

AFR

Reserved

Court No. - 53

Case :- APPLICATION U/S 482 No. - 37952 of 2022

Applicant :- Om Prakash @ Guddu And 4 Others

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Pranav Tiwary, Atharva Dixit, Sr. Advocate

Counsel for Opposite Party :- G.A., Udai Chandani

Hon'ble Umesh Chandra Sharma, J.

1. Heard Sri Manish Tiwari, learned Senior Advocate assisted by Sri Aushim Luthra, learned counsel for the applicants, Sri Pankaj Kumar Tripathi, learned AGA for the State, Sri Udai Chandani, learned counsel for opposite party no.2 and perused the record.

2. This application has been moved to quash the charge sheet dated 20.01.2021 and the order dated 19.10.2022 passed by Additional Sessions Judge in ST No.298 of 2022 (State Vs. Umashankar and others) in Crime No.163 of 2020, under Sections 498-A, 304-B IPC and Section 3/4 DP Act, Police Station Manduadih, District Varanasi pending in the Court of CJM, Varanasi.

3. In the application it has wrongly been mentioned that the case was pending in the Court of CJM, Varanasi virtually the case has been committed to the Court of Sessions Judge and at present the case is pending in the Court of Additional Sessions Judge-IX, Varanasi as ST No.298 of 2022.

4. In brief, facts of the case are that the deceased was the daughter of opposite party no.2, Om Prakash and was the wife of applicant no.1, Om Prakash @ Guddu and daughter-in-law of applicant nos.3 and 4. Applicant no.2 is the real brother of applicant no.1 and applicant no.5, Radha Devi is the wife of applicant no.2.

5. As per this application marriage between the deceased, Nidhi Prakash and applicant no.1, Om Prakash @ Guddu was solemnized on 25.06.2018 without any dowry and charge of additional demand of dowry of a car and Rs.5,00,000/- has been denied by the applicant. It is wrong to say that the deceased was kept hungry due to which her health was significantly deteriorated. It is also wrong that during her pregnancy proper treatment was not provided to her but she was in the treatment and care of Dr. Sarojni Singh. The facts of the FIR are false and frivolous. There is an unexplained, inordinate delay of four days in lodging the FIR. Applicant no.1 belongs to a very well respectable family and is a Grade-II Officer in Indian Railway since 2005. Neither any demand of dowry was made at the time of marriage nor subsequent to it. The deceased was accorded full love and affection at her matrimonial house by the applicants. The relationship between the applicants and the deceased was extremely loving and cordial. Applicant no.1 had also encouraged and supported her in pursuing her B.Ed. degree and had furnished the requisite fees and also helped in obtaining the admit card for the B.Ed. examination. From the text messages annexed as annexure-3 to the affidavit it would

reflect that the informant was a man of limited financial means and a man of ordinary prudence would not believe that any demand of dowry was being made by the applicants from such informant. Some text messages between the applicant no.1 and the deceased which being sensitive and personal in nature have not been brought on record but they show that the deceased was leading a happily married life on very good terms with her husband. No FIR or complaint or any proceedings were initiated by the deceased or the informant prior to the lodging of the present FIR. Since the deceased became pregnant, she was receiving thorough and proficient medical attention and supervision on the clinic of Dr. Sarojni Singh, a renowned gynecologist in Varanasi where applicant no.5 Radh Devi, sister-in-law of applicant no.1 and the deceased was also supervised and treated and had delivered her child successfully. Hence, the deceased had been taken there. Allegation of opposite party no.2 that his daughter did not receive adequate treatment and was taken to an inferior clinic is completely baseless and unwarranted.

6. Earlier in the month of March, 2019, the deceased had become pregnant and had promptly received medical treatment at the New Life Hospital, Varanasi where she was being treated by Dr. Neelam Ohari. Knowing the news of pregnancy, her mother came to the house of the applicants and insisted that the first child be born at her parental house and had taken the deceased to the house of the first informant but when certain complications

arose, opposite party no.2 took her to Dr. Akanksha Singh but seeing no positive result, applicant no.1 immediately got his wife back home and took her back to Dr. Neelam Ohari. However, it was too late to handle the situation and the deceased had a miscarriage. Hence, when second time the deceased became pregnant, the applicants took no risk and immediately took her to Dr. Sarojni Singh where the deceased was regularly checked up and she was in a good medical condition during the entire course of her pregnancy. The estimated date of delivery was stated to be 04.05.2020.

