

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **Crl. M.A. No. 12716/2010 & Crl. LP No. 247/2010**
% **Date of Decision: 14.09.2010**

State *Petitioner*

Through Mr. Saleem Ahmed, Additional
Standing Counsel, Criminal

Versus

Ram Niwas & Ors. *Respondent*

Through Nemo.

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR
HON'BLE MR. JUSTICE SURESH KAIT

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | <i>To be referred to the reporter or not?</i> | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.
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Crl.M.A No.12716/2010

This is an application seeking condonation of delay of 155 days in filing the petition to leave to appeal.

For the reasons stated in the application there is sufficient cause for condoning the delay. Therefore the application is allowed and the delay in filing the petition seeking leave to appeal is condoned.

Crl. LP No. 247/2010

1. The petitioner has sought leave to appeal against the order dated 31st August, 2009 passed in SC No.25th January, 2008 arising out of FIR 26/2005, PS J.P. Kalan under Section 498-A/304-B of IPC acquitting the accused/respondents Ram Niwas, Smt. Pinki and Smt. Bimla and Sh. Dharamvir.

2. The case of the prosecution in brief was that the deceased Poonam was married to the accused Dharamvir on 20th February, 2001. Sh. Ram Niwas is the elder brother of the husband of the deceased whereas Pinki and Bimla are the wives of the brothers of deceased's husband Dharamvir. Deceased Poonam is alleged to have committed suicide by burning. On the allegation of Sonu, brother of the deceased that his sister has been burnt at Chhota Pandwala near Temple, DD No. 11/A, Ex. 10/ B was recorded at 8.45 am. The allegation of the mother of the deceased, Smt. Bimlesh and her brother Mahesh @ Sonu was that 20 days after her marriage, deceased Poonam's Jethanis, namely, Pinki and Bimla and Jeth Ram Niwas and Mahavir and her husband had started harassing her for dowry and they had made a demand for TV and fridge. They used to give her beatings, however, deceased Poonam was bearing the atrocities as her father was not alive. The mother and the brother of the deceased in the statement before the SDM further disclosed that four months before the incident of Poonam

committing suicide, she had visited her matrimonial home and stayed there for two months, however, a compromise had been arrived at and deceased Poonam had gone back to her in-laws house and was living there with her husband and her two year old child.

3. Since the deceased had died within seven years of her marriage, on the basis of material on record and the statement made to the prosecuting agency, charges under Section 498A/304-B/34 IPC were framed against all the respondents to which they pleaded not guilty. During the trial prosecution examined 17 witnesses and the statements of the accused persons were recorded under Section 313 of the Crl. Procedure Code.

4. The Trial Court considered the testimonies of PW-1 Smt. Bimlesh, PW-2 Mahesh @ Sonu, brother of the deceased, PW-3 Jitender Yadav, PW-4 Raj Singh Sharma to ascertain whether there had been a demand for dowry and whether the deceased was subjected to harassment or cruelty by her husband and the in-laws. On account of material contradictions in the testimonies of these witnesses, it has been held that their testimonies have not inspired any credence and PW-3 Jitender and PW-4 Raj Singh Sharma were introduced to implicate the accused persons.

5. The mother of the deceased (PW-1) deposed that 2-3 months after the marriage, all the accused persons started beating and harassing her daughter on account of insufficient dowry, without giving any further details as to who had beaten her and on what occasion and who had told her about the alleged beatings to her daughter. Though the mother stated that after 2-3 months, the deceased daughter was harassed and beaten, the brother PW-2 Mahesh @ Sonu had deposed that the harassment and the torture started after one year. Even the brother Mahesh did not give any specific particulars of harassment or cruelty or alleged beatings.

6. The mother of the deceased (PW1) had deposed that the demand was for TV, fridge and cooler whereas Mahesh (PW2), brother of the deceased testified that the demand was for money, fridge and washing machine. He was categorically quiet about the demand for TV though documentary proof of TV only was produced which was also not recovered from the house of the deceased.

7. The mother of the deceased (PW1) has testified that 1 ½ months before her death she had come to her parent's house, when she had asked for money and was given Rs.5,000/-. Whereas the deceased's brother (PW2) testified that Rs. 3,000/- was given to her which was demanded by her in-laws, namely, Jeth and Jethanis for the

construction of latrine and bathroom mother of the deceased did not depose supporting the said fact.

