleged to have been committed by these accused and further submitted that marriage between the accused Dharamraj and the Akansha (deceased) was solemnized on dated 05.06.2015 and from the date of marriage till the date of death, no complaint was ever filed by the deceased or her parents against the accused regarding the cruelty alleged to have been committed by these accused against the deceased and prayed for discharge of the accused, namely, Dharam Raj, Usha Mishra and Karuna Mishra.

5. Ms. Bornali Singh, the Ld. Legal Aid Counsel for
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the accused Radhey Shyam Mishra and Shyam Sunder Mishra has submitted that nothing incriminating is collected by the IO during investigation against the accused Radhey Shyam Mishra and Shyam Sunder Mishra and submitted that the accused the accused Radhey Shyam Mishra and Shyam Sunder Mishra are entitled to be discharged.

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

7. No doubt, that alleged occurrence had taken place on dated 03.06.2022 and on the same date, SDM had recorded the statements of father and brother of the deceased, but, nothing incriminating was deposed against the accused persons in the said statements. Since, learned Additional Public Prosecutor for State has submitted that on that day, father and brother of the deceased were misled by the accused persons that death of the deceased had occurred in view of accidental fall from the roof, but, on seeing the body of deceased on dated 04.06.2022, they found multiple injuries on the body of deceased and in view of the same, they had requested to SDM for recording their statements again and on recording statements, they have disclosed about the cruelties committed by the accused on the deceased, this court has perused the statement of Ashok Tiwari recorded by the SDM on dated 04.06.2022, wherein, he has deposed that he did not see the body of the deceased on dated 03.06.2022 and on seeing the same on dated 04.06.2022, he had

seen that there were nail scratch marks and signs of danda blows and there were many injuries on the body of the deceased and submitted that these injuries would have been caused prior to throwing of the deceased from the roof and he had also deposed that accused Usha Mishra and Karuna Mishra were on the roof and they had killed and thrown the body of the deceased from the roof and,thereafter, the postmortem report was also received, wherein, 60 injuries are allegedly found on the body of the deceased and cause of death is mentioned as Asphyxia as a result of combined effect of compression of neck structures (throttling). Since, the detailed statements of the brother and father of the deceased were also recorded by the IO u/sec. 161 of Cr.P.C. on dated 30.06.2022, wherein, the brother of the deceased has deposed that her sister was married with the accused Dharamraj on dated 05.06.2015 and the accused were not satisfied with the dowry articles and they used to taunt and commit cruelties on the deceased and he has also deposed that on dated 03.06.2022, he was sleeping with accused Dharamraj and he felt that this accused Dharamraj was going and coming in the room and at about 1:00 AM, this accused Usha Mishra, who is mother-in-law of the deceased had come in the room and shouted that the Karuna had jumped from the roof and thereafter, they arrived to the plot adjoining to the house of the accused and found that his sister was lying in the said plot in unconscious condition and accused Dharamraj had given slap blow to the Karuna and he has categorically stated that he has suspected that

his sister has not fallen, but, all these accused persons had killed her and, thereafter, thrown her from the roof and they told in the Hindu Rao Hospital that this accused Karuna had fallen from roof and they did not tell that this accused jumped from the roof. Similar allegations are leveled by the mother and father of the deceased. Since, Shivam Tiwari, Ashok Tiwari and Smt. Sanju Devi have alleged that all the accused were not satisfied with the dowry articles given in the marriage of the deceased, deceased was harassed, also dealt with cruelty by all the accused and death of deceased is unnatural, as cause of death is mentioned as Asphyxia as a result of combined effect of compression of neck structures (throttling), 60 injuries are allegedly found on the body of deceased and the deceased had expired within the seven years of her marriage. The inconsistency, if any, in the statement of witnesses will be looked into at the time of final adjudication of the case and at this stage, the statements of the witnesses of the prosecution recorded by the SDM and Investigating Officer cannot be ignored, so, in the considered opinion of this court, *prima facie* case punishable U/s: **302/304-B/498-A/34 of IPC** is made out against all the accused persons.

8. So, the charges U/sec. **302/304-B/498-A/34 of IPC** are liable to be framed against all the accused persons.

**ANNOUNCED IN THE OPEN
COURT ON 10.02.2023**

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