

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

+ **Crl.L.P. No.332/2010**

% **Date of Decision: 11.11.2010**

State Petitioner
Through Mr.Lovkesh Sawhney, APP.

Versus

Sh.Ravi Singh & Ors. Respondents
Through Nemo.

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR
HON'BLE MR.JUSTICE S.L.BHAYANA

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

ANIL KUMAR, J.

*

CRL.M.A.No.15002/2010

Allowed subject to all just exceptions.

Application is disposed of.

CRL.M.A.No.15004/2010

This is an application under Section 5 of the Limitation Act, 1963 seeking condonation of delay in filing the petition seeking leave to appeal.

The applicant has contended that the delay of 78 days occurred

on account of the file being put up before different officials details of which are given in the application.

For the reasons stated in the application there is sufficient cause to condone the delay.

Therefore, the application is allowed and delay in filing the petition for leave to appeal is condoned.

Crl.L.P.No.332/2010

The petitioner has filed the abovenoted petition for leave to appeal against the order dated 11th February, 2010 convicting the respondent No.1 under Section 498-A of Indian Penal Code and sentencing him to undergo RI for a period of three years and a fine of Rs.2000/- and in default to further undergo rigorous imprisonment for six months, however, acquitting respondent Nos.2 to 4 under Section 498-A of IPC and acquitting all the respondents under Section 304-B of Indian Penal Code by order of dated 11th February, 2010 and order dated 15th February, 2010 sentencing respondent No.1 in Sessions Case No.31/2007 titled State v. Ravi Singh and Ors arising out of FIR No.14/2007 under Section 498-A/304-B/34 of Indian Penal Code Police Station Sangam Vihar.

The brief facts of the case of the prosecution are that Mamta, wife

of Ravi Singh, respondent No.1 was married to him on 12th December, 2005 in accordance of Hindu rites at Sangam Vihar. It was alleged that within a month of the marriage, the in-laws of Mamta i.e the husband Ravi, father-in-law Ram Singh, mother in law Nirmlesh and Madhu Chachiya Saas (aunt of husband), had started harassing the deceased on account of dowry and they used to physically assault her and use abusive language against her. Her in-laws had been pressurized her to bring Rs 50,000/- in cash and a motorcycle, which created a lot of tension in the house. A complaint was even made to the Crime Against Women Cell regarding demand for dowry and harassment, however, later on the in-laws of the deceased agreed to keep her with the assurance that she will not be tortured. Allegation was also made that inspite of assurance deceased Mamta was again beaten and tortured. It was further alleged that fearing for her life Mamta ran away from her matrimonial home and came to her a parent's house. On the intervening night of 6th and 7th January 2005, Ravi the husband of deceased came to his in-laws house and he stayed in the house of the parents of Mamta. In the morning Mamta was found hanging from a rod in the roof of a room and had died by the time she was brought down. There was no one in the room except Mamta and according to Jyoti, sister of the deceased two persons were seen going out of the room.

Pursuant to DD No. 5 A which was exhibited as Ex PW7/A recorded at 8:15 a.m. on 7th January 2007, at PS Sangam Vihar, SI Balbir Singh, PW16 and Ct Subhash reached the place of incident which was residential house K-1/18C/43 and there the body of the deceased victim Mamta was found which was hanging by a Ligature (sari) from the pipe in the roof of a room. Since the death of the victim was within 7 years of marriage and it was under unnatural circumstances, the SDM of the area Sh. Tirlok Sharma, PW-10 was apprised about the situation. Photographs of the site were taken by a crime team and the body was removed to AIIMS Hospital by ambulance. Relevant articles including saree, which was ligature was seized. The Executive Magistrate had recorded the statement of Rajesh Kumar PW-3 and Kishan Devi PW-1, proved as Ex. PW1/A and Ex PW 3/C and on the direction of the Executive Magistrate, the FIR was registered as the case of dowry death and cruelty. On the same day accused persons Ravi and his father were arrested from their house.

