

23.03.2023

Order on charge

1. The brief facts are that deceased Manju committed suicide on the intervening night of 21.01.2014 - 22.01.2014 and had also left a suicide note. As per postmortem report, the cause of death is “**asphyxia as a result of ante mortem hanging**”. The deceased Manju was married to the accused Sanjay in the year 2002 and also had a daughter aged about 10 years at the time of incident. The statement of the daughter of the deceased was also recorded wherein she stated that her grand parents used to harass her mother on the pretext that she has given birth to a girl child and not a son and also used to torture her due to which her mother generally used to reside with the maternal grand parents of Prachi @ Gungun (daughter of deceased) and sometimes used to come to her matrimonial home.

2. The father of the deceased also stated that the deceased was married in the year 2002 with the accused Sanjay. He was informed by the accused Ram Niwas, who is brother in law (Jeth) of the deceased, in the morning of 22.01.2014 that Manju (deceased) was not keeping well, thereafter, they rushed to the matrimonial home of the deceased where they came to know that deceased had already expired. Accused Sanjay told the complainant that on the previous night at around 10 am, the deceased was not keeping well. Complainant asked Sanjay as to why he was not told about the ill health of the deceased, though, earlier he was usually informed. Thereafter, he asked from the brother of Sanjay and all of them gave a different statement. He further stated that as all the accused persons were giving different versions, therefore, he got suspicious and then his son Sachin examined the deceased and found injuries on the neck of the deceased as if the deceased was strangulated. Then again father of deceased asked Sanjay about the injuries on the neck of the deceased, then Sanjay got

perplexed and told the complainant that 3 days prior, while, washing clothes in washing machine the dupata of the deceased was struck in the washing machine due to which she sustained injuries on her neck, however, accused Ram Niwas said that the deceased had fallen from stairs due to which she sustained injuries. Complainant again became suspicious and informed the police. The accused persons, thereafter, handed over a suicide note to the police but as per the complainant and his son, the handwriting on the suicide note was not of the deceased and the suicide note is in two different hand writings. Complainant has further stated that all the accused persons in conspiracy murdered the deceased as the accused persons were demanding dowry in the form of chuchak. **Complainant has also stated about the demand of Rs.5 lakhs and a car and has further stated that as deceased was unable to give birth to a son, therefore, all the accused persons were harassing her.** On the statement of the complainant present FIR was registered and chargesheet was filed under Section 306 IPC.

3. Statement of Prachi @ Gungun (daughter of deceased) under Section 161 Cr.PC was also recorded and she has further stated that 1 to 2 days prior to the death of the deceased, her Tau and Tai had a fight with deceased and they had assaulted the deceased. Despite efforts the admitted handwriting of the deceased could not be procured by the IO and therefore, the suicide note was not sent for examination by any hand writing expert.

4. Statement of the daughter of the deceased was recorded under Section 164 Cr.PC in which she has stated that her father had told her it was in her hand to save them. She has further stated about harassment given to the deceased by her Tau and Tai as well as her grand mother.

5. Written arguments have also filed on the point of charge by the accused persons. Ld. Defence Counsel has relied upon the following judgments in support of his plea for discharge:

- (i) Sanju @ Sanjay Singh Sengar Vs. State of M.P., Appeal (Crl.) 572 of 2002, decided on 01.05.2002;
- (ii) M. Mohan Vs. State Tr. Dy. Supdt. of Police, Criminal Appeal No. 611 of 2011, decided on 01.03.2011;
- (iii) Govind Suni Vs. State of U.P. & Anr., decided on 15.12.2020;
- (iv) S.S. Cheena Vs. Vijay Mahajan & Anr., Criminal Appeal no. 1503 of 2010, decided on 12.08.2010;
- (v) Jalil Khan Vs. State of Madhya Pradesh, Cr.R. No. 2436/20, decided on 23.06.2021

6. The factum of marriage is admitted and the birth of one daughter Prachi @ Gunnu is also admitted. It is stated that though, after the death of the deceased a complaint was made regarding demand of Rs. 5 lakhs and one car, but, no such complaint in respect of the alleged demand was made prior to the death of the deceased. It is stated that there are no allegations in the complaint dated 31.01.2014 that the conduct of the accused persons was such as to drive the deceased to commit suicide and there is not even a single allegation that immediately before death any fight/insult etc had taken place. It is stated that the medical documents of the deceased were also collected during investigation and as per prescription dated 06.01.2014, the deceased was suffering from Asthmatic Bronchitis, Severe Anemia Case, Bleeding Pilles, Hypertension with UH Depression. It is stated that general allegations that have been made that all these people have murdered the deceased, however, it has not been disclosed as to which person has driven the deceased to commit suicide. Also, though it has been alleged that after birth of Gunnu, all these people used to demand Rs. 5 lakhs and one car, however, it has not been disclosed as to which person had demanded. The statement of the daughter of the deceased is to the effect that the deceased and the Sanjay had a fight but it is stated that Sanjay had never hit the deceased in front of Prachi @ Gunnu. It is further stated as per statement of Prachi @ Gunnu also six days before the death, the deceased and Geeta had a fight

