

Sessions Case No. 38 of 2018

Order No. 13 dated 27.03.2019.

The case is taken up for hearing on the point of framing charge.

Ld. Lawyer for prosecution is present as well as Ld. Lawyer for accused.

At the outset Ld. Lawyer for prosecution submits that he has already filed draft charge on the basis of the report u/s 173 of Cr.PC as there is sufficient materials on record against the accused for framing charge u/s 498A/302 of IPC.

As such Ld. PP submits for framing of charge under the offences as prima facie made out and mention in draft charge form.

On the other hand Ld. Lawyer appearing on behalf of accused submits that there is no material to substantiate the charge of offence u/s 302 of IPC as nowhere in the report of 173 Cr.PC found any kinds of injury on the body of deceased.

Further Ld. Lawyer for the accused submits that it is a clear case of normal death and for the sake of argument it can be the best case for the offence u/s 498A of I.PC as because deceased died due to her long ailment and for anemia and the Post Mortem report disclosed that her spleen was enlarged and it was the cause of her death.

Finally Ld. Lawyer for accused submits referring the order of Hon'ble High Court, Calcutta in connection with C.R.M No. 9239 of 2018 whereby Hon'ble High Court, Calcutta pleased to allow bail petition of accused u/s 439 of Cr.PC where Hon'ble High Court, Calcutta observed that there was no external injury on the body of the victim.

Considered.

Upon perusal of CD, the report u/s 173 of Cr.PC, material presently available on record and hearing of Ld. Lawyers for both sides it appears to this Court that there is sufficient material on record for substantiating a prima facie case u/s 498A/302 of I.PC against the accused which may go to the trial and at this stage it is not the matter to consider whether the case will be ended in conviction or not.

Further remarks during hearing of bail petition u/s 437 or 439 of Cr.PC cannot be a ground for discharge of accused if the materials on record justify the framing of charge against accused.

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As such this Court is not in agreement with the submission of Ld. Lawyer for accused that the accused should be discharged from this case holding the death of victim as natural death.

Fix ..23.04.2019 for framing of charge.

Accused is as before.

Dictated and corrected by me

Addl. District & Sessions Judge,
Fast Truck Court-1,
City Sessions Court, Calcutta.

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