
(2015) 02 JH CK 0045
In the Jharkhand High Court
Case No : Criminal Revision No. 879 of 2011

Hitesh Varma

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 10-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173(8)
Penal Code, 1860 (IPC) — Section 302, 304, 304A, 34, 498A

Citation : (2015) 3 JLJR 20

Hon'ble Judges : Amitav Kumar Gupta, J.

Bench : Single Bench

Advocate : Vikash Kishore, APP, Advocates for the Respondent

Final Decision : Allowed

Judgement

Amitav Kumar Gupta, J.—This revision is directed against the order dated 22.11.2011 whereby the application for discharge was partly rejected holding that no prima facie case is made out for the offence under Section 304A IPC however the trial court held that prima facie case is made out for the offence under Section 498A IPC.

2. Learned counsel for the petitioner has submitted that F.I.R was instituted under sections 302, 498A and 34 IPC against the petitioner-Hitesh Verma and his parents, namely, Kirti Prasad Verma and Sarojbala Verma. That after investigation charge-sheet was submitted exonerating the parents of the charges for the offence under Section 498A and 302 IPC, however, investigation was kept pending against the petitioner whereafter, charge-sheet was submitted under Section 498A and 304 IPC. It is urged that by the impugned order the trial court discharged the petitioner for the offence under Section 304A IPC but rejected the petition for discharge for the offence under Section 498A IPC. That on the application of the petitioner further investigation was ordered in terms of Section 173(8) Cr.P.C. and the matter was investigated by the C.I.D and the Investigating Officer of the present case found the allegation to be false. That the

Sessions Court declined the application of the petitioner to call for the further investigation reports of the C.I.D and the police whereafter, the Petition bearing Cr. Writ petition bearing W.P.(Cri.) No. 304/2008 was preferred and by order dated 10.07.2009, the High Court set aside the order of the Addl. Judicial Commissioner with the direction to the trial court to consider and call for the enquiry report dated 17.12.2006 along with the documents which form part of the report dated 10.03.2008 at the time of framing of charge.

3. It is argued that the trial court has failed to appreciate that earlier when the matter was posted for hearing on the point of charge then by order dated 05.03.2011(Annexure-4) on query by the court as to what are the ingredients for framing charge for the offence under Section 498A IPC, the prosecution submitted that it is only pressing the charge for the offence under Section 304A IPC and not for the offence under Section 498A IPC meaning thereby that the prosecution conceded that there is no material on record to make out a prima facie case under Section 498A IPC. That the allegation in the FIR regarding torture, demand of dowry and ill-treatment by the petitioner is not supported by the materials on record but the trial court without appreciating the facts and without assigning any reason rejected the petition in part.

4. It is urged that the son, Avnish Satyang, In para 52 of the case diary, has stated that there was sweet relationship between his parents. He has not whispered a word about torture, assault or cruelty by this petitioner which is also noted in the C.I.D report dated 17.07.2005. Awnish's statement was recorded by the Judicial Magistrate which is enclosed at pages 265 to 268 of the C.I.D. Report.

5. It is pointed out that the family doctors, attached to C.C.L. where the petitioner was an employee, and the doctor of the Apollo Hospital also did not find any injury on the person of the informant's daughter. That the allegation regarding demand and payment in the FIR and as per para 3 of the case diary that Rs. 30,000/- was paid to the mother of the petitioner, as per the statement of informant and one Santosh Kumar in para 29 of the case diary, was verified and investigated and as per para 41 of the supplementary case diary it was found that during the said period the mother of the petitioner was in America, accordingly, allegation of payment of Rs. 30,000/- was found to be false. That as per para 54 of the case diary wherein it is mentioned that Rs. 51,000/- was deposited In the account of deceased-Sanjana Verma for the mundan Ceremony of her daughter and the said money was never withdrawn. That Dr. Rai Chandinath Sahay, in para 60 of the supplementary case diary, has stated that the deceased was a chronic asthmatic patient for the past ten years. On 12.10.2004 she was admitted to Gandhinagar Hospital for treatment of pneumonia and was given cardiac massage. Dr. H.D. Saran, in para 62 of the supplementary case diary has stated that Sanjana Verma was under his treatment for respiratory disorder on 07.10.2004, 09.10.2004 and 11.10.2004 and the petitioner had brought her. This shows that petitioner was very much

concerned about health of his wife (since deceased).