According to the prosecution the victim deceased Mamta committed suicide as a result of the continuous cruelty and torture inflicted on her by the accused on account of demand of dowry. Respondent No.2 is the father-in-law; respondent No.3 is the mother-in-law and respondent No.4 is the aunt of the husband of the deceased.

All the accused/respondents were put on trial under Section 498-A and 304-B/34 of IPC and an alternate charge under Section 302 of IPC was also framed against respondent No.1.

The respondents had not pleaded guilty and had claimed trial and during the trial the prosecution examined 18 witnesses. The statements of the accused under Section 313 of the Criminal Procedure Code was also recorded and the accused examined 2 witnesses in their defence, and accused Ram Singh appeared in person to depose his defence on oath as DW-3.

This cannot be disputed that the High Court has the power to reconsider the whole issue, reappraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial Court, if the findings are against the evidence or record or unsustainable or perverse. However, before reversing the finding of acquittal the High Court must consider each ground on which the order of acquittal is based and should record its own reasons for not accepting those grounds and not subscribing to the view of the trial Court that the accused is entitled to acquittal.

This is also settled law 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 demeanour 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 favorable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent.

The allegations against the accused were that they were demanding a motorcycle and an amount of Rs.50,000/- as dowry and for the demands raised by the accused the deceased Mamta was subjected to torture and cruelty. The body of the deceased namely Mamta was found hanging by a ligature (sari) from the pipe in the roof of a room of her parents and since she had died within seven years of marriage and her death was under unnatural circumstances, therefore, presumption under Section 113-B was invoked against the accused.

The trial Court after considering the evidence had observed on the basis the post mortem report Ex. PW13/A that the death was on account of asphyxia as a result of hanging by a ligature and no other kind of external injury mark was noticed on her body. In fact PW 13, Dr. Chitranjan Behra, who conducted the post mortem, deposed that there is a difference between death due to hanging and death due to strangulation. Injury in a case of death by strangulation would be of a different kind as that of death by hanging. SI Balbir Singh, PW-16 had deposed that on receiving DD No. 5 vide Ex. PW-7/A he reached the spot immediately and saw that there was a single bed in the room where the deceased was found hanging along with a one foot paddle sewing machine lying adjacent to the bed, which he admitted could have been used by the deceased in committing suicide. He had also not found any other apparent injury mark on the body of the deceased so as

to reflect any struggle or resistance by the deceased.

The trial Court took into consideration a complaint which was filed by the deceased before the Crime Against Women Cell on 26th September 2006, and Mamta's statement was also recorded on 3rd October 2006, however, on 1st December, 2006 the deceased had agreed to go back to her matrimonial home with her husband respondent No.1. The respondents had pointed out to the trial Court that a petition for restitution of conjugal rights was filed by respondent no.1 on, 4th July 2006 and the complaint before Crime Against Women Cell was filed as a counter blast.

This was not disputed before the trial Court that the deceased Mamta after coming back to her matrimonial home on 1st December, 2006 had gone to her parents house on 9th December, 2006 for participating in the birthday celebrations of her brother's son and the respondent No.1 accused had himself taken her to her parent's house and then had returned back. This evidence was considered to negate the allegation that the deceased was turned out of the matrimonial home as this was not denied that the respondent no.1 had accompanied her to her parents house and other factors which were noticed by the trial Court. The learned additional public prosecutor has not shown any

evidence on the basis of which it can be inferred that the deceased was turned out of the matrimonial home after she had gone while the petition for restitution of conjugal rights filed by the respondent no.1 and the complaint filed by the deceased was pending.

The trial Court has further held that from the testimony recorded before the trial Court that the father of the deceased was a Mason and had passed away 5-6 months after the marriage. It was further inferred that the demand for an amount of 50,000 and a motorcycle knowing very well the poor financial condition of the family defied any logic in the facts and circumstances and the evidence led on record. The respondents had denied that they had made the demands for Rs.50,000/- and a motorcycle. The respondent no.1 also denied his presence in the matrimonial home on the night of 6th January 2007. It was contended that no particulars of harassment and cruelty had been disclosed and the allegations were omnibus and generic in nature. It was rather contended that instead of demanding money from the family of the deceased, financial assistance was given to the father of the deceased for the amount incurred by him for providing food during the marriage ceremony as he was a poor meson and was also suffering from cancer. It has also been held by the trial Court that in the circumstances the allegation that the motorcycle and an amount of Rs.50,000/- was demanded is without any cogent evidence on record.