8. The mother, PW-1 has stated that Rs. 5,000/- was given out of rent whereas the brother PW-2 has stated that Rs. 3,000/- was given by him from his business, as he is doing the business of CDs and cassettes and the amount was given in the presence of the mother. Mother was however, conspicuously silent about the alleged amount allegedly given by brother. Both the statements are contradictory to each other, specially, in view of the statement of the brother that the money was paid in the presence of the mother. The learned counsel for the petitioner has contended that Rs. 5,000/- was given separately by the mother and that Rs. 3,000/- was given separately by her brother. However, in view of the categorical statement of the brother that Rs. 3,000/- was given by him from his business and in the presence of his mother who has not deposed at all about the same, both the statements cannot be reconciled and cannot be relied on. The deposition of mother is that she had given Rs. 5,000/- whereas her son, brother of the deceased had deposed about giving Rs. 3,000/- but none of them deposed that the amounts were given by them separately. The plea of the learned prosecutor that the amounts given were separate cannot be accepted being contrary to the deposition of said witnesses.

9. The mother of the deceased was also quiet as to who had demanded Rs. 5,000/- from her daughter which is allegedly given by her from the rent allegedly received by her. Though, the brother, PW-2 in his statement before the Court had stated that Rs. 3000/- were given by him to his deceased sister on account of the demand made by her Jeth and Jethanis for construction of latrine and bathroom. However, he had not deposed so in the statement given before the Magistrate, Ex. PW1/A. Before the Magistrate, he had only stated that his sister had taken a sum of Rs. 3,000/- for construction of latrine and bathroom. The Trial Court has also noted that Rs.3,000/- taken by the deceased Poonam for construction of latrine and bathroom cannot be termed as a demand for dowry. The alleged demand by Jeth and Jethanis was also not disclosed by the brother, PW-2 in his statement recorded under Section-161 of the Criminal Procedure Code.

10. The Trial Court, while acquitting the respondents also relied on the fact that though, it is alleged that she was sent from the matrimonial home three times but every time, the accused Dharamvir, her husband with three or four persons, and other family members had gone to her house and she was brought back although once she was told that her son was not well, and on that excuse, she was brought back. This is the version of PW-1, the mother of the deceased which statement has not been corroborated and supported by other witnesses of prosecution. Even the brother, PW-2 of the deceased did not support

the testimony of the mother that the deceased was thrown out of her matrimonial house and later on was taken back on account of misrepresentation made to her about the sickness of her son.

11. The other contradictions which have been noticed by the Session Judge are that though the brother, PW-2 of the deceased had alleged that she was beaten up by Sh. Ram Niwas, Pinki and Bimla 15 days prior to her death, however, the mother, PW-1 in her statement Ex. PW-1/A before the SDM and PW2 in his statement, Ex. PW2/DA and Ex. PW 2/DB recorded by the Police under Section-161 of the Criminal Procedure Code did not state anything regarding the incident of beatings by the accused husband 15 days prior to her death. Had she been beaten up, normally she would have disclosed the said fact to her mother. This statement that she was beaten up appeared for the first time before the Court and in these circumstances, was not relied on by the Session Judge and to this extent, the inference of the Trial Court in our opinion, cannot be faulted.

12. The Sessions Court has also noticed and considered the alleged demand of TV on behalf of the accused. The discrepancies which have been noticed regarding the demand of TV are that the mother stated that a color TV was given to the accused on the demand being made but she also clarified that the color TV was given to her at the time of the birth of a son of her deceased daughter, which was two years three

months after the marriage. Consequently, if the statement of the mother is to be believed then, the color TV was given one year ten months before her death. This fact about the demand of TV and the same being given is contradicted by the brother PW-2 Mahesh and also by the testimony of PW-3 Sh. Jitender Yadav who also had deposed that the TV set was given to the deceased few days before her death.

13. The PW-3 Sh. Jitender Yadav, however, in his examination-in-chief, had not deposed about the demand of TV and he had also not stated about the demand of TV in the statement given by him before the SDM which was exhibited as Ex. PW-3/A. In the statement recorded under Section 161, vide Ex. PW3/DA he had rather stated that the TV was given not few days before her death but 6-7 months prior to her death. The Trial Court has rightly disbelieved the testimony of PW-3 as he went to the extent of saying that he had gone to deliver the TV at her matrimonial house, though the brother and the mother of the deceased did not state that PW-3 Jitender had delivered the TV, which according to mother of the deceased was given on the occasion of giving birth to a child by her daughter, which was one year ten months prior to her death. It has also been noticed that Jitender, PW-3, knew the deceased through Raj Singh, PW-4 with whom he had a business relationship. This statement was changed by him in the cross-examination, in which he stated that his father was known to the father of the deceased. In the circumstances, his statement that he knew the deceased cannot be

relied on nor this fact was disclosed in the statement Ex. PW-3/DA and no satisfactory explanation was given by him about this discrepancies when he was confronted with the said statements.