It is submitted that the parents of the petitioner were exonerated by the police against which the informant had filed protest petition which was dismissed and the same has remained unchallenged. That the allegation of attempting to set the deceased on fire or there was an attempt to kill the deceased many a times, as made in the FIR, has not been supported by the neighbours or the children of the couple which is evident from the case diary, supplementary case diary and CID report dated 12.07.2005 and the police report dated 17.12.2006 and CID report dated 17.01.2007 as well as police report dated 10.03.2008. That such allegation has been made for the first time two days after the death of deceased-Sanjana Verma.

6. It is submitted that witnesses have stated that the informant and the relatives of late Sanjana Verma were consoling the petitioner at the death of his wife. If the petitioner had ill-treated the deceased-Sanjana Verma, the informant or his relatives would not have sympathised or consoled the petitioner rather he would have lodged the case immediately at that point of time. Dr.Raghav Sharan had treated deceased-Sanjana Verma on 12.04.2004, 23.04.2004 and 07.05.2004 and his statement in para 66 of the case diary falsified the allegation that the deceased's ear drum was damaged due to assault by the petitioner. That the allegation made by the informant and his relatives that the petitioner had assaulted his wife whereupon she was admitted in Gandhinagar Hospital from 22.01.2004 till 31.01.2004, was investigated and from the medical papers it was found that there was no mention of any injury or assault and the attending Nurses of the ICU Unit, have categorically stated that the deceased never complained of any assault.

7. Learned counsel for the petitioner has submitted that in fact the present case has been lodged with an ulterior motive as would be evident from the narration in the FIR where the informant has made an assertion that the children of the petitioner be handed over to him. The informant has filed application under the Guardian and Wards Act for the custody of the children.

8. It is urged that there is no material on record and in fact it is just whispering suspicion by the informant, his son and daughter regarding the assault, torture and demand of dowry. That the trial court failed to appreciate the fact that the allegation by the informant that no kin or relative of the deceased had been informed about the hospitalisation or the death of the deceased on 12/13-10-2004 and the parents of the deceased-Sanjana Verma had reached at Ranchi on 15.10.2004 on getting information from some neighbour was investigated and it is evident that informant had arrived at Ranchi on 12.10.2004 as per para 39 of the case diary which is enclosed at page 14 of the police report dated 17.12.2006. The deceased had been admitted in the Hospital in the presence of her maternal uncle, Sunil Sahay. That as per enclosure at page 176 of the police report dated 17.12.2006 the maternal aunt/Mami-Smt. Neelima Sahay had received the ornaments of the deceased from Hospital from where

she was taken to MICU, as per page 180 of the enclosure of the said police report dated 17.12.2006. That on same set of evidence the parents were exonerated of the charges by the police.

9. In support of his contention he has relied upon a decision in the case of Vinay Tyagi Vs. Irshad Ali @ Deepak and Others, and submitted that all the investigation reports either preliminary, supplementary or further investigation have to be considered as relevant materials and read conjointly for appreciation of the evidence on the point of discharge. It is submitted that from the evidence of the witnesses and the medical evidence as well as the evidence of the doctor it is clear that the deceased was suffering from "interstitial lungs disease" and subsequently she contracted pneumonia. She was admitted to the hospital and she died a natural death on account of the illness and the allegation made that she was assaulted and tortured due to which she died is falsified by unimpeachable and indubitable documents on record.

10. It is submitted that when two views are possible and there is no grave or strong suspicion the accused should be discharged. Learned counsel has placed reliance on the decisions in the case of Union of India (UOI) Vs. Prafulla Kumar Samal and Another, which has also been followed in the case of Dilawar Balu Kurane Vs. State of Maharashtra, and in the case of Yogesh @ Sachin Jagdish Joshi Vs. State of Maharashtra, in support of his contention.

11. On the above grounds learned counsel has submitted that the trial court without appreciating the material facts and laid down principles has rejected the application for discharge in a mechanical manner and the impugned order is fit to be set aside and the petitioner deserves to be discharged.

12. Mr. Vikash Kishore, learned A.P.P. has not disputed the fact that as per the direction of the High Court further investigation reports dated 17.12.2006 and 10.03.2008 have been considered at the time of framing of charge. It is admitted by the learned A.P.P. that co-accused i.e. the parents, namely Kirti Prasad Verma and Sarojbala Verma have been exonerated of the charges under Section 498A IPC as final report was submitted by the police on 28.06.2005 and has been accepted by the Chief Judicial Magistrate, Ranchi on 16.01.2006. The protest petition of the informant was also dismissed and the same was not challenged by the informant. Learned APP has submitted that the learned court below has considered the facts and circumstances of the case and found materials for framing charge under Section 498A IPC. He has submitted that in the FIR there is specific allegation that amount was given to the mother of the petitioner through cheque and demand draft. That there is allegation that this petitioner along with his parents used to subject the informant's daughter i.e. the deceased to torture and cruelty. That there is allegation that they had tried to throttle his daughter. There is also allegation that mother of the petitioner and the petitioner had sprinkled k.oil and set Sanjana Verma(since deceased) on fire which was doused by the neighbours. That the informant had seen the injury marks on the body of his daughter and the same was also seen by his wife and

his brother-in-law.

