

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **Crl. M.A. No. 17740/2010 & Crl. LP No. 433/2010**

% **Date of Decision: 14.12.2010**

State Appellant
Through Mr. Jaideep Malik, APP
Versus
Rakesh Ram & Anr. Respondent
Through Nemo

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

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| 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.

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Crl. M.A. No. 17740/2010

This is an application by the appellant/applicant seeking condonation of delay in filing the petition for leave to appeal on the ground that the impugned judgment was pronounced on 19th January, 2010 and considerable time was taken in procuring the certified copy of the judgment, which was received on 26th March 2010.

The applicant has given the details as to who has considered the file to decide whether a petition for leave to appeal is to be filed or not.

The applicant has relied on Collector of Land Acquisition Vs. Katiji, (1987) 2 SCC 107 and State of Nagaland Vs. Lipok Ao, 2005 (3) SCC 752 holding that sufficient cause should be considered with pragmatism in justice oriented approach rather than a technical defection of sufficient causes for explaining every days delay having regard to considerable delay of procedural red tape in the decision making process of the government, certain amount of latitude is permissible and should be given. The applicant has contended that the State Government is the impersonal machinery working through its officers or servants- hence it cannot be put on the same footing as an individual.

The petitioner/applicant, in the circumstances, has contended that there is sufficient cause for condoning the delay of 211 days in filing the petition for leave to appeal.

Considering the averments made in the application, it is apparent that the petitioner has been able to make out sufficient cause for condonation of delay in filing the petition for leave to appeal.

Consequently, the application under Section 5 of the Limitation Act, seeking condonation of delay in filing the petition for leave to appeal is allowed and delay is condoned.

Crl. LP No. 433/2010

The petitioner has sought leave to appeal against the order dated 19th January, 2010 passed by the Sessions Court in Sessions Case No. 92/2008 titled as State Vs. Rakesh Ram and Mahipal @ Ankit arising out of FIR 362/2006 under Section 498A/304B/34 of IPC, at P.S. Delhi Cantt., New Delhi acquitting the accused persons on all charges.

The case of the prosecution is that on 3rd October 2006, DD No. 3A was received stating that a woman had been admitted at Safdarjung Hospital with burn injuries. The allegations against the accused persons were leveled on 4th October 2006 by the complainant, Geeta, PW-2 sister of the deceased Hema, residing at Village & PO Badalo, District Pithoragarh, Uttaranchal, stating before the SDM, Sh. S.M. Bharadwaj, PW-3 that “her sister Hema was married to accused Rakesh Ram as per Hindu rites and customs on 22nd June 2004 with the consent of family members without any dowry demand. Husband of her sister, accused Rakesh Ram used to torture, harass and beat her sister, Hema as she refused to give the amount of Rs 3,00, 000/- which was deposited by her mother in the name of her sister in FDRs. Accused

Rakesh Ram used to threaten her sister to kill her. At one point of time, pregnancy of her sister was terminated, due to torture, beatings and harassment by accused Rakesh Ram. On 3rd October 2006 at about 7:30 am, accused Rakesh Ram, husband of her sister informed them about the death of her sister due to burns. She along with her family members reached Safdarjung Hospital, on 4th October 2006, in the morning and verified the factum of death.” She further told that on 20th September 2006 her sister told her on telephone that accused Rakesh Ram used to beat and ill treat her and used to threaten to kill her. Since, her sister was pregnant, she was not allowed to travel, so they wanted to take her after delivery of child but prior to that accused killed her by burning. On this statement, case was registered as FIR No. 362/06. Postmortem on the dead body was conducted and investigation was carried out. However, the last rites of the deceased had been performed by the accused.

During the investigation, on the pointing out of Geeta, accused Rakesh Ram and accused Mahipal @ Ankit were arrested. Arrest memo vide Ex. PW2/B and Ex. PW 13/B was prepared. Accused Mahipal @ Ankit was arrested as it was alleged that he used to instigate accused Rakesh Ram for demanding money from the deceased. Statements of witnesses were recorded. Site Plan of the place of incident was prepared vide Ex PW12/A. Articles relating to deceased Hema were seized vide seizure memo Ex. PW7/A. Postmortem report was obtained vide Ex.

