

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **Crl. L.P.No. 180/2007**

% *Date of Order : January 20, 2009*

State Appellant
Through : Ms.Richa Kapoor, APP

VERSUS

Ved Prakash Gupta & Ors. Respondents
through : Mr.Rajesh Mahajan, Advocate

CORAM :-

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE ARUNA SURESH

- (1) Whether reporters of local paper may be allowed to see the judgment?
- (2) To be referred to the reporter or not?
- (3) Whether the judgment should be reported in the Digest ?

PRADEEP NANDRAJOG, J.(Oral)

1. The State is aggrieved by the impugned judgment and order dated 11.4.2007 acquitting the accused of offences punishable under Sections 304-B/498-A/406/34 IPC.

2. The deceased Rekha was married to A-2 Anoop Gupta on 21.11.1996. She committed suicide on 28.2.2000. Statements of her father and brothers were recorded by the Sub-Divisional Magistrate because Rekha had died within seven years of her marriage. They stated that the husband of the deceased, her father-in-law A-1, her mother-in-law A-3 and her brother-in-law

A-4 used to treat her with cruelty and used to torture her on account of bringing insufficient dowry in spite of the fact, they had spent lavishly at the wedding and due to said cause Rekha had committed suicide.

3. On the basis of the statements made by the father and brothers of the deceased, an FIR was registered under Sections 304-B/498-A/406/34 IPC. During investigation a diary, Ex.P-1, was recovered. The writing thereon is admittedly in the hand of the deceased; a fact admitted by the father and brothers of the deceased. A writing Ex.P-2 near the bed side of the deceased was found. It is not in dispute that the said writing is in the hand of the deceased and is a suicide note.

4. The case of the prosecution obviously hinged upon the testimony of the father and brothers of the deceased and above all the diary maintained by the deceased as also the suicide note.

5. Discussing the diary maintained by the deceased, learned Trial Judge has discussed the writings therein in para 22 of the decision. The same reads as under:

“22. As already observed herein above, the prosecution and the defence have relied heavily on the diary Ex.P2 maintained by the deceased. The contents of the same were read out in open by the Ld.APP as well as the Ld. Defence counsel. There is not an iota of allegation in the said

writings that the accused ever demanded any dowry from the deceased. In fact all the writings are addressed by the deceased to her deceased young brother Golu who was already dead at the time when those writings were written which fact is itself clear from a bare perusal of the said writings. There is only a single incident (A-54) mentioned by the deceased wherein she wrote, addressing to her said younger brother (True English Translation). "Do you know that on the New Year day what gift I had received. One slap. Alas, I am entitled only for this. What else could an evil and destitute like me could have got." In all other writings she have been requesting her deceased brother to return back or else threatened to come to him. All the writings cannot be reproduced here but a mere reading of the same shows that she was not only deeply attached with her deceased brother but was emotionally broken and was immensely depressed. However, in one such writing (A-59) she again wrote that she should not have been married and therefore, her brother Golu would not have left her. This writing is also addressed to Golu. She further wrote that she does not want to live but could not die because of her child Meetu and that only her husband loves her and in case, her husband stop loving her she would come to him (Golu) with her daughter. Similarly, in the writing (A-64) and (A-65) the deceased again while addressing to her deceased brother showed her intention to commit suicide but further mentioned that her husband i.e. accused Anoop loves her too much and that was the reason that she wants to die. She also wrote that her mother in law met her maternal aunt in a marriage and she praised the deceased like anything which was conveyed to her by her maternal aunt."

6. Learned Trial Judge had additionally noted that PW-1, father of the deceased, on cross-examination had admitted

that the deceased was admitted at Vidya Sagar Institute of Mental Health and Neuro Sciences on 14.1.1996 (i.e. nearly 10 months before she was married) and that she remained admitted at the said Institute for a day.

7. Pertaining to the evidence of the father of the deceased PW-1, and Rakesh Gupta and Rajesh Gupta, PW-2 and PW-4, brothers of the deceased; learned Trial Judge has noted improvements made by PW-1 vis-à-vis his statement, Ex.PW-1/B, recorded at the first instance by the learned SDM. Pertaining to the alleged articles of dowry given at the time of marriage, discussing the evidence, learned Trial Judge has returned findings in paras 14 to 17 of the impugned decision which reads as under:

“14. The prosecution has examined four material witnesses to prove the fact that the deceased was subjected to cruelty and harassment on account of demand of dowry prior to her death. They are respectively the father, brothers and sister of the deceased namely PW1, PW2, PW4 and PW13. PW1 father of the deceased, PW2 and PW4, the brothers of the deceased in their deposition have made categorical and specific allegations regarding the demand of dowry and of giving harassment to the deceased. PW1 deposed that a sum of Rs.3.5 lacs was spent in the marriage which was beyond his means and he also gave a motor cycle to accused Anoop Gupta on his demand apart from cash on the various ceremonies of marriage. He further deposed that he gave various gold ornaments and other articles