13. Heard. Perused the materials on record and the impugned order.

14. As per the FIR the informant has alleged about the demand of dowry and payment of Rs. 4 lacs to the mother of the petitioner. It has been noted in the FIR that in April, 2004 one Santosh Kumar is alleged to have given Rs. 30,000/- to the mother of the petitioner. As per investigation by police and C.I.D, during the period between 9th March to 25th June the mother of the petitioner was in America. This was verified by the Investigating Officer as per paras 33 and 41 of the supplementary case diary. In the passport, entry has been made regarding her arrival in America on 04.03.2004 and arrival at Calcutta on 25.06.2004. It is evident that mother and father of the petitioner have been exonerated of the charges under Section 498A IPC. The specific allegation is of handing over of money to the mother-in-law and not to this petitioner. The allegation of sprinkling K.oil and setting the deceased on fire has not been supported by any medical evidence neither have the neighbours or children supported the said allegation. The informant has further alleged that air bubble was injected into the veins of the deceased which caused her death. As per the post-mortem report the cause of death of the deceased was due to chronic lungs disease and its complications. The doctor did not find any mark of injury or even burn injury on the body of the deceased. In the inquest report no external injury was found.

It is apparent that earlier while hearing on the point of charge by order dated 05.03.2011 learned counsel for the State had only pressed the charge for the offence under Section 304A IPC and not under Section 498A IPC which has not been denied by the prosecution. The testimony of the witnesses is that the marriage was solemnised between the petitioner and his wife i.e. informant's daughter in a cordial relationship as they were family friends and the family was known to each other from very beginning. The informant has alleged that neither he nor any of his family members were informed regarding the death of his daughter whereas as per investigation report and the materials on record as pointed out by the learned counsel for the petitioner, reveals that maternal uncle and aunt(mama and mami) were present when the deceased was taken for treatment. In investigation report dated 17.12.2006, at para 9, it has been mentioned that the informant was present at CCL hospital and Apollo hospital on 13.10.2004 and he had accompanied the petitioner and his daughter(since deceased) to Apollo hospital. As per para 33 and 39 of the supplementary case diary the Investigating Officer has found that the informant had reached Ranchi on 12.10.2004 itself. It is also stated in para 60 of the supplementary case diary that Dr. Rai Chandinath Sahay who had visited the house of the petitioner on 12.10.2004 found the informant there with his brother-in-law-Sudhir Sahay and his wife. Thus, the statement of the informant that no one was informed appears to be fabricated statement and not inconsonance with the materials on record.

Save and except the allegation made in the FIR and the statement of the mama and mami there is no material on record to prove that the deceased was tortured

and subjected to cruelty for demand of dowry. The probability cannot be ruled out that the allegation has been made against the petitioner with malafide intention. It is true that charge can be framed when there is grave suspicion showing complicity or involvement of the persons in the crime. But in the instant case, there is no document or materials on record to make out a prima facie case for the offence under Section 498A IPC. That in the impugned order the trial court did not find any ingredients to make out a prima facie case for the offence under Section 304A IPC and discharged the petitioner of the charge for the offence under Section 304A IPC but without assigning any reason or discussing the materials on record held that prima facie case is made out under Section 498A IPC. This finding of the trial court is without any discussions or consideration of materials on record. In fact, as pointed out by the learned counsel for the petitioner, which has not been controverted by the learned APP that on the same set of allegation parents of the petitioner or the petitioner have been exonerated of the charge for the offence under section 498A IPC.

15. In view of the discussions made above and materials on record this Court finds that the impugned order has been passed in a mechanical manner and is not sustainable in the backdrop of the discussions made hereinabove and materials on record. Continuing with the proceeding will only amount abuse of process of court and wastage of public time. Accordingly, the petitioner is hereby discharged of the charge for the offence under Section 498A IPC. The impugned order dated 22.11.2011 is set aside to the extent noted above.

16. The revision is hereby allowed.