The learned counsel for the petitioner has also not able to show any such cogent evidence on the basis of which it can be inferred that the demand for Rs.50,000/- or motorcycle was made by the respondents from the family of the deceased. The respondents had also contended that no demand was made at the time of marriage and in any case soon before the death of the deceased on 7th January, 2007 no demand of any type was made nor has been established. It was also contended that after complaint before the Crime Against Women Cell and during the pendency of petition for restitution of conjugal rights filed by the respondent no.1, the deceased was taken back to the matrimonial home and, therefore, there was no account of any cruelty inflicted from May, 2006 when the deceased was at the house of her parents. This has also been held that after the deceased was taken back to the matrimonial house till she came back to her parents house to attend the birthday ceremony of her brother, no harassment or cruelty has been established.

This Court has perused the trial Court record and the pleas and contentions raised by the Learned Additional Public Prosecutor. Before the trial Court the prosecution had not pressed the charge of murder as there was no cogent evidence that the deceased was hanged by the accused. No sign of any struggle or any injury was found on the body of the deceased. The room where the deceased was found hanging also

had only one bed. Although the respondent No.1 denied that he was present in the night of 6th and 7th January, 2007, however, the trial Court has held that he was present in the house. The trial Court has also noted that there was no sign or any mark of resistance of any kind and had there been a case of deceased being hanged by anyone then there would have been resistance by the deceased which would have become apparent, however, since no incriminating circumstance was found and as there was only one cot in the room where the deceased was found hanging, therefore, merely because the deceased was held to be present in the house it cannot be inferred that the respondent no.1 had committed the murder of the victim. Though the sister of the deceased Jyoti, PW-2 had deposed that two more persons were seen going out from the room where the deceased was found hanging, however, the said allegation remained uncorroborated and could not be established by any other evidence and, therefore, respondent No.1 has not been convicted by the trial Court under Section 302 of IPC. The learned counsel is also unable to show any evidence on the basis of which it can be held that the charge under section 302 of IPC can be made out against the respondent no.1. The learned counsel is also unable to show any illegality or perversity in the order of the trial Court in this regard.

Regarding the charge of 304B IPC it is no more res integra that it

must be proved that the death of the women must have been caused by burn or bodily injury otherwise than under normal circumstances; such death must have occurred within seven years of her marriage; the woman must have been subjected to cruelty or harassment by her husband or by relatives of husband and the cruelty and harassment must be for or in connection with the demand for dowry and such cruelty or harassment must be shown to have been meted out to the woman soon before her death. Since it was not disputed and could not be disputed that the death of the wife of the respondent No.1 was within seven years of marriage and was otherwise than under normal circumstances, therefore, two of the ingredients of Section 304B were made out.

Regarding the demand for dowry and subjecting the deceased to cruelty or harassment the trial Court noted that the allegations for demand of motorcycle and Rs.50,000/- were omnibus and prosecution witnesses failed to disclose and prove the same. Considering the deposition of the mother of the deceased, PW-1 it is apparent that the testimony nowhere reflects that she herself had any encounter with the accused persons on this account nor that the alleged dowry demands were made to her nor that the deceased complained to her mother about any specific cruelty or harassment meted out to her. Though it has been alleged that there were beatings or abuses, however, the

