

(2019) 01 RAJ CK 0356

Rajasthan High Court (Jaipur Bench)

Case No: Criminal Revision No. 1067, 1012 Of 2018

Brijendra Singh And
Ors

APPELLANT

Vs

State Of Rajasthan
And Ors

RESPONDENT

Date of Decision: Jan. 25, 2019

Acts Referred:

- Indian Penal Code, 1860 - Section 113B, 120B, 201, 304B, 306, 406, 498A
- Code Of Criminal Procedure, 1973 - Section 193
- Evidence Act, - Section 106

Hon'ble Judges: Pankaj Bhandari, J

Bench: Single Bench

Advocate: Rajendra Kumar Soni, Sudesh Saini

Final Decision: Allowed

Judgement

1. Petitioner-complainant has preferred this revision petition aggrieved by order dated 16.05.2018 passed by Additional District Judge Woman

Atrocities Cases No. 2, Jaipur Metropolitan, Jaipur, whereby the Court below has rejected the prayer of complainant for sending the matter for re-

investigation and has refused to take cognizance against respondents No. 3 to 7. Petitioner has also challenged the order vide which charges have

been framed under Section 498-A & 306 of I.P.C. and in alternative under Section 304-B of I.P.C. Prayer in this regard is that charges should have

been framed under Section 304-B, 498-A, 406, 201 and 120-B of I.P.C. Aggrieved by the same order petitioner Mukesh Budhanian has preferred

revision petition for quashing and setting-aside the order dated 16.05.2018. As both the revision petitions pertain to common order, both are decided by this common order.

2. In brief the factual matrix of the case are that an FIR No. 193/2017 was registered at Police Station Mahesh Nagar, Jaipur (South) with the allegation that complainant's daughter has been killed by her in-laws namely; Mukesh Budaniya, Ramnath, Satyanarayan and other family members for not being able to meet their demand for dowry. Petitioner-Complainant apprehending collusion of the Investigating Officer with the accused-persons filed a Criminal Misc. Petition and High Court directed the Investigating Officer to make fair investigation. The Investigating Officer filed charge-sheet only against Mukesh Budaniya. The complainant thereafter, moved an application under Section 193 Cr.P.C. for taking cognizance against other accused-persons i.e. respondents No. 3 to 7. The said application was dismissed by the Court below.

3. It is contended by the counsel for the petitioner that the marriage of petitioner's daughter with Mukesh Budaniya took place on 05.02.2014. She was continuously harassed on the ground of dowry. On 30.04.2017 Ramnath, father-in-law of the deceased rang up the petitioner and demanded dowry or to face the consequences. Complainant met Ramnath and Satyanarayan and assured them that he would try to arrange for the amount of Rs. 2 lacs which was demanded by Ramnath. On the same day at 8.50 pm, Mukesh informed the petitioner-complainant that his daughter Shaifali has died. Petitioner immediately rushed to her daughter's house, he found that her in-laws were busy in their routine work. They were shocked to find Shaifali lying died on her bed. The FSL Mobile team which came to the spot took finger prints of the deceased and lifted finger prints the ceiling fan. After considering the width of the ligature marks on the body of the deceased, the Mobile FSL team opined that the same was not caused by Chunni. It is contended that the Court below has in summary manner dismissed the application under Section 193 Cr.P.C. without assigning any reason and has erred in framing charges in the alternative under Section 304-B IPC against Mukesh Budhaniya.

4 . It is contended by counsel for the petitioners-complainant that the investigation was not fair. Deceased was murdered and to cover up the offence, it was shown as suicide. It is argued that the deceased was lying on the bed, the ligature mark was less than 1 cm., the dust on the fan was intact hence, it was not established that the deceased committed suicide. Further, there was no stretching of the Chunni and there was twisting in the ligature mark found on the neck of the deceased.

5 . It is also contended that the page of diary which was handed over to the Police was not established to be written just prior to the death of the deceased. The diary was of the year 2011 and the note was undated. Pages of diary were missing and the other diaries which were seized were not proved to be in the handwriting of the deceased. Hence, the same cannot be considered as a suicide note.

6 . It is also contended that there was specific evidence to the effect that there was demand of dowry soon before death. Hence, there was no justification for the Court below to reject the application under Section 193 Cr.P.C. It is argued that if there is material on record, Sessions Court is competent to take cognizance against the accused. Reliance in this regard has been placed on ""Sri Indrani Mukherjee vs. The State of West Bengal & Anr."" (CRR No. 2115/2017) decided by Calcutta High Court on 07.09.2018.

