

(1998) 10 DEL CK 0060

In the Delhi High Court

Case No : Criminal Rev. 339/98, Criminal Rev. 340/98

Rajesh Diwan and Another

APPELLANT

Vs

National Capital Territory of Delhi (State)
 Bhola Deep
Sahni and Another Vs National Capital Territory of Delhi
(State)

RESPONDENT

Date of Decision : 16-10-1998

Acts Referred:

Penal Code, 1860 (IPC) — Section 304

Citation : (1999) 3 RCR(Criminal) 31

Hon'ble Judges : D.K. Jain, J

Bench : Single Bench

Advocate : Mr. Rajnish Bhatnagar, Mr. Sunil Rana and Mr. Mukta Gupta, for the Appellant;

Judgement

D.K. Jain, J.—These two Criminal Revision Petitions, by the husband, the mother-in-law, the sister-in-law and husband of the sister in law of the deceased, namely, Smt. Chanchal, are directed against the order of learned Addl. Sessions Judge, Delhi, dated 30 May, 1998 whereby charge under Sections 304B/498A/34, IPC was framed against them. Since the material facts in both the petitions are common as they arise out of the same FIR, these are being disposed of by this common order.

2. The deceased Smt. Chanchal was married to Rajesh Diwan on 3 September, 1992 but on account of some marital discord between the family members of the petitioners and the deceased, she left the matrimonial home sometime in December 1992 and remained with her family till the alleged incident took place. On 1 December 1995, at about 3.15 PM, information was received from Dr. Ram Manohar Lohia Hospital regarding admission of Smt. Chanchal in a burnt condition. She had suffered 75 to 80% burns and was declared unfit for making statement. She was however, declared fit for statement on 3 December, 1995 when Shri K.K. Dahiya, SDM, was called for recording of her statement and on

the basis of her statement before him, a case was registered under Sections 498-A/406/304-B IPC against all the petitioners. On completion of investigations, charge sheet against the petitioners was filed and on a consideration of the matter, in the light of the material placed on record by the prosecution, the learned Trial Court framed charges u/s 498-A and 304B IPC against the petitioners in Crl. Rev. 339/98, namely, Rajesh Diwan and Smt. Pritam Diwan and u/s 498-A IPC against the other petitioners in Crl. Rev. 340/98, namely Bhola Deep Sahni and Smt. Vijay Deep Sahni. Against these orders the petitioners have come up in revision for quashing of the said orders.

3. It is submitted by Mr. Rajnish Bhatnagar, learned counsel for the petitioners, that there is no material on record to even remotely suggest that soon before her death the deceased was subjected to cruelty or harassment by the petitioners for or in connection with any demand for dowry particularly when the deceased had admittedly left the matrimonial home in December 1992 and was living with her parents although thereafter till her death and, Therefore, one of the important ingredients of Section 304-B IPC, namely, cruelty or harassment for or in connection with demand for dowry should have been meted out to the deceased that charge u/s 304-B IPC could not be framed against accused Rajesh Diwan and Smt. Pritam Diwan. It is also submitted that even to attract Section 498A IPC, there is no material on record, in the form of some letter or complaint by the deceased, indicating that she was subjected to cruelty on account of demand for dowry. It is asserted that even in the dying declaration of the deceased there is no specific allegation regarding the demand for dowry.

4. The petitions are resisted by Ms. Mukta Gupta and Mr. Akshay Bipin, learned counsel for the State. While fairly conceding that in view of the fact that the deceased had left her matrimonial home in December 1992 and continued to stay with her parents till the date of her death, it may not be possible to say that she was subjected to cruelty or harassment by the petitioners "soon before her death", it is contended by learned counsel for the State that not only charge u/s 498-A IPC has been correctly framed, on the facts of the case even a case u/s 306 IPC could be made out against Rajesh Diwan and Smt. Pritam Diwan, for which the matter may be remanded to the Trial Court for reconsidering on this aspect.

5. In rejoinder, learned counsel for the petitioners submits that insofar as Section 306 IPC is concerned, since the accusations as contained in the dying declaration do not constitute an offence of abetment to commit suicide nor is there any allegation that the petitioners goaded the deceased to commit suicide, there is no point in remanding the case back to the Trial Court.

6. It is well settled that while considering the question of framing the charge, the Trial Court has to consider broad probabilities of the case and the total effect of the material collected by the prosecution. It has the power to sift and weigh the evidence for a limited purpose to find out whether or not a prima facie against the accused has been made out.

7. I have considered the matter in the light of the material available on record, in particular the dying declaration of the deceased, recorded by the SDM on 3 December 1995. I am in agreement with learned counsel for the petitioner that insofar as Section 304B IPC is concerned, there is no material on record from where it could be said that the deceased was subjected to cruelty or harassment soon before her death on 9 December 1995. However, as regards Section 498-A IPC, I am unable to persuade myself to agree with learned counsel for the petitioners. Section 498A reads as follows:

"498A. Husband or relative of husband of a woman subjecting her to cruelty:-

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation:- For the purpose of this section, "cruelty" means -

(a) any willful conduct which is on such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

8. Explanation (a) to Section 498-A IPC provides that for the purpose of this Section, cruelty means any willful conduct which is of such a nature as is likely to drive the woman to commit suicide. Read with the said Explanation, I am of the, prima facie, view that the mere fact that the deceased had to leave her matrimonial home within three months of her marriage and the petitioners having taken no steps to get her back is by itself a prima facie evidence to suggest that the deceased was driven to commit suicide, on account of their conduct with her, as is alleged by the prosecution. Even her dying declaration indicates so.

9. I am, Therefore, of the view that the learned Trial Court was not justified in framing charge u/s 304B IPC against Rajesh Diwan and Smt. Pritam Diwan but it was justified in framing charge u/s 498A against them.

10. Coming to the contention of learned counsel for the State that having regard to the language of Section 498A IPC, read with Explanation (a) and Section 306 IPC, the Trial Court should have considered if a charge could be framed against Rajesh Diwan and Smt. Pritam Diwan u/s 306 IPC. I find substance in the contention and order accordingly. The Trial Court shall consider this aspect of the matter, in the light of the material available on record. I need not say more lest it may cause prejudice to the petitioners.

11. As noted above, charge u/s 498A IPC has been framed against petitioners in

Crl. Rev. 340/98, namely, Bhola Deep Sahni and Smt. Vijay Deep Sahni, husband of sister-in-law and the sister-in-law respectively. I have glanced through the dying declaration, on the basis whereof the said charge has been framed. In the entire statement the allegation against the said petitioners is as under:

"Once he beat me in front of his sister who is a Lecturer in Udaipur and once in front of my elder brother in law (elder sister"s husband) I was locked ".

I am of the view that on the basis of this accusation, a case u/s 498-A IPC cannot be made out against the said petitioners.

12. For the foregoing reasons, Crl. Rev. 339/98 is partly allowed tot he extent that the charge framed against the petitioners in that case u/s 304B IPC is quashed but the charge framed u/s 498A IPC is maintained with a further direction that the Trial Court will consider if on the material available on record a charge u/s 306 IPC could be framed against them. Crl. Rev. 340/98 is allowed and the charge framed against the petitioners in that case u/s 498-A IPC is hereby quashed.

13. It is, however, clarified that nothing said hereinabove shall be read as an expression of opinion on the merits of the case.

14. Both the petitions stand disposed of in the above terms.