allegations are omnibus and no particulars have been given. Rather the mother of the deceased had admitted in the cross examination that no dowry had been demanded at the time of marriage. The mother of the deceased also admitted in her cross examination that after the deceased had gone back with respondent no.1 to her matrimonial house subsequent to the submission of the petition for restitution of conjugal rights and the complaint filed before Crime Against Women Cell, respondent No.1 had brought the deceased to her house and her daughter was also accompanied by the mother-in-law, respondent no.3. At that time or thereafter it is not deposed that any complaint for demand of dowry of Rs.50,000/- or a motorcycle was made nor any alleged cruelty or harassment particulars were given. If the deceased would have been treated with cruelty or harassment she would have disclosed the particulars to her mother and even the mother-in-law would not have accompanied the deceased to her parent's house. There are apparent contradictions in the statement of PW-1 as she stated that the mother-in-law of respondent No.1 had accompanied the deceased to her house and in the cross examination she had contended that the deceased was turned out of the house. Though she deposed that there was a quarrel at her house, however, she specifically admitted that the dispute was not over the demand of dowry. No complaint was made to the women cell for the alleged demand for dowry or harassment or torture after she was taken back in the matrimonial home in

December, 2006.

In the circumstances, on the basis of the inconsistent statement of the mother of the deceased, PW-1 the finding that the prosecution has failed to establish that the deceased was treated with cruelty or harassment or there had been a demand for dowry by respondent Nos.1 to 4 cannot be termed to be unsustainable or perverse in any manner. The learned counsel for the petitioner has also failed to point out such grounds or such evidence on the basis of which it can be inferred that the findings of the trial Court or based on no evidence or contrary to evidence on record.

This has not been disputed by the learned counsel that the complaint made before the crime against Women Cell was in English and as admitted by the witnesses, the deceased did not know or understood English, meaning thereby that victim Mamta was not aware of the contents of the detailed complaint presented before CAW and so it could not be the basis to hold that she was treated with cruelty or was harassed in the absence of any cogent corroborating evidence regarding cruelty or harassment. The learned counsel for the petitioner cannot dispute that such an application would not be substantive evidence for drawing the inferences that the deceased was treated with cruelty or harassed by the respondents. This Court has also considered the

evidence of PWs.1, 2 & 3 and on perusal of the evidence it cannot be inferred that the deceased was treated with cruelty or that she was harassed for the alleged demands of Rs.50,000/- and motorcycle soon before her death on 7th January, 2007.

What is the cause for the deceased to have committed suicide in her parental home has not been established though there is evidence that the respondent no.1 used to consume liquor and that he had even consumed liquor on a day prior when the deceased was found hanging in the house of the room of her parents. There was no demand for dowry and cruelty and harassment proximate to her death. In the circumstances though the trial Court has held that charge under Section 498A of Indian Penal Code has been made out against respondent no.1, however, it cannot be held the charge under Section 304B of Indian Penal Code has been made out against all the respondents and the finding of the trial Court that the charge u/s 304B has not been made out against the respondents cannot be held to be unsustainable.

The respondent No.1 has not appealed against his conviction under Section 498A of the Indian Penal Code and his sentence of three years rigorous imprisonment and a fine of Rs.2000/-, however, in absence of the other ingredients of Section 304B, it cannot be held that the charge under Section 304B can be made out against

the respondents. The learned Additional Public Prosecutor has failed to point out any such illegality or perversity in the order of the trial Court which would require interference by this Court nor can it be held that the charge under Section 304B of Indian Penal Code is made out against the respondents. In the circumstances, there are no grounds to grant leave to the petitioner against orders dated 11th February, 2010 acquitting the respondents of charge under section 304 B of Indian Penal Code. The petition seeking leave to appeal in the facts and circumstances is without any merit and it is, therefore, dismissed.

CRL.M.A.No.15003/2010

This is an application by the petitioner for direction to the police to arrest the respondent under Section 304B of IPC read with Section 34 of IPC.

Since the leave to appeal has been declined and the petition has been dismissed, there are no grounds to direct the police to arrest the accused persons for offence under Section 304B of IPC read with Section 34 of IPC.

The application is, therefore, dismissed.

ANIL KUMAR, J.

S.L.BHAYANA, J.

NOVEMBER 11, 2010

‘k’