

**(2011) 12 DEL CK 0093**

**Delhi High Court**

**Case No:** Criminal Rev. P. No. 290 of 2009 and Criminal M.A. 5780 of 2009

Durga Shaw and Another

APPELLANT

Vs

State NCT of Delhi

RESPONDENT

**Date of Decision:** Dec. 14, 2011

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 306, 34, 498A

**Hon'ble Judges:** Mukta Gupta, J

**Bench:** Single Bench

**Advocate:** K.K. Manan, Mr. Mustafa Arif, Mr. Abhimanyu Dhawan, Mr. Nipun Bhardwaj, for the Appellant; Manoj Ohri, APP for State with ASI Anand Parkash PS Delhi Cantt., for the Respondent

**Judgement**

Hon"ble Ms. Justice Mukta Gupta

1. By the present petition the Petitioners challenge the orders dated 19th March, 2009 directing framing of charges u/s 498A/306/34 IPC and framing charge against the Petitioners.
2. Learned counsel for the Petitioner contends that the deceased left no dying declaration. The FIR was registered on the statement of the mother recorded next day after the death of the deceased. On the day of death statement of a neighbour Rita Bamrada was recorded who stated that she had heard no quarrel between these people. Even taking the FIR on its face value no charge u/s 306 IPC is made out. Further the ingredients of Section 498A IPC are missing as there was no demand of dowry. The allegation is of demand of loan for the plot purchased in the name of the deceased and the same cannot be said to be dowry demand. The letters of the deceased depict no demand or harassment. Further there was no prior complaint despite the fact that the Petitioner No.1 and deceased were married on 20th November, 2000 and the deceased died on 12th August, 2008. Reliance is placed on [Sanju @ Sanjay Singh Sengar Vs. State of Madhya Pradesh, , Netai Dutta](#)

Vs. State of West Bengal, , Pawan Kumar Bhalotia Vs. State of West Bengal, , Ramesh Kumar Vs. State of Chhatisgarh 2002 SCC (Crl) 1088 , Mahendra Singh and Another, Gayatribai Vs. State of M.P., , Asha Shukla Vs. State of U.P. and Another, HC, Santosh Wishwakarma & Anr. Vs. State of M.P. (now Chhatisgarh) 2004 (3) Crimes 147(M.P.).

3. Learned APP on the other hand contends that the statement of the neighbour Rita Bamrada is inconsequential as she had been living there only for three weeks and could not have been aware of the entire facts. The statement of the mother of the deceased is supported by the statement of the father Kashinath. The letters sought to be relied upon by the learned counsel for the Petitioner are not part of charge-sheet and hence cannot be looked into. A perusal of the allegations in the FIR and the statement of witnesses make out a clear case for trial for offences under Sections 498A/306/34 IPC against the Petitioners.

4. I have heard learned counsel for the parties. FIR No.291/2008 was registered at P.S. Delhi Cantt on the complaint of the mother of deceased Smt. Asha Devi, who alleged that the engagement of the deceased was performed with Petitioner No.1 in February, 2000. A few days thereafter, Petitioner No.2 demanded a car for Petitioner No.1 failing which they would break the engagement. After discussions, the Petitioners told them to pay Rs.50,000/-. Thus, in March, 2000, her husband gave Rs.25000/- to Petitioner No.1 for marriage and marriage was fixed for 20th November, 2000. Despite the fact that dowry and gift items beyond complainant's capacity were given to the Petitioners, Petitioner No.1 was not happy with the same. He demanded a big T.V. of L.G. and left the deceased at their house. However, to save the matrimonial life, they sent back their daughter to her matrimonial home. On birth of first female child, the Petitioners became angry as they wanted a male child. Petitioner No.2 used to beat and taunt the deceased for this reason. Thereafter, on two-three occasions when in the pregnancy test female foetus was found, abortion was got conducted without the consent of the deceased. In August, 2006 forcible abortion of the deceased was got conducted at the time of pregnancy of five months. Petitioner No.1 demanded Rs.2 lakhs for construction of the house and when they showed their inability, the deceased told their parents that in case money was not given, she would be in difficulty. Thus, the husband of the complainant gave Rs.50,000/- from his account and Rs.50,000/- from the account of his son in March-April, 2007. in the account of Petitioner No.1. When they asked for return of money, Petitioner No.1 refused to give back the money and stated that he purchased some plot near his house with the said money. The complainant apprehended that her daughter was killed for non-fulfillment of dowry demand and not giving birth to a male child.

5. In Sanju alias Sanjay Singh Sengar (supra) the Hon'ble Supreme Court held that where suicide was not proximate to the quarrel and not the direct result of the quarrel, the accused cannot be held liable for instigation. It was held:

12...The word "instigate" denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation. It is common knowledge that the words uttered in a quarrel or on the spur of the moment cannot be taken to be uttered with mens rea. It is in a fit of anger and emotion. Secondly, the alleged abusive words, said to have been told to the deceased were on 25-7-1998 ensued by a quarrel. The deceased was found hanging on 27-7-1998. Assuming that the deceased had taken the abusive language seriously, he had enough time in between to think over and reflect and, therefore, it cannot be said that the abusive language, which had been used by the appellant on 25-7-1998 drove the deceased to commit suicide. Suicide by the deceased on 27-7-1998 is not proximate to the abusive language uttered by the appellant on 25-7-1998. The fact that the deceased committed suicide on 27-7-1998 would itself clearly point out that it is not the direct result of the quarrel taken place on 25-7-1998 when it is alleged that the appellant had used the abusive language and also told the deceased to go and die. This fact had escaped notice of the courts below.

6. Section 306 IPC provides punishment for the abatement or instigation to commit suicide. No doubt continuous conduct of harassment amounts to instigation and in such a case there need not be some instigation too proximate to the death.

7. In the present case however the last incident of instigation was in August, 2006 when the deceased was forcibly aborted and thereafter in March-April, 2007 when Rs. 1 lakh was given. The deceased committed suicide on the 12th August, 2008. Thus in the facts of the case it cannot be said that soon before death there was an instigation to the deceased leading her to commit suicide.

8. In view of the facts stated I find that no case for framing of charge u/s 306 IPC is made out against the Petitioners. However, there was a continuous course of conduct with regard to harassment of the deceased on account of demand of dowry and for not begetting a male child. The allegations clearly fall within the ambit of Section 498A IPC. Hence the Petitioners are liable to be discharged for offence u/s 306 IPC and prosecuted for offence u/s 498A/34 IPC. Ordered accordingly.

9. Revision petition and stay application stand disposed of. Trial Court Record be sent back.