14. Even the statement of PW-3 Sh. Jitender Yadav that his father is the friend of the father of the deceased is not credible because he had not even attended the marriage of the deceased nor did he know to whom she was married. His credibility is further impaired when he allegedly stated that when he went to deliver the TV along with the brother, which fact has not been disclosed and admitted by the brother Mahesh (PW2). He also deposed that the deceased had told him that her husband is having relations with his brother's wife and her jeth and jethani and husband used to beat her. Rejection of such testimony of PW-3 who had visited the deceased only once and allegedly deceased had disclosed or divulged her intimate things to PW-3 was found to be not credible and such inference by the Trial Court cannot be termed to be perverse or unsustainable in the facts and circumstances.

15. Another major contradiction in the statement of PW-3 Sh. Jitender Yadav is that he has stated that his statement was recorded one or two days after the death of Poonam on 17th March, 2005, however, Inspector Nand Kumar, PW-17 had admitted that PW-3 was brought to him by the brother of the deceased and his statement was recorded on 15th March 2005. The allegation of demand of TV was

further tainted by the prosecution witness PW-9 Sukhwinder who had deposed that he had sold the same to Mahesh on 7th September, 2004 vide receipt Ex. P1. Considering the statement of PW-1, PW-2, PW-9 and PW-3, it is apparent that the discrepancies are substantial and the demand of TV as dowry has not been established. Even, no such TV was recovered to corroborate the version of the prosecution. In the circumstances, the inference of the Trial Court that the prosecution has failed to prove on record that there was any demand by the accused for TV or demand was fulfilled has not been established. The inferences and findings of the Trial Court in the facts and circumstances cannot be held to be unsustainable or perverse in any manner. Similarly, the testimony of PW-4 has not been relied on as he had taken Rs. 50,000/- from the accused Dharamvir to get him a job with DTC. Though, the husband had given Rs. 50,000/- to Raj Singh (PW4) to get a job, however, neither did he get the job nor the money was returned to him by Pw4. Therefore, the testimony of such a person was not found to be credible and such an inference of the Trial Court cannot be faulted nor can be termed to be unsustainable or perverse so as to interfere with the same. No other admissible evidence has been pointed out by the learned counsel for the petitioner which has been ignored by the Trial Court.

16. Even PW-1 and PW-2 have not stated that PW-4 used to visit their house or even visited the house of the deceased and he was informed about the alleged atrocities allegedly committed on the deceased by her in-laws. The statement of PW-4 that the deceased used to call him at her parent's house also cannot be relied on as PW-1 mother of the deceased has nowhere testified to that effect. The other fact which has material bearing in ascertaining whether the demands for dowry were made is the alleged harassment which was allegedly inflicted on the deceased. The allegation of beating has not been established and no particulars of harassment have been given by various witnesses, all that is stated is that the deceased was married against her wishes at the house of her mama Hoshier Singh after the demise of her father. The mother PW-1 Smt. Bimlesh had admitted in her statement that her deceased daughter had refused to marry before completing ITI Course which she was doing at the time, however she was forced into the marriage. She also admitted that the deceased daughter marriage was fixed by her deceased husband despite the deceased, Poonam not agreeing for the same. She was married from the house of the brother of PW1 namely Sh. Hoshier Singh in Kapashera Village. Even the relation of the mother with her brother Hoshier Singh were strained to such an extent that the mother of the deceased did not enter the house of her brother after the marriage of her daughter and she had even asked her brother-in-law not to come to her house, reflecting that even the mother was not happy with the marriage of her daughter with the accused

Dharamvir which had taken place on account of insistence of her husband and brother Hoshiar Singh. Sh. Hoshiar Singh was not cited as a witness or examined as a prosecution witness which has also been noticed by the Trial Court. In the circumstances, the inference of the Trial Court that the prosecution has failed to prove that there was demand of dowry by the accused persons and on account of not meeting the demands, she was treated with cruelty and harassment soon before her death, has not been established, cannot be termed perverse or unsustainable so as to entail interference by this Court.