7. In the night of 02.05.2020 the deceased claimed pain in her abdominal region, hence she was immediately rushed to the hospital of Dr. Sarojni Singh but at that time she was not present . Hence, her daughter Dr. Monisha Singh, gynecologist attended the deceased and opined that she was suffering from gastritis and had given an injection of asiloc after which she felt relief and was taken back to the home of the applicants. The doctor neither suggested nor indicated that the deceased was not in a good physical health and it was not safe for her to have a natural child birth on 04.05.2020, the estimated date of her delivery. The deceased was given regular medical check up during the entire period of her pregnancy and there was no abnormality suggested by the treating doctor regarding the health and condition of either the mother or the fetus and no special investigation was recommended by the treating doctors. The deceased was examined two days prior to the expected date of delivery

by Dr. Monisha Singh and no alarms were raised regarding health of the mother or the fetus. It is evident that the septicaemia emanated from an infection post her operation conducted by Dr. Monisha Singh due to her negligent and careless handling of the case. Hence, no fault can be attributed to the applicants regarding the unfortunate demise of his wife. As there was no need for admission of the deceased in the hospital two days prior to her estimated date of delivery, merely in an attempt to generate revenue, the hospital authorities were insisting for admission for no valid reason.

8. Accordingly, applicant no.1 took his wife to the hospital of Dr. Sarojni Singh on 04.05.2020 and as the deceased and the fetus were found to be in a good and healthy condition, no need arose for a cesarean delivery. Neither there was any such urgency nor need insisted upon by the treating doctor. Hence, the deceased underwent a natural birth. It is improper allegation that applicants were against the cesarean delivery and were adamant and insistent upon the natural birth, since applicant no.5 had undergone a cesarean delivery by Dr. Sarojni Singh on account of certain complications during her pregnancy four year prior to the present incident. On 04.05.2020 the deceased was treated by Dr. Monisha Singh who had completed her MS in the year 2019 and was an inexperienced doctor, a doctor on call supervising the delivery of the deceased. When the deceased went in for her delivery she was in good physical health. It appears that owing to the inexperience of Dr. Monisha

Singh who operated the deceased without proper preparation and investigation whose negligent in performing her duties, it led to certain complications. The health of the deceased started deteriorating immediately after the delivery procedure. On account of the negligence of the operating doctor, Dr. Monisha Singh, the internal organs (chest, kidney and liver of the deceased) had infection and started deteriorating in a rapid manner and hence the applicants got her admitted at Apex Hospital for better treatment as she was in immediate need of dialysis. However, during treatment the deceased passed away on 07.05.2020 in spite of best efforts of the applicants.

9. The unfortunate demise of the deceased was due to post pregnancy complications owing to the inexperience and negligence of the treating doctor for which applicants cannot be held liable. In the treatment of the deceased approximately Rs.7,00,000/- were remitted by the applicant nos.1 and 3 and under such circumstances no man of ordinary prudence would be tempted to believe that any demand of dowry was being made by either of the accused persons. Hence, it is evident that the FIR is the outcome of malice to harass the applicants and browbeating them into succumbing to his onerous and arbitrary demand for financial gratification under the threat of frivolous criminal litigation.

10. As per *post mortem* report the deceased died on account of septicaemic shock due to infection of lungs and uterus. Since the death of the deceased took place on

account of natural causes ingredients of Section 304-B IPC are absolutely absent.

11. In parcha no.1 of the case diary dated 12.05.2020 the informant has tried to support the prosecution version and has made major development that his daughter was assaulted by the applicants and has also tried to support the contents of the FIR and upon being questioned by the investigating officer (I.O.) he has stated that he was informed by the treating doctor, Dr. S.S. Bohra that abrasion mark on the neck of the deceased was not on account of physical assault but the same was caused by installing the catheter for conducting dialysis on the deceased at the Apex Hospital. In parcha no.2 Smt. Kalawati Devi has also tried to support the prosecution version in her statement. In parcha no.3 Dr. S.S. Bohra of Apex Hospital stated that at the time of admission of the deceased in the Apex Hospital there were no marks of injury on her body. The urine out put was nil, she was put in dialysis and a catheter was inserted and the abrasion mark on her neck would have been likely caused in the course of removal of dianaplast and in inquest report dated 07.05.2020, cause of death was informed to be sudden cardiac arrest and in which no bodily injury was observed.

12. It is a case of the prosecution that on 30.04.2020 the deceased made a phone call and narrated the physical violence caused by the applicants and also that a recording of said phone conversation was also made though the incident having occurred on 30.04.2020 and

recording of such statement is denied and it is also evident that neither such mobile phone was submitted to the police nor alleged call recording has been certified in accordance with Section 65-B of the Indian Evidence Act, 1872 (in short 'the Act, 1872'). As enshrined by the Apex Court in the Case of **Anwar P.V. Vs. P.K. Basheer and others, (2014) 10 SCC 473** and **Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal, (2020) 7 SCC 1** it cannot be considered as evidence.

13. In parcha no.5 statements of Niti Prakash, Dipika and Pintoo were recorded by the I.O. As per parcha no.6 Apoorva Kumar, brother of the deceased provided a pen drive containing a phone call recording of a conversation between the deceased and her mother on 30.04.2020, the pen drive would be secondary evidence and without receiving a certification under Section 65-B of the Act, 1872, the same cannot be considered as evidence.

14. A transcript of telephonic conversation is being attached as annexure no.4 to the affidavit filed in support of the instant application.