clothes etc. to the accused and the deceased in the marriage. However, he was duly confronted with his statement which he gave to the SDM Ex.PW1/B where all these facts were not recorded. Thus, he greatly improved upon his previous statement, on material particulars. This witness was confronted with his saving account which he was maintaining with Punjab National Bank, Chanakya Puri and he admitted that during the period when he got the deceased married he was not having enough balance in the account. The deceased was married on 21.11.96, however, in October, 1996, he was having a balance of Rs.1,151.38/-. He could not produce any record to show that any amount was withdrawn by him from the bank for arranging the marriage. Similarly, PW2 and PW4 also could not give any satisfactory reply regarding the source from which such a huge amount of money was taken and spent in the marriage. They simply and vaguely deposed that the money was arranged from some private Financiers but shorn of any details. Thus, it could not be proved on record that PW1 had sufficient means to spend such a huge amount in the marriage and the improvements in the testimonies of PW1, PW2 and PW4 regarding the payment of cash on various ceremonies to the accused also belies their version.

15. It has been admitted by all the said three witnesses that no list of dowry articles was prepared at the time of the marriage and the first such list Ex.PW1/A was prepared only after the death of the deceased when it was so demanded by the police. Thus no authenticity can be attached to the same. In any case, the entire stridhan of the deceased was recovered by the police and returned to her father. It may also be noted that no charge for the offence under section 406 IPC was framed against any of the accused.

16. There are again marked and immaterial improvements in the testimonies of the said three witnesses i.e. PW1, PW2 and PW4 regarding the demand of dowry. They deposed that the accused never permitted them to meet the deceased alone and would not permit her to talk to them. PW1 deposed that once her daughter called him on phone and complained about dowry demands and harassment. No date, month etc. has been mentioned or deposed by him when such talk took place. It has also been deposed by the said three witnesses that after marriage, they sometime used to pay Rs.5000/- or Rs.10000/- to the accused on the demand of the accused. Again no date, month etc. has been deposed when such demands were made or such amount was paid to the accused. There were again improvements in the statements of the witnesses in respect of these demands which were duly confronted with from their previous statement made to the SDM and to the police, which make their testimonies vague and unreliable.

17. In respect of the incident, PW1 deposed that he received the phone call from his other daughter PW13 Anita who told him that the deceased was unwell and then he called the accused on phone and accused Deepak told him "KOI KHAS BAAT NAHIN HAI" and put the receiver. PW2 in this respect deposed that accused Deepak told him "AANA HAI TO AA JAO" Both these witnesses claimed to have received the said phone call. Thus, there are material contradictions in this respect as well. These improvements were apparently made to show the cold and harsh attitude of the accused towards the deceased."

8. The result is the acquittal of all accused.

9. At the hearing today, urging that it is a fit case for grant of leave to appeal learned counsel for the State urges that in the diary Ex.P-1, at point A-54, while penning her thoughts to her deceased brother Golu the deceased has written that the new year gift which she has received is a slap on her face. Learned counsel further urges that in the diary at place A-64 and A-65 the deceased has evidenced intention to commit suicide.

10. Learned counsel urges that the writing A-54 evidences that the deceased was being treated with cruelty.

11. Conceding that there are improvements in the statement made by the father of the deceased while deposing in Court vis-à-vis his statement made to the learned SDM at the first instance, learned counsel for the State urges that the mental condition of a father, who had lost a young girl, has to be kept in mind and thus not much credence can be given to the lack of clarity with which the father made the statement before the learned SDM.

12. We note that the learned Trial Judge has rightly laid emphasis on the suicide note and the diary maintained by the deceased which show that the deceased was deeply attached with her younger brother Golu who had died and the writings

show that the deceased was constantly interacting with her deceased brother. In fact, as noted by the learned Trial Judge, the writing A-64 and A-65 addressed to the deceased brother evidence the intention of the deceased to commit suicide; but being prohibited from doing so on account of the deceased recording that her husband Anoop loved her too much.

13. The fact that the deceased was suffering from a mental disorder even before her marriage stands admitted by the father of the deceased.

14. Her writings in the diary maintained by her show that the deceased was having a troubled mind on account of the death of Golu, her younger brother. Most of the writings are addressed to the deceased brother, Golu.

15. The deposition of the father and brothers of the deceased that the deceased had told them that her husband used to beat her is prima facie belied from the diary maintained by the deceased, which as noted hereinabove, records a solitary instance of somebody slapping the deceased. Perusal of the diary shows that the deceased had maintained a meticulous account of her affairs; even noting a few recipes which she had learnt on different occasions. Had she been repeatedly beaten by her in-laws, certainly she

would have let her heart out to her deceased brother Golu by writing in the diary, the said incidents. We repeat, the emotions of the deceased when she was alive are reflected in the form of her communications in the diary to her deceased brother Golu.

16. It is settled law that unless the Trial Judge has ignored vital evidence or has ignored a material circumstance, and subject to there being no perversity in the appreciation of evidence, the Appellate Court would not re-appreciate the evidence which has been considered by the learned Trial Judge. The specific evidence, attention whereof was drawn to nail the accused, has been noted by the Trial Judge and has been dealt with.

17. We record our concurrence with the view taken by the learned Trial Judge. No case is made out to grant leave to appeal.

18. The petition is dismissed.

PRADEEP NANDRAJOG, J.

ARUNA SURESH, J.

January 20, 2009
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