in which the accused Ram Niwas and Geeta asked deceased to vacate the house and go to her parental house. It is stated that it is the hearsay evidence and even if it admitted to be true there is sufficient time between the date of incident and the date of death to reflect. However, as per statement of the witness Prachi @ Gunnu, this incident in which her Tau and Tai had assaulted the deceased had occurred 1 to 2 days prior to the suicide and not 6 days prior to the incident and therefore, this argument that the alleged assault of deceased by her in laws had happened six days prior and there was time to reflect is not correct. It is also stated witness Gunnu @ Prachi have not stated about any dowry demand and that there are material contradictions in the statement of the witnesses. About dowry demand, the statement of father of deceased is available on record. The witness Prachi was a child at the time of incident. She has deposed about the conduct of accused persons. However, a child cannot be expected to specifically depose about dowry demand. Child of such tender age may not even understand what 'dowry' means.

7. It is stated that deceased was suffering from several health problems, however, there is nothing on record to come to this conclusion that deceased had committed suicide due to her health issues, rather the statement of the child (daughter of deceased) establishes that accused persons used to fight with the deceased and had also assaulted her.

8. As far as offence of abetment of suicide is concerned, Section 306 IPC reads as under:

“306. Abetment of suicide.--If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

9. On the issue of cruelty, the Hon'ble Supreme Court in **K.V. Prakash Babu Vs. State of Karnataka (2017) 11 SCC 176** has held that the concept of

mental cruelty depends upon the milieu and the strata from which the persons come from and definitely has an individualistic perception regard being had to one's endurance and sensitivity.

10. In *Praveen Pradhan v. State of Uttaranchal, (2012) 9 SCC 734*, it has been ruled

"18. In fact, from the above discussion it is apparent that instigation has to be gathered from the circumstances of a particular case. No straitjacket formula can be laid down to find out as to whether in a particular case there has been instigation which forced the person to commit suicide. In a particular case, there may not be direct evidence in regard to instigation which may have direct nexus to suicide. Therefore, in such a case, an inference has to be drawn from the circumstances and it is to be determined whether circumstances had been such which in fact had created the situation that a person felt totally frustrated and committed suicide...."

11. In *Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618*, Hon'ble Supreme Court observed that whether the accused by his acts or by a continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an **"instigation"** may be inferred. In other words, in order to prove that the accused abetted commission of suicide by a person, it has to be established that:

(i) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction; and

(ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of mens rea is the necessary concomitant of instigation."

12. The Hon'ble Supreme Court again observed in ***Chitresh Kumar Chopra Vs. State (2009) 16 SCC 605***, observed that

"20. ... The question as to what is the cause of a suicide has no easy answers because suicidal ideation and behaviours in human beings are complex and multifaceted. Different individuals in the same situation react and behave differently because of the personal meaning they add to each event, thus accounting for individual vulnerability to suicide. Each individual's suicidability pattern depends on his inner subjective experience of mental pain, fear and loss of self-respect. Each of these factors are crucial and exacerbating contributor to an individual's vulnerability to end his own life, which may either be an attempt for self- protection or an escapism from intolerable self."

13. In view of above judgment, it is clear that as the accused persons by their act or conduct had created circumstances that the deceased has left with no other option but to commit suicide and in such circumstances, an instigation can be inferred. There is sufficient evidence on record in the form of the statement of the witnesses that the accused persons used to harass the deceased and used to fight and had also assaulted her 1 to 2 days prior to the incident.

14. As far as argument that no complaint regarding demand of Rs. 5 lakhs and car was made prior to the death of the deceased. The same is no ground to disbelieve the witness at this stage of charge. Moreover, in Indian context generally the parents of the girl are reluctant to file a complaint and all efforts are made so that the marriage of their daughter is saved. The complaint regarding dowry demands are

only resorted to after loosing all hopes of survival of the marriage of the girl. It has come on record that the deceased generally used to reside with her parents due to the constant cruelty of the accused persons and used to visit matrimonial home only sometimes. In such circumstances, a clear inference can be drawn at this stage that the deceased was harassed by all the accused persons and mental as well as physical cruelty was committed upon her.

15. The alleged suicide note has also been examined by the court and the same is in two different clear handwritings. The first handwriting appears of deceased in which she has stated about the conduct of the accused persons. The second portion is in a different handwriting in which this fact that she has committed suicide due to ill health is mentioned. This fact that the suicide has been committed by her due to ill health is not in the same handwriting in which the first portion of the suicide note is written and seems to have been added by some one else later on, therefore, this cannot be inferred at this stage that the deceased had committed suicide due to his ill health. The deceased was not suffering from any terminal illness even as per medical records available in the file.