15. In parcha no.7, statement of Dr. Monisha Singh has been recorded in which she has tried to cover up her negligence due to which the deceased contacted an infection which spread to her vital organs and the applicants are being made scapegoat in the present case. Dr. Monisha Singh has stated that there were no injury marks on the body of the deceased at the time of her admission. A report was also sought from the Apex

Hospital. On keeping the reports of Dr. Monisha Singh and those of Apex Hospital in juxtaposition would lead to severe contradiction. The report of Dr. Manoj Kumar Pathak in the capacity of forensic expert transcribed in parcha no.14 is merely based on insinuations and assumptions which cannot be relied upon on the basis of the photographs of the *ante mortem* injuries, the *post mortem* report and the treatment history shown to him and he had not attended the body of the deceased himself.

16. In cases of dialysis, first a vein is chosen for insertion of a dialysis catheter in a right jugular vein which can be ascertained from perusal of point 5.4.2 of the KDIOG (Clinical Practice Guideline for Acute Kidney Injury) which is annexed as annexure-20 to the affidavit.

17. Dr. Prakash Kumar Bharti and S.S. Bohra have given contrary opinion to that offered by Dr. Manoj Kumar Pathak. On the basis of above, it is evident that no criminal offence is made out.

18. The deceased died on account of complications arose during child birth and negligence by the treating doctor. Prior to the present charge sheet a charge sheet dated 07.10.2021 was filed against applicant nos.1, 2 and 3 under Sections 498-A, 304-B IPC and Section 3/4 DP Act. Applicant no.1 had been released on bail vide order dated 01.11.2021 in which the Hon'ble Court observed that the opinion sought from Dr. Pathak was unethical when two professional doctors have two different opinions and it cannot be said with certainty that whose opinion is wrong.

The deceased had died as a result of post cesarean operation at Apex Hospital, Varanasi and the death of the deceased has no connection with any dowry being demanded by the applicants. Applicant nos.2 and 3 have also been granted bail on 20.08.2020 and 07.09.2020 respectively. Applicant nos.4 and 5 have also been released on bail by the court below.

19. The applicants preferred a discharge application (annexure-26 to this application) before the Additional Sessions Judge, Varanasi which was rejected on 09.10.2022. The trial court has passed the impugned order in a very mechanical manner and has completely ignored the fact that the said death was due to natural causes and the so called injuries on the body of the deceased had been duly explained during the course of investigation. The applicants are innocent and have been falsely implicated in this case. This case is a gross abuse and misuse of process of law. Applicants are peace loving and law abiding citizens. They have only criminal antecedents owing to the dispute between the family members which has already been explained. Hence, the application be allowed and the charge sheet and the impugned order regarding rejection of discharge application be quashed.

20. All the papers referred in the application have been annexed with the affidavit.

21. Opposite party no.2 has filed counter affidavit to the application and has alleged that the deceased chatted

with her family on 30.04.2020 stating that the accused persons will murder her and there is serious threat to her life and requested her family members to protect her from the applicants and other accused persons. This conversation has been attached with the affidavit as annexure-CA-1. On 20.10.2019 also there was a chat between Neetu, Om Prakash (father of the deceased) and Nidhi Prakash in which she disclosed that there is serious threat to her life and liberty from the applicants. It is attached as annexure-CA-2. The police authorities were hand in gloves with the accused and were not registering the FIR and, therefore, several complaints were made to the superior police officer for registration of the FIR by the informant and brother of the deceased which have been annexed as annexure-CA-3. The photographs of the deceased clearly established that abrasions wound is present alongwith a punctured wound which demonstrates strangulation. An expert opinion (annexure-CA-4) was obtained from the professor and head of department of forensic medicine (BHU) which reveals serious *ante mortem* injuries caused to the deceased by the accused persons. The doctor who conducted the operation has also filed her affidavit on 19.05.2020 whereby it is established beyond doubt that there were *ante mortem* injuries and there was serious problem faced by the deceased due to the illegal act committed by the accused persons which is annexed as annexure-CA-5. During the inquest serious injuries have been found and that the death is not only due to medical reasons which is annexed as annexure-CA-6. All the aforementioned

documents are the part of the case diary and were supplied to the I.O. but the I.O. in connivance with the accused persons, was not investigating properly.

22. The informant, Smt. Kalawati Devi (mother of the deceased) and Apoorva Kumar (brother of the deceased) have disclosed in their statements that the deceased was murdered due to demand of dowry by the applicants. The statement of Ravi Prakash and Rajneesh Kumar, witnesses of inquest has also been annexed as annexure-CA-9. The mobile recording was provided to the I.O. by the brother of the deceased which was made part of the case diary vide paper no.CD-6. The CMO, Varanasi had also requested the Deputy Director, SSPG, Varanasi to constitute a medical board so that the truth about injuries found during the *post mortem* can be examined which is annexed as annexure-CA-13.

