

(2022) 05 DEL CK 0034

In the Delhi High Court

Case No : Criminal Miscellaneous Case No. 2263 Of 2020, Criminal
Miscellaneous Application No. 16090 Of 2020

Jai Kishan Datwani

APPELLANT

Vs

State, Govt. Of Nct Delhi

RESPONDENT

Date of Decision : 09-05-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 304B, 498A
Evidence Act, 1872 — Section 104

Citation : (2022) 05 DEL CK 0034

Hon'ble Judges : Asha Menon, J

Bench : Single Bench

Advocate : Hitendra Kumar Nahata, G.M. Farooqui

Final Decision : Dismissed

Judgement

Asha Menon, J

1. This petition under Section 482 Cr.P.C. has been filed by the accused in FIR No.1009/2011 under Section 498A IPC, registered at PS Shakarpur, against the order dated 29th June, 2020, passed by the learned Additional Sessions Judge-04 ('ASJ', for short), East District, Karkardooma Courts, allowing the revision petition filed by the State against the order dated 27th March, 2019 of the learned Metropolitan Magistrate ('MM', for short) East in State Vs. Jai Kishan Datwani.

2. It may be mentioned here that the petitioner got married to the daughter of respondent No.2 on 15th May, 2005. A child was born to them on 12th March, 2007. Thereafter, when she conceived again, she was carrying twins and was under the supervision of a doctor at Lifeline Hospital at Priyadarshini Vihar, Delhi. She was given some injection at the Lifeline Hospital on 18th July, 2011, allegedly an injection for iron (Ferikind). She developed complications and died.

3. On a complaint made by the respondent No.2, the FIR was registered on 26th December, 2011 for an offence under Section 498A of the IPC against the petitioner, who was arrested and subsequently granted bail. The learned MM while hearing arguments on charge, came to the conclusion that no prima-facie case has been made out for framing of charge against the petitioner, not only because there were two views that were possible, but also because the prosecution's version was less probable than the version espoused by the defence. Accordingly, the petitioner was discharged of the offence under Section 498A IPC also holding that no case under Section 304B IPC, was also disclosed.

4. Being aggrieved by this discharge, the State preferred a revision before the learned ASJ who considered the matter and was of the view that the documents of the accused could not have been considered at the time of arguments on the point of charge as has been held by the Supreme Court in *State of Orissa v. Debendra Nath Padhi*, (2005) 1 SCC 568. It held that the learned MM had no jurisdiction to consider the charge under Section 304B IPC which was triable only by the Sessions Court. Furthermore, it was observed that the postmortem examination report dated 20th July, 2011 had recorded antemortem injuries by blunt force trauma, consistent with being 2-7 days old in duration. This could be explained only by the doctors during trial. Accordingly, the learned ASJ allowed the revision and set aside the order of the learned MM and directed the learned Trial Court to proceed against the present petitioner being accused as per law.

5. Mr. Hitendra Kumar Nahata, learned counsel for the petitioner before this Court submitted that the learned ASJ has proceeded on a wrong premise. It overlooked the fact that immediately after the death, in statements made before the learned SDM, neither the father nor the mother of the deceased had levelled any accusations against the petitioner. Thereafter, only the father had given a fresh statement. There was delay in the registration of the FIR by two months which gave scope for the complainant to manipulate facts. It was further submitted that even the postmortem report does not attach any culpability upon the petitioner, as the cause of death was natural. It was submitted that the judgments relied upon by the learned ASJ were not applicable to the facts of the present case. Ultimately, there was no cogent evidence that can be brought against the petitioner and the learned MM had rightly concluded that there was no case made out against the petitioner for the offence under Section 498A IPC.

6. It was submitted that the offence under Section 304B IPC was not included in the charge-sheet and yet the learned ASJ seems to have gone that way, without cause or material. Hence, it was submitted that the impugned order be set aside. Reliance has been placed on the decision of the Supreme Court in *Dipakbhai Jagdishchandra Patel v. State of Gujarat*, (2019) 16 SCC 547 and on the guidelines issued by the Supreme Court in the *Suo Moto Writ (CRL.) No(s).1/2017* titled *In Re: To Issue Certain Guidelines Regarding Inadequacies and Deficiencies in Criminal Trials Vs. The State of Andhra Pradesh & Ors.* to submit that the documents collected by the Investigating Officer which supported

the version of the accused were to be filed before the Magistrate and the court would then consider the documents at the time of framing of charge. Therefore, the learned MM had taken a holistic view which the learned ASJ failed to do and thus, passed the erroneous order. Hence, it was submitted that the Trial Court's order be upheld by quashing the order of the learned ASJ and thus, discharging the accused by allowing the present petition.

7. Mr. G.M. Farooqui, learned APP for the State on the other hand, submitted that the injuries were antemortem and 7 days old. These old injuries have remained unexplained. The difference in the statements made by the father of the deceased is something that can be explained naturally. Further, the offence under Section 304B IPC was also made out prima-facie and, therefore, the Sessions Court should be directed to frame charge under Sections 498A and 304B IPC. In fact, it is the contention of the learned APP for the State that the learned MM ought to have committed the case in the first place to the Sessions Court and not have discharged the petitioner for the offence under Section 498A.

8. In rejoinder, the learned counsel for the petitioner submitted that the injuries were not attributable to the petitioner but to some medical procedures. The ribs were broken during the process of resuscitation which is what the postmortem report observed.

9. It may be mentioned here that the respondent No.2 had also appeared in person and had submitted that the petitioner had been subjecting his deceased daughter to physical harm for dowry and the petitioner was required to face trial for what he had done.