7 . It is also contended that F.I.R. was lodged on the same day for offence under Section 304-B of I.P.C., therefore, presumption under Section 113-B ought to have been drawn against the accused, which was ignored by the Investigation Agencies as well as the learned Court below.

8 . Learned counsel appearing for the respondents and for Mukesh Budaniya in Criminal Revision Petition No. 1012/2018, contends that thorough investigation has been done by the Police. The police after due investigation submitted negative final report, after coming to the conclusion that deceased has committed suicide. It is also contended that from perusal of the suicide note, it is apparent that the deceased was not happy because of the fact that her relationship with some boys became known to the public. She also had some issues with regard to her mother who left her when she was three years old.

9. It is also contended that the Police has seized the mobile recording from which it is revealed that the deceased was in constant touch with two boys.

She used to communicate with the boys and there are as many as 100 calls between the two boys and the deceased.

10. It is also contended that the deceased was a student of LLB. She never made any complaint with regard to demand for dowry. There is no

complaint by the family members to the Police with regard to demand for dowry and only with a view to involve the entire family members they have

been named in the F.I.R.

11 . It is also contended that there was no mark of injury on the person of the deceased which established that it was a case of suicide.

12. It is also contended that all the independent neighboring witnesses have deposed in favour of the respondents and there is no evidence with regard

to demand for dowry soon before death.

13 . It is contended that suicide note is primary document which was written by deceased, even if the date of the writing of the document is not

ascertained still, the same has to be considered by the Court. It is also contended that from the statement of boys it is revealed that she was not happy

with her married life and wanted to take divorce and she even mentioned that she does not want to live.

14 . It is contended that Forensic Department of SMS Hospital has answered the queries of the Police in clear terms and has mentioned that cause of

death is Asphyxia due to antemortem hanging. It is also mentioned that ligature mark and antemortem fracture in C-2 & C-3 bone can be caused due

to hanging, jerks and convulsions. It has also been mentioned that it is not necessary that at the time of commission of suicide froth would come or

tongue would be between the teeth or there would be urination.

15 . It is contended that when Police has submitted negative final report and cognizance was taken only against Mukesh Budhaniya, there was no

justification for the Court to proceed under Section 193 Cr.P.C. and Court has not committed any impropriety or illegality in rejecting the prayer of the

complainant.

16. With regard to Revision Petition filed by Mukesh Budhaniya, it is contended by counsel for Mukesh Budhaniya that charges in the alternative

under Section 304-B of I.P.C., could not have been framed against the petitioner, reliance in this regard has been placed on 2013(7) SCC 256

Jasvinder saini Vs. State o (Govt. NCT Delhi)"".

17. It is also contended that if Police had submitted negative final report against some of the accused, the course available to the complainant was to

file protest petition.

18. I have considered the contentions and have perused the record.

19. As far as Revision Petition No. 1067/2018 filed by the complainant is concerned, it is for the Court to consider as to whether she committed

suicide or she was murdered. There is variance in the report submitted by SMS Hospital and by the Mobile Unit of FSL. To my mind the report of

Mobile Forensic Unit of FSL which visited the site and took photographs is very relevant. The Mobile Forensic Unit observed that the ligature mark on

the neck of the deceased was having twisted marking the width of the mark was less than 1 cm and could not have been caused by a Chunni. The

Mobile Forensic Unit further observed that there were no marks that the room was opened with force pointing to the fact that the room was not

closed from inside. The Unit further pointed out that there was no bend on the fan and the blades, and the fan was in its original position. It was also

observed that the dust on the top of the fan was intact. The Unit also observed that a temporary knot loose loop was found just near the motor of the

ceiling fan, there was no stretching of Chunni, the mobile forensic unit concluded that it was not a case of suicide by Chunni.