23. It has been further stated that the entire incident comes under the cloud of suspicion but from bare perusal of the expert opinion alongwith *post mortem* report and the affidavit of Dr. Sarojni Singh, it is evident beyond doubt that the act of the accused persons is clearly establishing the offence under Sections 498-A, 304-B IPC and Section 3/4 DP Act and the presumption under Section 113-B of the Act, 1872 is also established. Serious injuries were caused to the deceased by the accused which is evident and established from the *post mortem* report. Prior to the death, the deceased had informed her family members that there is likelihood of her murder and the baby which is not yet born. Only by mentioning that

applicants belonged to a respectable family does not in any way take away the serious, heinous offence committed by them and when from the very beginning there was demand of dowry and cruelty on the deceased and the relationship of the applicants with the deceased was not at all cordial and loving but the same was cruel just to fulfil the demand as raised time to time by them. The entire fees and expenditure regarding B.Ed. examination was borne by the informant, father of the deceased and no financial help had been accorded by the applicants by any means and a completely concocted and manufactured story has been cropped up in this regard. It is evident from the statement of Dr. Sarojni Singh that the deceased had sustained *ante mortem* injuries and her condition was very critical when she was brought to the hospital and even though on the insistence of Dr. Sarojni Singh deliberately the applicants avoided her to be taken to intensive care unit of specialized hospital due to which she expired. It was not the act of negligence but sheer deliberation of committing the offence under Section 304-B IPC.

24. It is further stated that the deceased was never taken for medical treatment by the applicants but father of the deceased and her family members were taking care and she was living with them but the applicants forcefully took the deceased back to their house where the deceased sustained miscarriage and the deceased was taken for regular medical check up during pregnancy by her father or her family members and not by the applicants. The said

version in this regard is completely unacceptable. The deceased was not suffering from any disease. The applicants never informed the family members of the deceased that they are taking her to the hospital for delivery. After death of the deceased the family members came to know about the same and when they verified the facts from the medical expert and Dr. Sarojni Singh, the entire picture relating to the misdeed of the applicants came to the knowledge of the deponent and his family members. There were serious injuries caused to the deceased by the accused persons which is evident from the *post mortem* report. From the photographs of the deceased it is clearly established that the abrasion wound was present alongwith a punctured wound which in the opinion demonstrates strangulation which has been confirmed by the professor and head of forensic medicine department of BHU. The doctor who had conducted the operation has filed her affidavit dated 19.05.2020 which established beyond doubt that the *ante mortem* injuries were in existence and there was serious problem faced by the deceased due to illegal act committed by the accused persons and the expert also specifically stated that it is a case of manual strangulation and serious act of throttling as potential cause of death and there were *ante mortem* injuries consisting of abrasion and punctured wound. The informant has not manipulated the facts and it has been misinterpreted and manipulated by the applicants. The medical evidence and the expert opinion as well as the last recording of the deceased with her family members and the statements of the witnesses established the case

beyond doubt against the applicants. Dr. S.S. Bohra is hand in gloves with the applicants and his testimony is unreliable as the same refuted from the expert opinion. There is no reply by the applicants regarding bodily injuries sustained by the deceased as under what circumstances she sustained injuries and the burden lies upon them under Section 113-B of the Act, 1872.

25. The recording dated 30.04.2020 is an electronic evidence and the same established doubt that the physical violence and threats to the life of the deceased was being done time and again by the applicants and the recording dated 30.04.2020 obtained from the mobile phone of Apoorva Kumar is an electronic evidence in the eyes of law and cannot be overlooked by the Court as the mobile phone of the deceased was tampered and was in the custody of the applicants and the I.O. was hands in gloves with the applicants and till today the mobile of the deceased has not been recovered by the I.O. and the charge sheet has been submitted though the same was the most credential evidence. Dr. Monisha Singh has stated that there was no negligence on her part but the applicants deliberately delayed the process and not even considered the opinions made by the doctors and there were serious injuries caused to the deceased by the accused persons which is quite evident from the *post mortem* report and the photographs established abrasion alongwith a punctured wound which demonstrates strangulation. The Apex Hospital is a private hospital. On the basis of reports of this hospital it cannot be presumed

that the deceased died a natural death while the concerned doctor was a close friend of the applicants and is hand in gloves with them. The report of forensic department of BHU is a substantive, corroborative piece of evidence which clearly established that the deceased was assaulted and had received *ante mortem* injuries due to which she expired. Since the report and statement of Dr. Prakash Kumar Bharti and Dr. S.S. Bohra were not in consonance with, therefore, expert opinion was obtained from Forensic Science Department of BHU. The doctor who conducted the operation in her affidavit dated 19.05.2020 stated that the deceased was facing serious problems due to the illegal act of the accused persons. She has specifically stated that it is a case of manual strangulation and serious act of throttling as potential cause of death. On the basis of above, a prayer has been made to dismiss this application filed by the applicants.

