

SC No.419/2022
State Vs. Azharuddin
FIR No. 25/2020
PS Hazrat Nizamuddin

20.08.2022

ORDER ON CHARGE

Present: Shri Salim Khan, learned Chief Public Prosecutor
for State.

Accused is present on bail with learned counsel Shri
S. D. Sharma.

1. The FIR was lodged on the basis of the complaint made by Mrs. Shagufta, mother of deceased Fatima. Here, it is alleged that her daughter was married with accused Azharuddin on 09.11.2019. In nikah beyond her capacity she had given dowry. Accused used to demand money on one pretext or the other. Immediately after marriage, accused visited their house and asked them to arrange Rs.7 lacs - 8 lacs for his permanent employment. Showing her inability, she refused. Thereafter, they started harassing her daughter. During this, Fatima came to know that accused was already married and have a child of 5-6 months and his first wife lives in Seelampur. She was not aware if accused had taken divorce from her. Yesterday on 30.01.2020 at 2.00 pm, her son Faizal @ Sonu received a call from mother of the accused calling him to come immediately as his sister has hanged herself. Immediately, she along with her son reached the house of the accused at Nizamuddin. There, they found her daughter was lying on the bed and a cloth was hanging from the ceiling fan. With the help of the police, her daughter was taken to hospital where she was declared brought dead. She has doubt that

her daughter has been killed by all these persons. On this complaint, police prepared rukka and got the FIR registered under Section 304B/34 IPC.

2. As per the post mortem report, cause of death is asphyxia due to antemortem hanging. PW Shahana is the sister of the deceased. PW Faizal is the brother of the deceased. They both have made similar statement as made by their mother Shagufta. PW Mehraj has arranged this alliance and he has also made similar allegations as made by complainant and other family members of the deceased.

3. Heard the arguments.

4. Learned Chief Public Prosecutor has submitted that this is a case of dowry death, the deceased committed suicide within three months of marriage and there are clear and specific allegations of dowry demand which forced her to commit suicide. It is submitted that prima facie ingredients of the offence under Section 498A/304B IPC are made out against the accused.

5. On the other hand, learned counsel for accused has submitted that necessary ingredients of the offence are not there. It is stated that as per law soon before death deceased must have faced cruelty or harassment but there are no such allegations. It is stated that no specific date has been mentioned in the FIR for demand of dowry and cruelty. It is stated that there must be specific demand for dowry by accused before or during the marriage but there is no demand mentioned in the FIR with no specific date.

6. The date of marriage is 09.11.2019 and on 30.01.2020 deceased Fatima committed suicide. Section 304B IPC provides “when death of a woman occurs otherwise than

under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called dowry death”.

7. Section 498A IPC defines ‘cruelty’. The same is reproduced as follows :

“498A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation.—For the purpose of this section, “cruelty” means—
(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

8. As already discussed, complainant Shagufta, who is mother of the deceased; Faizal, brother of deceased; Shahana, sister of deceased and Mehraj, who arranged this alliance have specifically stated that accused used to make dowry demands through deceased from her family members and more specifically he has demanded Rs.7 lacs - Rs.8 lacs for his permanent employment. It is also mentioned that on account of non-fulfillment of dowry demand, he used to harass and subject the deceased to physical cruelty.

9. One of the contention raised on behalf of accused is that deceased was having extramarital affair, she had absconded with her lover for which police complaint was registered by the

accused in the DCP Office but same has been concealed by police. He has filed copy of the complaint stated to have been made to the police on 11.01.2020. As per copy of this complaint, same has been received in the office of DCP on 13.01.2020. What is the status of complaint, at this stage, it is not possible to comment upon. The law is settled that at the stage of framing of charge, the court is only required to see the existence of prima facie case. Reliance is placed upon **Union of India Vs. Prafulla Kumar Samal, (1979) 3 SCC 4.**

10. In view of the aforesaid discussion, prima facie evidence is there against the accused for offence under Section 498A/304B IPC. Accordingly charge is framed to which accused pleaded not guilty and claimed trial.

11. Be put up for PE on 01.11.2022. Complainant along with IO be called for the date fixed.

(SANJAY GARG-I)
Principal District & Sessions Judge
South East District, Saket Courts
New Delhi : 20.08.2022 (ar)