17. In Prem Kumar v. State of Rajasthan 2009, (2009) 1 JCC 482 the Supreme Court had dealt with the principles governing and regulating the hearing of the appeal against an order of acquittal holding that before reversing the finding of acquittal, the High Court has to keep in view the fact that presumption of innocence is still available in favor of the accused and that the same stands fortified and strengthened by the order of acquittal passed in his favor by the trial court and the High Court should not substitute its own view with the view of the trial court as the trial court had the advantage of looking at the demeanor of witnesses and observing their conduct in the court specially in the witness box. In Syed Peda Aowlia Vs The Public Prosecutor, High Court of A.P, Hyderabad the Supreme Court had dealt with the powers of the appellate court reviewing the evidence upon which an order of acquittal is based by the trial court. It was held that a miscarriage of justice

which may arise from acquittal of the guilty is no less than the conviction of an innocent, it was further held that in a case where admissible evidence is ignored, a duty is cast upon the appellate court to re-appreciate the evidence where the accused has been acquitted for the purpose of ascertaining as to whether any of the accused really committed any offence or not. It was held that in an appeal against the judgment of acquittal it is allowed to interfere only when there are compelling and substantial reasons for doing so. If the judgment which is impugned is clearly unreasonable and irrelevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference.

18. Even if on fresh scrutiny and reappraisal of the evidence and perusal of the material on record, if the High Court is of the opinion that another view is possible or which can be reasonably taken, then the view which favors the accused should be adopted and the view taken by the trial Court which had an advantage of looking at the demeanor of witnesses and observing their conduct in the Court is not to be substituted by another view which may be reasonably possible in the opinion of the High Court. Reliance for this can be placed on 2009(1) JCC 482=AIR 2009 SC 1242, Prem Kanwar v. State of Rajasthan; 2008 (3) JCC 1806, Syed Peda Aowlia v. the Public Prosecutor, High Court of A.P, Hyderabad; Bhagwan Singh and Ors v. State of Madhya Pradesh, 2002 (2) Supreme 567; AIR 1973 SC 2622

Shivaji Sababrao Babade & Anr v. State of Maharashtra; Ramesh Babu Lal Doshi v. State of Gujarat, (1996) 4 Supreme 167; Jaswant Singh v. State of Haryana, 2000 (1) JCC (SC) 140. The Courts have held that the golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented.

19. In the totality of the facts and circumstances taken into consideration, this Court also concurs with the inferences drawn by the Trial Court that the prosecution has failed to establish that there was demand for dowry or that the deceased was harassed or treated with cruelty on account of alleged demands for dowry. On account of inherent contradictions which go to the root of the matter, it has not been established that the deceased was beaten by the accused on account of not bringing the alleged dowry which resulted in the deceased committing suicide by burning herself. The other reason, of the deceased not being satisfied with the marriage on account of being forced into it also cannot be ruled out.

20. The learned counsel for the petitioner has contended that there are no inherent contradictions and that there is sufficient evidence of the deceased being subjected to cruelty and harassment for demand of dowry, cannot be accepted. Considering the entirety of the evidence and specially, the statements of PW-1, PW-2, PW-3, PW-4 and other witnesses, the inferences as alleged by the petitioner cannot be drawn in the facts and circumstances. Although the learned counsel for the petitioner has contended that the Trial Court has committed gross error in overlooking various facts and circumstances, no such gross errors have been pointed except for generic allegations that the contradictions are not inherent and the testimonies of the witnesses specially PW-1, PW-2, PW-3 and PW-4 can be believed. In the appreciation of the evidence even by this Court, on the basis of the testimony of these witnesses, it cannot be held that there was demand for dowry and the deceased was beaten or harassed on account of alleged demands. The learned counsel for the petitioner has failed to show instances of Trial Court ignoring admissible evidence.

21. Even according to the prosecution, there was a complaint of the husband having illicit relation with the wife of his brother which has not been established. In the totality of the facts and circumstances, the charges under Section 304B and 498A of the IPC are not made out and there are no grounds to grant leave to appeal in the present facts and circumstances.

22. The petition to leave to appeal in the present facts and circumstances is therefore, without any merit and the petitioner is not entitled to leave. The petition is therefore, dismissed.

ANIL KUMAR, J.

SURESH KAIT, J.

SEPTEMBER 14, 2010

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