26. The applicants have filed rejoinder affidavit and have denied the contents of the counter affidavit and have alleged that the alleged conversation dated 30.04.2020 does not find any mention in the FIR, it has been added through statement under Section 161 CrPC as an afterthought more so the same has not been certified in accordance with Section 65-B of the Act, 1872. Hence, the same cannot be considered as evidence. The whatsapp chats have again not been certified in accordance with Section 65-B. The deceased had died due to post pregnancy complications and the charge sheet has been submitted which shows that the police was actually hand

in gloves with the informant. The *ante mortem* injuries were caused due to cesarean operation and abrasion on the neck was due to the use of catheter which was inserted for the purpose of dialysis. There was no punctured wound on the body of the deceased. From the perusal of the photograph, nature of injury cannot be definitively determined. Hence, the report of forensic expert cannot be relied on.

27. Dr. Sarojni Singh had not conducted the operation. She has stated just to cover up the medical negligence on the part of her hospital. The injury report has no evidentiary value in the eyes of law. It is the *post mortem* report which is to be relied upon and the injuries found in the *post mortem* report have been duly explained. Apoorva Kumar brother of the deceased has clearly admitted that the abrasion on the neck was caused due to use of catheter. Electronic evidence cannot be considered due to non-compliance of the direction of Section 65-B of the Act, 1872. There is no dying declaration of the deceased and the statement made by the deceased to her family members would be hearsay and extra judicial in nature.

28. Heard and perused the record.

29. On the basis of above submission these facts come out that there is allegation of unnatural death within seven years of marriage. There is allegation of demand of dowry. According to the I.O. on the basis of oral, documentary and medical evidence it is not a case of

medical negligence. According to the applicants if it is a case of medical negligence caused by Dr. Monisha Singh why no FIR had been lodged by the applicants against her is a point of consideration and it goes against the applicants.

30. The conversation dated 30.04.2020 disclosed that the deceased was in fear to her life with the applicants. On 30.04.2020 the deceased had told to her sister Deepa that *“whether she will remain alive or not. Now it is high time beyond the limit of tolerance. Yesterday both the brothers beaten her together with kicks and punches. Tell me, let us eat poison, die or run away. Now the bier will go from the house. You guy make arrangement for this. You will not get any news. Hands and legs will be raised. There will be no news about it. The mother of the deceased is telling why did you not talk after asking from the phone. The deceased replied that phone is not available here, if asked for phone, it is said that there are many things in the phone how phone can be given. After telling a lot the phone is being received. Mother spoke your condition is not good, speak quietly. The deceased said that all the respect is gone. They are sitting her all around. They are listening what we are talking about. Again being questioned by mother, the deceased replied that her position was finished. The deceased further states, now you come with police but they refused. She has further stated that something is happening, we are not getting relief. She further stated that she was beaten with kicks and punches. Her mother spoke, in such situation who*

beaten you, is it not a matter of shame. The deceased replied, your son-in-law has beaten. The deceased has further said that the accused persons are saying to leave his son. They will give her more and more money. She cannot move anywhere, they are not letting her to go out. The deceased has clearly stated that these people are saying that you leave their son, they will pay her money multiple to twice-thrice. Now there is no peace, whole plan has been made to remove the thorn. Every one is saying to leave our son (husband), they will give her money multiplied three-four times. They are considering her as home farming. The mother-in-law is saying to take three times money from them to spare the life of her child (husband of the deceased). Nothing can happen. Now you will see my dead face, just you take away me. Mother of the deceased had replied that keep calm and give the phone to bauji”.

31. In the meantime a person reached to the deceased and said that *your wish has come true and now go from here. Thereafter mother of the deceased is trying to talk again with the deceased but the phone was disconnected.*

32. The statement recorded on 20.10.2020 is between the deceased, her sister - Niti, father Om Prakash and it has also been made basis for submission of charge sheet. The relevant part of this conversation is also noted herein below in which the deceased was saying that *“she has heard so much in the night. There is no here to keep calm. Now everyone here is going to hit the tone “your father is a shoe polisher”. I am hearing that my father has*

polished the shoe. Did you tell that you have polished their shoes..... Here I am hearing a lot of tone that I am the girl of shoe polisher. I will not stay here at all, no one is here to take guarantee". In this conversation opposite party no.2 also made allegation that applicant no.1, husband of the deceased had illicit relation with his brother's wife. Opposite party no.2 angrily said that if his son-in-law, applicant no.1 was cohabiting his sister-in-law by keeping her as mistress, then why he solemnized marriage with his daughter. He said to call *mausa* of the deceased to take her back.

33. From the above discussion it is clear that all was not well within the matrimonial family of the deceased and between the deceased and applicant no.1. It has also been argued that if accused applicant no.1 was in service in Class-II of Railway Department since 2005 why he solemnized marriage after such unreasonable time.

