

HIGH COURT OF JAMMU & KASHMIR
AT JAMMU

Cr. Rev. No.57/2011

Cr. MP No.44/2011

Date of decision:**12-04-2012**

Sukhdev Sharma & others

Vs.

State of J&K and another

Coram:

Hon'ble Mr. Justice Mohammad Yaqoob Mir

Appearing counsel:

For the Petitioner(s): Mr. Sunil Sethi, Sr. Adv.

For the Respondent(s): Mrs. Z. S. Watali, Dy. AG.

i) Whether to be reported
in Digest/Journal:

YES

ii) Whether to be reported
in Press/Media :

YES/OPTIONAL

1) Tragic death of deceased Rajni Devi is horrendous. She has been treated in a manner unbecoming of a human being. Nine years back she was married to one Ashwani Sharma who unfortunately lost his life due to electrocution. She was putting up with her in-laws who allegedly wanted to take over possession of the property of the deceased and the amount of Rs.2/ lacs as was received by the deceased as compensation. Accused with the object of getting rid of the deceased are alleged to have hatched a conspiracy and in

pursuance thereof, on the death of the husband of the deceased, in-laws of the deceased perceived that the deceased is under the influence of soul of her husband, so they called excised i.e. Pawan Kumar S/O Om Prakash(caste Brahmin), in their house on 10.2.2011 along with drum beater. They started beating the deceased with kicks, sticks and chonda. On 17.2.2011, mother of the deceased on reaching to the house of the deceased found that the accused were beating the deceased with chonda and Jogi Danda, her request to stop them from doing such activities did not yield any results, so she left the place of occurrence and went to her home but on next day she heard that the deceased had received injuries on her spinal card and neck, so was taken to hospital where she succumbed to injuries.

2) Case registered as Crime No.52/2011 Police Station, Domana, on completion of investigation culminated in presenting the charge sheet to the effect that the accused No.1 to 3 during investigation are established to have committed offence punishable under Section 302/34 RPC where as

accused No.4 to 7 are established to have committed offence punishable under Section 498-A RPC.

3) Learned trial court (Sessions Judge, Jammu) after hearing PP and the counsel for the accused, as required in terms of Section 267, 268 and 269 Cr. P. C, has come to the conclusion that grounds exist for presuming commission of offence by all the accused punishable under Section 302/34 and 498-A RPC and accordingly charge has been framed against all the accused who pleaded not guilty. Since the accused No. 4 to 7 (petitioners herein) were at large on bail because as per conclusion of the investigation, they were only found to have committed offence punishable under Section 498-A RPC. Trial court while framing charge against all the accused for commission of offence punishable under Section 302/34 and 498-A RPC, committed the said four accused to judicial custody.

4) Learned counsel for the petitioners (accused No.4 to 7) projected that the investigating agency, on collection of entire evidence, had reached to the conclusion that the petitioners, in any manner, were

not party to the offence punishable under Section 302 RPC but, however, were found involved for commission of offence punishable under Section 498-A RPC. Trial court, in its order, has simply referred to the injuries sustained by the deceased as mentioned in the postmortem report and has thereafter concluded that all the accused are *prima facie* established to have committed offence punishable under Section 302 RPC when the evidence, as collected, nowhere connects the petitioners with the commission of offence punishable under Section 302 RPC, therefore, charge framed against the petitioners for the commission of offence punishable under Section 302 RPC is unjustified.

5) In opposition, learned Additional Advocate General projected that the trial court was not required to marshal the material on record. The trial court had only to consider the material so as to derive satisfaction *prima facie* that sufficient material against the accused exist. Neither meticulous sifting and scanning of evidence, at the

stage of framing of charge, is permissible nor the trial court at the stage of framing or otherwise of the charge is to consider the evidence in detail. Strong suspicion against the accused at the stage of framing of charge does not favour the accused because the test which has to be applied at the initial stage is somewhat different than the test which has to be applied at the final stage. Doubt at the initial stage favours prosecution whereas same doubt favours the accused at the conclusion of the trial.