PW9/A in which PW-9. Dr. Ajay Kumar opined that the cause of death was shock as a result of antemortem flame burns involving 95% of total body surface area and time since death was approximately one and a half days. Thereafter, after completion of the investigation charge sheet was filed against both the accused persons. After having found prima facie case against both the accused persons, charge against both the accused persons was framed under Section 498 A/ 304 B read with Section 34 IPC to which they pleaded not guilty and claimed trial.

The prosecution has alleged that the accused Rakesh Ram on instigation of accused Mahipal @ Ankit started harassing, beating and torturing Smt. Hema Kumari for want of more dowry, and that soon before her death and thereafter, in furtherance of their common intention, they put her on fire on 2nd October 2006 as a result of which she was hospitalized on the same date and on 4th October 2006, due to said burn injuries, she died an unnatural death within a period of seven years of her marriage.

In order to prove its case, the prosecution has heavily relied on the deposition of Smt. Geeta, real sister of deceased as PW-2, Sh. Ishwar Raj, uncle of deceased as PW-5, Sh. Himmat Ram, maternal uncle of deceased as PW-11 and Smt. Leela as PW-8.

PW-2, Smt. Geeta had categorically stated in her statement made before the SDM vide Ex PW2/A and in court that accused Rakesh Ram used to torture, beat and harass her sister after the marriage in view of the demands of the three lacs deposited in the name of the deceased by her mother. It has also been alleged that on 20th September 2006, her sister had telephoned her stating that she was given beatings by accused Rakesh Ram for demand of money and that even a threat to kill her was made by the accused. These allegations have been also been repeated by PW-5, PW-11 and PW-8, however, they are omnibus without any specific particulars.

However the Trial court has observed the various contradictions and inconsistencies in the depositions of the above stated witnesses. PW-2, Smt. Geeta herself stated that at the time the marriage was solemnized, there was no demand of dowry made by the accused Rakesh Ram. After the marriage, PW-2's sister, the deceased came to Delhi along with her husband and in-laws, however none from the maternal side had visited her. Also when she came along with her husband to Pithoragarh, she came with gifts and clothes for PW-2 and her other sisters and stayed on for a total of 15 days. After which she left for Delhi happily. However still she did not mention any demand for dowry made or any account of cruelty inflicted on her. Nor was there any written complaint made to any authority during the 5-6 months

she stayed with her sister PW-2 in Pithoragarh. PW-2 has also deposed in her cross-examination that accused Mahipal @ Ankit never instigated accused Rakesh Ram for demand of Rs. 3 Lacs in her presence.

PW-5, Sh Ishwar Raj too had categorically deposed that he never used to visit the house of deceased as they resided in a restricted army area where one could only enter with a pass. He had further deposed that he never witnessed his niece being beaten by the accused Rakesh Ram and that accused Rakesh Ram had in fact opened a joint account in the post office with the deceased which was operated by both of them. Also PW-7 Dev Ram and PW-8 Leela, during their cross-examination had categorically deposed that the accused used to treat the deceased Hema with love and affection and that she had never complained about the accused. It had also been deposed that accused Rakesh Ram never demanded any FDRs or ornaments of the deceased and that it is the sisters of the deceased Hema who used to demand money and financial help from Hema.

The trial court has also carefully scrutinized the dying declaration made by the deceased to PW-6, vide Ex PW6/A. SI Nihal Chand PW-6 is the one who had moved an application before the doctor for recording the statement of Hema as Ex. PW6/A. The doctor had opined that the patient was fit for making the statement and that she

was conscious, coherent and oriented. Hema gave her statement voluntarily which was read over to her and then endorsed by her as well. She categorically stated that her husband was keeping her well and no complaint against him was made by her.