34. Learned counsel for the applicants has raised objection that such conversation cannot be read in evidence in view of Section 65-B of the Act, 1872. In this regard several decisions are available which are as under:-

(I) In **Ravinder Singh @ Kuku Vs. State of Punjab, 2022 Live Law (SC) 461** it was held that the certificate under Section 65-B(4) is a mandatory requirement for production of electronic evidence. It was also held that oral evidence in place of such certificate cannot be possibly suffixed. It was also held that in cases based on

circumstantial evidence from the circumstances and inference as to the guilt of the accused have to be proved beyond reasonable doubt and have to be shown to be closely related with the principal facts sought to be inferred from those circumstances. In the present case the electronic evidence is the primary evidence not the secondary evidence and sufficient material is available on the record to prove the chain of the circumstantial evidence against the accused applicants beyond all reasonable doubts. For convenience Section 65-B(4) of the Indian Evidence Act reads as under:-

"65B. Admissibility of electronic records.—(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say—

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it."

(II) In **Anvar P.V. Vs. P.K. Basheer, (2014) 10 SCC 473 (three-Judge Bench)** it has been ruled that under Section 65B(4) certificate is necessary for admissibility of the secondary evidence.

(III) In **State of UP Vs. Ajai Kumar Sharma, 2016 (92) ACC 981 (SC)** (para 14) it is laid down that a "Compact Disk" is a "document" on which admission and denial may be made by both the parties or their advocates.

(IV) In **Mukesh Vs. State (NCT) of Delhi and others, AIR 2017 SC 2161** (three-Judge Bench) Computer Cell Expert revealed no tampering or editing of the CCTV footage. It was held to be admissible under Section 65B of the Evidence Act.

35. Under Section 3(2) of the Act, 1872, electronic records are the documents and they are relevant and admissible under Sections 17, 22A, 34, 35, 39, 45A, 47-A, 59, 65-A, 65-B, 67-A, 73-A, 81-A, 85-A, 85-B, 85-C, 88, 88-A, 90-A and 131 of the Evidence Act.

36. In **R.M. Malkani Vs. State of Maharashtra, AIR 1973 SC 157** and in **Ram Singh and others Vs. Col. Ram Singh, 1985 (Supp) SCC 616** and the **State (NCT) of Delhi** (supra) it is held that the relevant conversation recorded in the tape recorder is admissible in evidence.

37. In **Anvar P.V. (supra)** and **Harpal Singh Vs. State of Punjab, (2017) 1 SCC 734** the Apex Court held that proof of electronic record is a special proviso introduced under the Evidence Act. The very caption of Section 65A of the Evidence Act, read with Sections 59 and 65B is sufficient to hold that the special provisions on evidence relating to electronic record shall be governed by the

procedure prescribed under Section 65B of the Evidence Act. That is a complete Code in itself. Being a special law, the general law on secondary evidence under Sections 63 and 65 has to yield. An electronic record by way of secondary evidence therefore shall not be admitted in evidence unless the requirements under Section 65B are satisfied. Thus, in the case of CD, VCD, chip, etc. the same shall be accompanied by the certificate in terms of Section 65B obtained at the time of taking the document, without which the secondary evidence pertaining to that electronic record, is inadmissible.

38. In **Vikram Singh Vs. State of Punjab, (2017) 8 SCC 518**, the original tape recorded conversation of ransom calls was handed over to the police, it has been held that the original tape record was primary evidence, therefore certificate under Section 65B of the Evidence Act was not required for its admissibility. Such certificate is mandatory only for secondary evidence and not for the primary evidence.

39. In **State by Karnataka Lokayukt P.S. Bengaluru Vs. M.R. Hiremath, 2019 0 Supreme 590 (SC)** *it is held that the certificate under Section 65B is sought to be produced in evidence at the trial, not at the stage of framing of charge.*

40. In **Arjun Panditrao Kholkar Vs. Kailash Kushanrao Gorantyal and others, AIR 2020 SC 4908** (three-Judge Bench) it has been held that certificate required under Section 65B(4) is a condition precedent to

the admissibility of evidence by way of electronic record. Oral evidence in the place of such certificate cannot possibly suffice as Section 65B(4) is a mandatory requirement of the law. Section 65B(4) clearly states that secondary evidence is admissible only if lead in the manner stated and not otherwise. To hold otherwise would render Section 65B(4) otiose. *The requisite certificate in sub-section (4) of Sections 65B is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, a computer tablet or even a mobile phone, by stepping into the witness box and proving that the concerned device on which the original information is first stored, is owned and/or operated by him. In cases where "the computer", as defined happens to be a part of a "computer system" or "computer network" and it becomes impossible to physically bring such network or system to the Court, then the only means of proving information contained in such electronic record can be in accordance with Section 65B(1), together with the requisite certificate under Section 65B(4).*

41. In **Mohammad Arif @ Ashfaq Vs. State (NCT) of Delhi, 2022 0 Supreme (SC) 1113** (three-Judge Bench) the Apex Court discussed the judgment **Anvar P.V.** (supra) and other pronouncements and held that "it must now be taken to have been settled that the decision of this Court in **Anvar P.V.** (supra) as clarified in **Arjun Panditrao** (supra) is the law declared on Section 65B of the Evidence

