

SC No.6484/2016
FIR No.348/13
PS : Saket
State Vs.Ram Kumar etc.

15.12.2018

Present : Sh. RK Gurjar, Ld. Addl. PP for state
Sh. Ramesh Gupta, Sr. Counsel for accused
persons
All accused are present on bail.
Sh. Jitender Tyagi, Ld. Counsel for the complainant.

Sr. Counsel Sh. Ramesh Gupta, concedes charge against the mother in law, father in law and husband for the offence u/s 304B/498A/34 however, he strongly opposes the charge against the rest of the accused namely Lalit (brother in law) and Kavita (married sister in law) and Uma (unmarried sister in law). It is submitted that at the time of death of deceased married sister in law namely Kavita was residing in her matrimonial home near Gurgaon and had no interference in the life of the deceased or her husband and there are statement of prosecution witnesses namely Smt. Pushpa, Rohtash, Geeta and Paramvir to the effect that Kavita was married 7-8 years prior to the incident and she used to rarely visit her parental home, where the deceased was residing and did not have any interference of any kind in the life of deceased and her husband. It is further argued that even against the unmarried brother Lalit and unmarried sister in law Uma, there are no specific allegations as only bald allegations have been raised to the effect that they alongwith other family members used to harass the deceased in furtherance of demand of dowry.

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Counsel has placed reliance on the judgment of Hon'ble Supreme court in **Kansraj Vs.State of Punjab 2000(5) SCC 207** wherein it was held in para 5 as under:-

“A tendency has, however, developed for roping in all relations of the inlaws of the deceased wives in the matters of dowry deaths which, if not discouraged, is likely to affect the case of the prosecution even against the real culprits. In their overenthusiasm and anxiety to seek conviction for maximum people, the parents of the deceased have been found to be making efforts for involving other relations which ultimately weaken the case of the prosecution even against the real accused as appears to have happened in the instant case.”

On the other hand ld. counsel for complainant Sh. Jitender Tyagi has argued that from the facts & circumstances of the case, a charge of section 302IPC is also liable to be framed in alternate with charge of section 304 B IPC. Ld. Addl. PP however, concedes that in view of the opinion of the doctor on the PM report dated 01.09.2013, and the opinion dated 30.09.2013 whereby the opinion was given that the hanging could be possible by ligature cloth i.e. Dupatta seized during investigation, no case of section 302 IPC is made out.

I have carefully perused the file. In the postmortem report, no external injuries were found on the dead body and the cause of death was opined to be asphyxia due to antemortem hanging. Same opinion regarding cause of death was given by the doctor even after analyzing the viscera report and it was observed in said opinion dated 30.09.2013 that since there was a

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delay of three years in obtaining report on the viscera therefore, the presence of level of ethyl alcohol as found could be the result of postmortem production in view of long storage and preservation period.

Perusal of the record shows that viscera was sent for chemical analysis after almost three years of the PM examination and that could be the reason for presence of 25.522mg percentage of ethyl alcohol in Ex.4 of the viscera. As already noted above PM report does not mention any mark of external injury on the dead body of the deceased.

Considering said position on record, I do not find any prima facie case for framing charge u/s 302 IPC against the accused persons.

I have also carefully perused the entire record with regard to the allegations of section 498A and 304 B IPC. It is an admitted position on record that at the time of alleged incident, sister in law of deceased namely Kavita was already married and she was living separately at her matrimonial home near Gurgaon and there are no specific allegations raised against her in the statement of any of the family members of deceased either recorded before the SDM or by the police as their versions contain only general allegations to the effect that all the family members used to harass the deceased for bringing less dowry in marriage. Except the specific allegation of demand of car against the mother in law, there are no specific allegation against any of the other family members. In the statement of 161 Cr.PC of the

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witnesses namely Mahender and Rakesh, the allegations against the sister in law Uma and Kavita are only to the effect that they used to harass the deceased by saying that the dowry articles and clothes brought by her were of inferior quality. Even the statement of Sombir recorded on 07.09.2013 mentions the allegations only against the mother in law, husband and sister in law Uma to the effect that when they visited the matrimonial house of the deceased for the purpose of settlement, said accused hurled upon them filthy abuses and taunted that the family of deceased had not even given a car in the marriage. Here again there is no allegation against brother in law Lalit or married sister in law Kavita.

In view of lack of specific allegations against brother in law Lalit and sister in law Kavita, I do not find any prima facie material to frame charge against said accused for any of the offence. Accordingly, both the accused namely Kavita and Lalit are discharged. They are directed to furnish bail bonds in terms of section 437 A Cr.PC in the sum of Rs.30,000/- each on the next date.

Charge for the offence u/s 304B/498/34IPC is framed against accused Krishan (husband), Ram Kumar (father in law), Suresh Devi (mother in law) and Uma (sister in law). Charge framed accordingly to which accused persons pleaded not guilty and claimed trial.

Put up for PE on **21.02.2019.**

(Sunena Sharma)
Additional Sessions Judge-03 (South)
Saket Courts/New Delhi/15.12.2018