16. In **P. Vijayan Vs State of Kerala & Anr., Criminal Appeal no.192/2010**, decided on 27.01.2010 by the Hon'ble Supreme Court, brief facts were that Naxalites Varghese while escaping from the police custody was killed in shoot out on 18.02.1970 and from 1970 till 1998, there was no allegation that the said encounter was a fake encounter. The relevant facts as stated in the judgment are as under :

“Only in the year 1998, reports appeared in various newspapers in Kerala that the killing of Varghese in the year 1970 was in a fake encounter and that senior police officers are involved in the said fake encounter. Pursuant to the said news reports, several writ petitions were filed by various individuals and organizations before the High Court of Kerala with a prayer that the investigation may

be transferred to Central Bureau of Investigation (CBI). In the said writ petition, Constable Ramachandran Nair filed a counter affidavit dated 11.01.1999 in which he made a confession that he had shot Naxalite Vaghese on the instruction of the then Deputy Superintendent of Police (DSP), Lakshmana. He also stated that the appellant was present when the incident occurred. By order dated 27.01.1999, learned single Judge of the High Court of Kerala passed an order directing the CBI to register an FIR on the facts disclosed in the counter affidavit filed by Constable Ramachandran Nair. Accordingly, the CBI registered an FIR on 03.03.1999 in which Constable Ramachandran Nair was named as accused no. 1, Mr. Lakshmana was named as accused no. 2 and Mr. P. Vijayan, the appellant herein, was named as accused no. 3 for an offence under Section 302 IPC read with Section 34 IPC. After investigation, the CBI filed a charge-sheet on 11.12.2002 wherein all the above mentioned persons were named as A1 to A3 respectively for an offence under Sections 302 and 34 IPC. By pointing out various reasons, his meritorious service and nothing whispered for a period of twenty years, the appellant filed a petition on 17.05.2007 under Section 227 of the Code of Criminal Procedure (in short "Cr.P.C.") for discharge. The trial court dismissed the said petition and passed the order and the same was challenged....."

17. Hon'ble Supreme Court while upholding the order of the trial court directing framing of charge observed:

".....Section 227 of the new Code confers special power on the Judge to discharge an accused at the threshold if upon consideration of the records and documents, he find that "there is not sufficient ground" for proceeding against the accused. In other

words, his consideration of the record and document at that stage is for the limited purpose of ascertaining whether or not there is sufficient ground for proceeding against the accused. If the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228, if not, he will discharge the accused. This provision was introduced in the Code to avoid wastage of public time which did not disclose a prima facie case and to save the accused from avoidable harassment and expenditure. In the case in hand, though, the learned Trial Judge has not assigned detailed reasons for dismissing the discharge petition filed under Section 227, it is clear from his order that after consideration of the relevant materials charge had been framed for offence under Section 302 read with Section 34 IPC and because of the same, he dismissed the discharge petition. After evaluating the materials produced by the prosecution and after considering the probability of the case, the Judge being satisfied by the existence of sufficient grounds against the appellant and another accused framed a charge. Whether the materials at the hands of the prosecution are sufficient or not are matters for trial. At this stage, it cannot be claimed that there is no sufficient ground for proceedings against the appellant and discharge is the only remedy. Further, whether the trial will end in conviction or acquittal is also immaterial.....”

18. Thus, at the stage of charge, the court is not to see the probative value of the evidence nor the sufficiency of material is to be gone into. **Whether the trial would eventually result into conviction of the accused or not is also not material at this stage.**

19. There is sufficient evidence on record to put the accused persons to trial and this is not a fit case in the opinion of the court to discharge any of the accused persons.

20. Ld. counsel for accused has relied upon the judgment titled as ***Govind Soni vs State Of U.P. And Anr. on 15 December, 2020***, however, in the said judgment also, Hon'ble High Court has observed in para no. 13 as under:

“13. The aforesaid decisions have almost settled the legal position that at the stage of charge the court is not required to consider pros and cons of the case and to hold an enquiry to find out truth. Marshaling and appreciation of evidence is not in the domain of the court at that point of time. What is required from the court is to sift and weigh the materials for the limited purpose of finding out whether or not a prima facie case for framing a charge against the accused has been made out. Even in a case of grave or strong suspicion charge can be framed. The court has to consider broad probabilities of the case, total effect of the evidence and the documents produced including basic infirmities, if any. If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, but the court should not weigh the evidence as if it were holding trial. Accused can be discharged only when the charge is groundless. In my opinion, the learned Sessions Judge has taken into account all the relevant materials and passed the impugned order keeping in view the parameters laid down by the Apex Court in the aforesaid cases. Therefore, the submission of the counsel for the revisionist that no charge was made out has no substance.”

21. After going through the charge-sheet and material placed on record, I am of the considered opinion that prima facie a case under Section 306/34 is made out against accused persons.

(KIRAN BANSAL)
ASJ-04, Shahdara/KKD Courts,
Delhi/23.03.2023