Act. In para 22, the reference of the judgment of **Arjun Panditrao** (supra) has been given which is as under:-

*"73. The reference is thus answered by stating that:
73.1. Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473, as clarified by us hereinabove, is the law declared by this Court on Section 65-B of the Evidence Act. The judgment in Tomaso Bruno v. State of U.P., (2015) 7 SCC 178, being per incuriam, does not lay down the law correctly. Also, the judgment in Shafhi Mohammad v. State of H.P., (2018) 2 SCC 801 and the judgment dated 3-4-2018 reported as Shafhi Mohd. v. State of H.P., (2018) 5 SCC 311s, do not lay down the law correctly and are therefore overruled.*

73.2. The clarification referred to above is that the required certificate under Section 65-B(4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, computer tablet or even a mobile phone, by stepping into the witness box and proving that the device concerned, on which the original information is first stored, is owned and/or operated by him. In cases where the "computer" happens to be a part of a "computer system" or "computer network" and it becomes impossible to physically bring such system or network to the court, then the only means of providing information contained in such electronic record can be in accordance with Section 65-B(1), together with the requisite certificate under Section 65-B(4). The last sentence in para 24 in Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 which reads as "... if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act ..." is thus clarified; it is to be read without the words "under Section 62 of the Evidence Act,...". With this clarification, the law stated in para 24 of Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 does not need to be revisited.

73.3. The general directions issued in para 64 (supra) shall hereafter be followed by courts that deal with electronic evidence, to ensure their preservation, and production of certificate at the appropriate stage. These directions shall apply in all proceedings, till rules and directions under Section 67-C of the Information Technology Act and data retention conditions are formulated for compliance by telecom and internet service providers."

42. From the above discussion it is very much clear that first of all the Court has to ascertain as to whether the electronic document provided by either of the parties is primary or the secondary evidence. If it is a secondary evidence not the primary evidence only then a certificate would be required under Section 65B(4) of the Act, 1872. *Similarly the production of above certificate would be necessary only at the appropriate stage when the parties have entered into evidence and not before that. Hence, at the time of taking cognizance or framing charge there would be no requirement of certificate under Section 65B(4) even if the document so produced is a secondary evidence.*

43. If according to the applicants the death was the result of sheer negligence of Dr. Monisha Singh why an FIR was not lodged by the applicants against her.

44. The injuries on the person of the deceased were *ante mortem* injuries other than the medication or surgery can only be judged during the trial.

45. From the conversation present in the case diary it can be gathered that all was not well within the family and between the deceased and the accused persons and the deceased had been beaten and mental and physical cruelty had been caused with her in her matrimonial house and there was no respect for her father in the heart and mind of the accused persons.

46. Though the applicants are taking the plea of cesarean delivery of applicant no.5, Radha Devi by Dr. Sarojni Singh that they had no reservation regarding normal delivery but from the statement of Dr. Monisha Singh it is crystal clear that there was no possibility of normal delivery even then family members of the deceased were adamant for normal delivery at any cost and were pressurising her for that. She tried to explain the situation but neither the husband of the deceased nor her family members were ready for cesarean delivery and they were creating pressure for normal delivery. Therefore, anti-biotic and supportive medicines were administered to the patient. The accused persons were saying that today is the Saturday and their panditji has said that if a child is born in your place, it would be unlucky day. It was taken in writing from the husband of the patient (deceased) that the patient is not making any progress and the doctor and the hospital cannot guarantee the safety of the life of mother and the child and they took to the patient at 08:30 a.m. writing that they are getting discharge of the patient at their own will. On 04.05.2020 at 02:00 p.m. the patient's husband came to her hospital with his wife Nidhi Prakash in very nervous position. The patient was having unbearable abdominal pain. The patient told that the movement of the baby in the stomach is reduced past 8 hours. She has also fever and icterus. Heart beat of the child was at the rate of 80-100. There was leaking to the patient which was meconium stained. Operation was the only necessary option for the safety of the mother and the child which

had been told to them two days earlier. The patient had urine infection and the patient had jaundice and the liver enzymes were increased. Consent for the operation was given by her husband. Doctor tried to manage the nerves of the child in womb. The operation was started at 03:30 p.m. by Dr. Monisha Singh with the help of Dr. Sarojni Singh, anaesthetic Dr. Surendra Kumar Srivastava and consultant child specialist Dr. Gyanendra. It was found that there was an ascitic fluid in her stomach. After removing fluid the same was sent for investigation. The baby was shifted to NICU for better medical care. The operation was completed successfully. The patient started vomiting bile continuously from 06:00 p.m. On inquiry, the patient told that her mother-in-law had administered her deshi ghee an hour before coming to the hospital while it is completely prohibited for a jaundice patient. There was fever at 103F three hours after the operation for which injection and anti-biotics were given. From 08:00 p.m. in the evening, the patient had a slow urination. After 02:00 a.m. the urination was completely stopped. It was conveyed that further investigation and dialysis facilities are not available in the hospital. The patient would be kept in ICU. The condition of the deceased was conveyed to her husband at his mobile at 07:30 a.m. Abhishek - friend of Om Prakash (husband) came to the hospital and the patient was discharged for better treatment, for this he took referral from her hospital. During the treatment blood pressure, pulse rate, respiratory rate, oxygen saturation and general condition of the patient was normal.