6) It is trite that the trial court has not to act as mouthpiece of prosecution, as such, prosecution theory is not to be blindly accepted. Framing or otherwise of the charge is an onerous duty. The objection and purpose of hearing the prosecution and the defence at such initial stage is to see that un-necessarily accused is not put to trial. No doubt scope for sifting the material is limited but not limited to the extent of accepting the prosecution case as it is. Application of mind at such stage is pre-requisite. On proper application of mind if

grounds exist for presuming commission of offence, the only course available to the Court is to frame the charge. Roving enquiry into pros and cons is not permissible.

7) Now the question is as to whether trial court, on the strength of the material collected during investigation, was correct in presuming commission of offence punishable under Section 302/34 RPC as against the petitioners (accused No.4 to 7). Since the investigating agency had concluded in its final report that the accused No.4 to 7 (petitioners) were found to have committed offence punishable under Section 498-A RPC and not the offence punishable under Section 302 RPC, therefore, perusal of the statements of the witnesses as well as entire material collected during the investigation has become imperative.

8) While going through the record for the limited purpose of ascertaining prima facie as to whether all accused are connected with the commission of offence punishable under Section 302/34 and 498-A RPC, what emerges is that as against accused No.1

to 4 and 7 grounds exist for presuming commission of offence punishable under Section 302/34 and 498-A RPC whereas as against accused No.5 (Chander Mani) and accused No.6(Ravi Dutt) grounds exist from presuming commission of offence punishable under Section 498-A RPC and not the offence punishable under Section 302 RPC. In this connection it shall be quite relevant to mention that from the perusal of statements of the main witnesses recorded under Section 164-A Cr. P. C as against accused No.5 and 6 prima facie commission of offence punishable under Section 302 RPC is not discernible.

9) Statements of said witnesses i.e. close relatives of the deceased, such as Vishal Sharma (Son), Ranu Devi (mother), Suman Bala(brothers wife of the deceased), Bishan Dass (brother) and then Prem Nath (drum beater) would reveal that main accused responsible for beating and killing are shown as accused No.1 to 3 whereas from the statement of Seeta Ram (brother of the deceased) recorded under Section 164-A Cr. P. C, involvement of accused No.1

to 4 and 7 is forthcoming as the said witness has divulged that in fact it is accused Raj Kumar S/O Sansar Chand (accused No.7), Sukha S/O Om Prakash (accused No.4), Mohan Lal (accused No.3), Pawan Kumar (accused No.1) and Raj Kumar Deevala (accused No.2) who are shown to have killed the deceased.

10) Viewed thus, order framing charge for commission of offence punishable under Section 302/34 and 498-A RPC, as against accused No.1 to 4 and 7, is maintained and the same order directing framing of charge as against accused No.5(Chander Mani) and accused No.6(Ravi Dutt) (petitioners No.2 and 3) for the commission of offence punishable under Section 302/34 RPC is set aside whereas framing of charge against the said two accused for commission of offence punishable under Section 498-A/34 RPC is maintained. The charge against these two accused shall be re-framed for the commission of said offence.

11) Since these two accused persona, namely, Chander Mani and Ravi Dutt, were at large on bail

but when charge was framed against them under Section 302 RPC they were directed to be taken into custody but now since their involvement is found prima facie only vis-à-vis commission of offence punishable under Section 498-A RPC, therefore, they shall be released on furnishing bail to the tune of Rs.30,000/ to the satisfaction of trial court with like amount of personal bond to the satisfaction of the Superintendent Jail concerned.

12) Trial court record along with copy of the order be send back forthwith.

Revision petition along with connected Cr. MP accordingly disposed of.

**(Mohammad Yaqoob Mir)
Judge**

*Jammu
12.4.2012,
Mohammad Altaf*