10. I have heard the submissions and have perused the record as also the guidelines.

11. In the order of discharge passed by the learned MM, it is recorded that the petitioner herein had opposed the complainant pressing for framing of charge both under Section 498A IPC as well as under Section 304B IPC. Clearly, the question of framing of charge under Section 304B IPC was beyond the ken of the learned Magistrate. Instead of considering whether the material disclosed grounds for committal, the learned MM chose to look into the material for the purposes of "deciding whether charge under Section 304B IPC is made out or not". If prima-facie a case had been disclosed as to the commission of offence under Section 304B IPC, the appropriate action to be taken by the learned MM was to commit the case to the Sessions Court. It would then have been open to the Sessions Court to determine whether the offences under Section 498A read with Section 304B IPC were made out or not or only the offence under Section 498A IPC was made out in which event, the matter then would have been remitted back to the learned MM for trial. That fallacy in the order has been noted by the learned Sessions Court.

12. The learned MM had referred to two judgements of the Supreme Court in State of Bihar v. Ramesh Singh, (1977) 4 SCC 39 and Union of India v. Prafulla

Kumar Samal, (1979) 3 SCC 4 and noted that the court was not required to undertake an elaborate inquiry in sifting and weighing material or delving into the various aspects of the material on record, whereas, it appears to have done precisely that, while at the same time, overlooking certain material evidences.

13. For instance, the postmortem report recording bruises has not been properly considered by the learned MM, which is what the learned Sessions Court has highlighted. The learned MM had considered only the prick marks and the injuries to the ribs as being part of the medical treatment, without noticing that the bruises that were recorded in the postmortem report were 2-7 days old and were located on the thighs. These bruises have been recorded in the postmortem report as follows:

"2. Salient findings of Post mortem examination:

a. External Examination

1 xxx xxx

2. Superficial bruise, bluish in colour 4 cm x 1 cm present on the outer front of middle 1/3rd of right thigh, on dissection there was extravasation of blood around the superficial vein.

3. Superficial bruise, bluish in colour 3.4 cm x 1 cm present on the front of middle 1/3rd of left thigh, on dissection there was extravasation of blood around the superficial vein.

4. Superficial bruise, bluish in colour 2 cm x 1 cm present on the back of lower 1/3rd of left thigh, on dissection there was extravasation of blood around the superficial vein.

5. Superficial bruise, bluish in colour 2 cm x 1 cm present on the outer back of upper 1/3rd of left leg, on dissection there was extravasation of blood around the superficial vein."

14. These injuries are on the outer side of both the thighs. When the limbs and muscle layers were incised, the committee performing the postmortem found the following injuries:

"6. On incising and reflecting the skin of limbs and dissecting the muscle layers revealed:-

i. Deep bruising with bleed (dark reddish brown in colour) infiltrating the muscle groups of the left arm.

ii. Deep bruising with bleed (dark reddish brown in colour) infiltrating the muscle groups of the left forearm."

15. This should have alerted the learned MM to the incidents that preceded the death of the wife of the petitioner. Usurping the powers of the Sessions Court, the learned MM concluded that the charge under Section 304B IPC could not be

made out "by any stretch of imagination", relying only on the first statements made to the SDM by the parents of the deceased and the observations in the postmortem report that in all probability the cause of death was natural due to some pathological state related to pregnancy rather than unnatural external event. The learned Sessions Court, therefore, rightly intervened to set aside these conclusions drawn by the learned MM.

16. It may be observed here that Section 304B IPC is attracted in cases where a woman dies under circumstances otherwise than normal, within 7 years of the marriage, and was subjected, soon before her death, to cruelty or harassment. It is a relevant fact that the injuries were found on the person of the deceased who was more than 6 months pregnant with twins, during her residence with the petitioner, and the onus will be on him under Section 104 of the Indian Evidence Act, 1872 to offer an explanation. But that is possible only in a trial. Thus, shifting of the focus only to the injection pricks and the damage to the ribs caused by attempts to resuscitate the deceased, was a complete non-application of mind, bordering on perversity. Again, the learned Sessions Court is right to have made these observations.

17. There are two statements made by the father of the deceased, but it is also to be noted that it was on his hand written complaint that the FIR was lodged. The uncertainty of the life of the young grandchild of the respondent No.2 is stated to be the reason for the first statement. The respondent No.2 and other witnesses have a right to depose before the court and explain why they made the statements that they made.

18. Whether there was medical negligence or not has no bearing on the allegations of cruel treatment of the deceased by the petitioner and other family members. The injuries that were on the thighs and arms of the deceased could not have been visible to the parents and, therefore, to say that they made no accusations of physical harm in the first statements, and the second statement incorporating allegations of physical harm to the daughter, would have to be discounted, would be misplaced. Mere photographs can in no way counter the statements of the parents of the deceased and the postmortem report which refers to antemortem injuries, 2-7 days old. The conclusions drawn by the learned MM were, therefore, wrong. That wrong has been corrected by the learned ASJ by a very well-reasoned order.

19. There is no perversity or miscarriage of justice, evident from the impugned order, calling for interference by this Court under Section 482 Cr.P.C. However, since the orders of the learned MM have been set aside, but the learned ASJ has remanded the matter back to the learned Trial Court for proceeding against the accused as per law, it is directed that the learned MM, after the accused presents himself, and passing appropriate orders for bail, will commit the matter to the Sessions Court, which will then determine what are the charges that are made out against the petitioner and proceed with the trial accordingly.

20. There is no merit in the present petition, which is accordingly dismissed, along with the pending application. The petitioner shall appear in person before the learned Trial Court on 20th May, 2022 without fail.

21. Nothing contained in this order will have any bearing on the framing of charge or the trial, as the observations are intended for the disposal of this petition only.

22. The judgment be uploaded on the website forthwith.