47. In such a situation when no FIR or complaint had been made against Dr. Monisha Singh and the concerned hospital and the report and statement of Dr. Monisha Singh is in favour of the prosecution, this Court is of the view that the truth would appear only during and after the trial.

48. From the inquest report, it transpires that there was difference of opinion between the witnesses of inquest about the cause of death of the victim hence she was referred for autopsy. The professor and head of forensic department has opined that the doctor was in a bit haste while doing *post mortem* and there was negligent attitude on his part that when in the presence of signs of injuries over neck, he had not dissected the neck to see the internal injuries present over the subjacent tissues and the neck muscles bruising to exclude asphyxia namely strangulation i.e. strangulation as potential cause of death.

49. In such situation this Court finds it difficult to decide the case and exonerate the applicants from trial. The reason of death was medical negligence or it is a case of dowry death, can only be judged by the trial judge after taking the evidence. Only on the basis that there are some photographs showing some moments of pleasure with the husband it cannot be concluded that the charge should not be framed and the trial should not be proceeded.

50. Learned counsel for opposite party no.2 argued that prior conversation by the deceased with her family

members would be treated to be dying declaration under Section 32(1) of the Act, 1872. Since the death is within seven years from the marriage and there is allegation of cruel treatment and demand of dowry, Section 113B would come into picture and in this respect the witnesses have stated in support of the prosecution version. There is unexplained *ante mortem* injury. There is also suspicion that which material was administered by mother-in-law of the deceased soon before her admission in hospital. It is also noteworthy that when 04.05.2020 had already fixed by the doctor with regard to delivery, why the deceased was taken to the hospital so late and why she was not admitted earlier.

51. High Court can exercise its inherent powers under Section 482 CrPC if it finds necessary to give effect to any order under this Code or if this Court finds that there is abuse of process of Court or to secure the ends of justice it is imperative on the Court to exercise the jurisdiction and quash any order or the proceedings challenged by the applicants.

52. From the above discussion it follows that there are several mysterious circumstances, allegations of demand of dowry, unnatural death of a young lady, difference of opinion of the doctors. There is report and evidence of the treating doctor in favour of the prosecution. There is expert opinion that the death of the deceased might have been occurred by manual strangulation. There are statements of the deceased prior to her death showing maltreatment and cruelty with her by the applicants.

There is also allegation of unethical relation between the applicant no.1 and the applicant no.5, this Court is of the considered view that the charge sheet and the rejection of the discharge application of the applicants under Section 227 CrPC are not liable to be interfered with. It is settled principle in **Kewal Krishan Vs. Suraj Bhan, AIR 1980 SC 1780** that when *prima facie* case of murder is made out, the discharge of the accused merely because the accused had no intention to kill the deceased is not proper. At the stage of charge, the standard of tests regarding guilt or otherwise of the accused cannot be applied.

53. In **R.S. Nayak Vs. A.R. Antulay and another, AIR 1986 SC 2045** it has been held that when materials in the form of statements made before the police, dying declaration, *post mortem* report furnish a clear *prima facie* case for framing charge, the Sessions Judge committed an error in discharging the accused.

54. In **State of Bihar Vs. Ramesh Singh, AIR 1977 SC 2018** it is held that the standard of test, proof and judgment which is needed for finding of a guilt or otherwise is not necessary for framing charge at this stage and even a strong suspicion found upon materials before the Court may justify framing of charge. The Court can sift and weigh the evidence for the purpose of finding out whether *prima facie* case against the accused has been made out. If two views are equally possible and the evidence gives rise to a grave suspicion, charge may be framed. The word "ground" has been used in these two

sections in the context of putting an accused on trial. It is the trial in which the guilt or the innocence of the accused will be determined and not at the time of taking cognizance or framing of charge. The Court, therefore, need not undertake an elaborate inquiry in sifting and weighing the materials nor is it necessary to delve deep into various aspects. At this stage defence of the accused has not to be seen.

55. On the basis of above discussion, this Court is again of the view that at this stage no case is made out in favour of the applicants and it cannot be concluded that the charge sheet has been submitted without proper and sufficient ground and the rejection of discharge application is bad in view of the fact and law of the case.

56. Accordingly, this application under Section 482 CrPC is **dismissed**.

Order Date :- 19.4.2023
Shahroz

(Umesh Chandra Sharma,J.)