

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Order: March 12, 2019

+ **CRL.REV.P. 645/2017 & Crl.M.A. 14133/2017**

SUKHBIR KATARIA

+ **CRL.REV.P. 696/2017 & Crl.M.A. 15349/2017**

RENU TOKAS

+ **CRL.REV.P. 708/2017 & Crl.M.A. 15586-87/2017**

NARESH @ NISHU

+ **CRL.REV.P. 724/2017 & Crl.M.A. 15928-29/2017**

RICKY KATARIA

..... Petitioners

Through: Mr. Siddharth Luthra, Senior
Advocate with Mr. Sumit
Chaudhary, Ms. Aakansha Bansal,
Mr. Yatharth Sinha, Mr. Mohit
Sharma & Mr. Mauank Kaushik,
Advocates

Versus

STATE GOVT OF NCT OF DELHI

..... Respondent

Through: Ms. Neelam Sharma, Additional
Public Prosecutor for respondent-
State with Inspector Paramvir
Ahuja
Mr. Anupam S.Sharma,
Mr. Prakarsh Airan, Ms. Apporva
Ahuja & Mr. Prakshit Sharma,
Advocates for complainant

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
(ORAL)

In the above captioned four petitions, the challenge is to the impugned order of 5th June, 2017 vide which petitioners have been put on trial for the offence under Section 304B/34 IPC and in the alternative, under Section 302/34 IPC and also for the offence under Section 306/34 IPC and 498A/34 IPC. Petitioners are the husband, father-in-law, sister-in-law (*nanad*) and distant cousin of husband of deceased.

With the consent of counsel representing both the sides, these petitions have been heard together and are being disposed of by this common order.

Learned senior counsel for petitioners assails the impugned order while submitting that there is no material on record which justifies putting petitioners on trial for the offence under Section 302/34 IPC. Attention of this Court is drawn to impugned order, wherein it is noted that the post-mortem report of deceased showed lividity and as per the medical history, this normally happens when the dead body is lying in sleeping posture and so, according to trial court, a *prima facie* case of murder is also made out. Attention of this Court is also drawn to Suicide Note (*Annexure P-4*) to point out that it is a case of suicide and there is no basis to frame charge of murder. To submit so, reliance is placed upon

Supreme Court's decision in *Richhpal Singh Meena Vs. Ghasi alias Ghisa and Ors.* (2014) 8 SCC 918. It is pointed out that on perusal of post mortem report, it becomes clear that lividity is a post mortem symptom and the cause of death, as given in the post mortem report, is *asphyxia due to ante-mortem hanging* and this was affirmed by subsequent opinion from All India Institute of Medical Sciences (AIIMS), New Delhi, wherein it is clearly recorded that the cause of death in this case was *asphyxia due to ante-mortem hanging*.

Learned senior counsel for petitioners points out that father of deceased in his response to notice under Section 91 Cr.P.C. has affirmed the Suicide Note being in the hand writing of deceased and has clearly stated that it is signed by deceased. Thus, it is submitted that the charge under Section 302/34 framed against petitioners needs to be set aside.

On the contrary, learned Additional Public Prosecutor for respondent-State and counsel for complainant, support the impugned order and submit that on the day of incident, the deceased had made a PCR call at around 10:15 p.m. regarding her being beaten by her in-laws and when the PCR reached the place of incident, the deceased had said that she would be making a complaint to the Crime Against Women Cell on the next day. It is submitted that on the next day police reached the spot and they found that bangles of deceased were broken and blood was lying in the house and the TV in room was on with full volume and petitioners were absconding. It is pointed out that police had discovered that deceased was hanging from the ceiling fan and the lividity found in

the post-mortem report belies the case of suicide. It is also pointed out that the suicide note is undated and so, it cannot be made the sole basis to plead that no offence under Section 302/34 IPC is made out. Reliance is placed upon medical literature i.e. “*Forensic Medicine and Toxicology*” by J.B.Mukherjee to submit so. Reliance is also placed upon decision of Supreme Court in *Santosh De & Anr. Vs. Archana Guha & Ors.* (1994) 2 SCC 420 by counsel for complainant in support of above submissions.

Upon hearing and on perusal of impugned order, material on record and decisions cited, I find that Supreme Court in *Amit Kapoor v. Ramesh Chander and Another* (2012) 9 SCC 460 has reiterated that discretion to quash criminal proceedings, particularly at the charge stage, is to be exercised sparingly and with circumspection and that too, in rarest of rare cases. Meaning thereby, no meticulous examination of the record is to be undertaken, particularly when it is the question of framing alternate charge.

Whether a *prima facie* case under Section 302/34 IPC is made out or not, is the point of consideration in this case. No doubt, it is recorded in the post-mortem report that the cause of death in this case was *asphyxia due to ante-mortem hanging* and the suicide note is in the handwriting of deceased, but this by itself cannot rule out the possibility of murder being committed by petitioners. It is so said because the suicide note is undated and the aspect of *ante-mortem hanging* cannot be considered in abstract by this Court in the light of medical literature, sought to be relied upon by respondents. Whether death of deceased was

homicidal or suicidal is an aspect which cannot be pre-judged at this initial stage. In any case, presence of lividity over the back and other areas *prima facie* justifies framing of charge under Section 302/34 IPC, as at this initial stage, only a *prima facie* opinion is to be formed. Reliance placed by petitioner's counsel upon Supreme Court's decision in *Richhpal Singh Meena (Supra)*, is of no assistance, as in the said decision, conviction under Section 304 IPC was altered to Section 302 IPC while taking into consideration the medical jurisprudence and in the factual background of the said case. In the considered opinion of this Court, impugned order does not suffer from any illegality or infirmity.

Finding no merit in the above captioned petitions and applications, they are dismissed while refraining to comment upon merits of the case, lest it may prejudice petitioners before the trial court.

(SUNIL GAUR)
JUDGE

MARCH 12, 2019

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