20. The other observation was with regard to the height of the room, the cot, the fan and the length of the Chunni. The Mobile Unit observed that the

height of the room was 9 ft. 10 inches, length of the fan from the roof was 18 inch. The length of one part of Chunni below the motor of fan was 29

inch and the other part was 6 inch, the piece of Chunni which was lying on the ground was 32 inch in length. The height of the cot including the

mattress was 19 inch and the height of the deceased was 5 ft. 3 inch. On putting the calculations together with regard to the height and length of the

articles, the calculation would be as under:-

The total height of the room was 9 ft. 10 inch, which is equivalent to 108 inches, height of cot was 19 inches, height of fan was 18 inch, height of

deceased was 5 ft. 3 inch i.e. 63 inches in total 100 inch. Total length of Chunni after the knot below the fan was 67 inches (29 inches + 6 inches + 32

inches.) As the Chunni was on two sides of the motor of the fan, we have to divide the same by two, the result would be about 33 inches. On totaling

the total length of the Chunni, height of fan and cot and height of deceased, the same would be 133 inches (33 1/2 inches + 18 inches + 19 inches + 63

inches) whereas the total height of the roof was only 108 inches. Even considering that one end of Chunni was used to commit suicide, after

considering the height of the deceased, the cot and the fan, she was only 18 inch below fan, which is easily reachable and hence, it does not point out

towards commission of suicide by Chunni. The length of the Chunni on the other side was 6 inch. No knot was found on 32 inch of the Chunni which

lay on the floor. It simply points out to the fact that the deceased did not commit suicide as pointed out by the family of accused.

21. It is also revealed that the dust over the fan was intact and there was no bending of the blades. The ligature mark on the neck of the deceased

was less than 1 cm and there was twisting mark, there was no stretching of the Chunni which also points out that the deceased did not commit suicide

with the help of Chunni.

22. The Mobile Unit also observed that the Chunni which was just below the motor of ceiling fan was a loose loop. Had the deceased committed

suicide, the loop would not have remained a loose loop. It is also pertinent to note that there was only one loose loop in the Chunni which was just near

the motor of the ceiling fan no other knot was there on the Chunni. It was also observed that the ligature mark from front was going downward

towards the back which is not possible by the Chunni. Hence, the Chunni was not used for committing suicide. It is thus apparent that it is not a case

of suicide as pointed out by the Investigating agency.

23. Yet another aspect which is material is that the room from where the body was recovered was not locked from inside. It is the case of accused

that they cut the Chunni. Section 106 of Evidence Act would apply in such cases and it is for the accused to discharge the burden of proof as the fact

was in the knowledge of the accused.

24. It is also pertinent to note that the deceased fractured her C-2 and C-3, in case of suicidal hanging there can be fracture of C-2, C-3 if the fall is from a height, the distance between the fan and neck of deceased was not even 1 1/2 ft. and if Chunni is included, there remains no space to commit suicide by hanging. C-2 and C-3 could also be fractured if a person resists when he is being throttled. The twist mark on the neck of less than 1 cm points to throttling with a wire and is not a case of suicide by Chunni. Report submitted by the Mobile FSL Unit is more reliable and presumption under Section 106 of Evidence Act ought to have been drawn against the accused.

25. The Apex Court in Rajbir Vs. State of Haryana AIR 201 SC 568) has held that charges under Section 302 IPC should be framed in the alternative with Section 304-B IPC. Apex Court however in J. Asvinder Saini Vs. State (NCT of Delhi) AIR 2014 SC 841 has diluted the earlier judgment and has held that Courts have to frame charges on the basis of material on record and it is not necessary that in all cases charge should be framed under Section 302 IPC.

26. From the discussions made herein above, it is amply clear that present is not a case of suicide, but it is a case of murder and the Court should have been framed framed charges under Section 302, 304-B, 498-A, 201 and Section 120-B IPC. The connivance of family members of the accused-husband is writ large as the offence could not have been committed without active participation of his family members. There is evidence also to the effect that family members were present and were busy in their day to day routine. The Revision Petition filed by complainant, therefore, deserves to be allowed and the Revision Petition filed by accused-husband deserves to be dismissed.

27. In the result, the Revision Petition No. 1067/2018 filed by complainant is allowed and the Revision Petition No. 1012/2018 filed by accused-husband is dismissed. The order passed by the Court below dismissing the application under Section 193 Cr.P.C. is quashed. Trial Court is directed to consider the entire facts and circumstances of the case and decide the application under Section 193 Cr.P.C. afresh. Trial Court is directed to alter/add the charges against Mukesh Budhaniya after considering the entire material in light of the observations made by this Court. Stay applications

and pending interim applications also stand disposed.

28. Copy of this order be placed in the connected file.