PW-9 Dr. Ajay Kumar too has corroborated this fact that as per the history contained in Ex PW 10/A, it was given by the patient Hema Kumar herself that she had tried to commit suicide by pouring kerosene oil over her body. Initially she was treated at Air Force Medical Centre and thereafter referred to Safdarjung Hospital. He too deposed that she was conscious, oriented and coherent. The Trial court has rightly placed reliance on the dying declaration of the deceased and this court does not find any irregularity or perversity in the finding of the Trial Court. The learned Public Prosecutor has not made out any ground as to why the dying declaration of the deceased be not relied or believed. No other evidence has been pointed out which has not been considered by the Trial Court. No ground has been made out by the petitioner which will make the findings of the trial Court unsustainable or perverse in any manner.

So far as the demand for 3,00,000/- is concerned, the same was pertaining to a fixed deposit and the FDR of the same remained with PW-2 Smt. Geeta and it never passed to the accused Rakesh Ram. Also

as to the allegations of beatings and torture to deceased Hema is concerned, the same is not proved on record as there is no direct evidence to suggest the same. The allegations regarding beatings to the deceased are also omnibus and without any particular. These allegations cannot be relied on in view of statement given by her before her death that her husband used to keep her well. In view of her statement which was given by her in coherent state of mind, the allegations of beatings to the deceased by the accused cannot be believed or relied on.

This is settled law that in reversing the finding of acquittal the High Court has to keep in view the fact that the presumption of innocence is still available in favor of the accused which is rather fortified and strengthened by the order of acquittal passed in his favor. 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 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.

Thus the trial Court had concluded that the prosecution had failed to prove its case beyond all reasonable doubt against the accused persons and consequently both the accused persons were acquitted on all charges. The learned public prosecutor too has not been able to make out any ground which will show that the inferences drawn by the Trial Court are unsustainable or not based on evidence or that any material evidence has been ignored by the Trial Court.

On perusal of the Trial Court record and the evidence of all the witnesses, it is apparent that there is no allegations of dowry demands or cruelty being successfully imputed against the accused Rakesh Ram and Ankit. The inconsistencies in the depositions of PW-2, PW-5, PW-11 and PW-8 are too glaring to be ignored and the trial court has rightly disbelieved them. This court also finds no perversity or illegality in the finding of the Trial Court on perusal of the record of the Trial Court. In fact none of the witnesses have deposed any instance in which they had witnessed the accused Rakesh Ram inflicting cruelty or harassment on the deceased. This coupled with the fact that the deceased had made a statement before PW-6 SI Nihal Chand vide Ex PW6/B, admitting that her husband was keeping her very well and that she had burnt herself by pouring kerosene oil on herself, renders the allegations against the accused persons unreliable. As this is diametrically opposite to what is deposed by PW-2. Smt. Geeta with respect to the telephone call from the deceased on 20th September 2006 prior to the date of incident, in

which the deceased allegedly complained about being beaten in view of dowry demands. The dying declaration vide ExPW 6/B rebuts the presumption u/s 113A and as such the prosecution has failed to prove its case beyond all reasonable doubt. This court does not find any cogent reason to disbelieve the dying declaration which has been recorded with due consideration to procedural requirements.

The conduct of the accused is also in consonance with the dying declaration given in Ex PW 6/B, as the deceased was admitted to the hospital by him and the last rites and all the consequent expenses were borne by the accused. This fact has also been corroborated by the deposition of complainant PW-2.

On perusal of the testimonies of the other witnesses also, this Court is unable to find any cogent evidence against the accused Rakesh Ram and Ankit on the basis of which it can be inferred that the deceased Hema had died on account of cruelty or that she committed suicide pursuant to any alleged dowry demands. PW-2 has also produced one photocopy of ikrarnama mark vide PW2/A which allegedly show that accused Rakesh Ram used to treat the deceased with cruelty. However PW-11, Himmat Ram himself had admitted that the said document did not contain any allegations of demand of dowry or cruelty. He further deposed that he wasn't aware as to where the

original document was lying and that the original of PW2/A was never even written by accused Rakesh Ram.

In the circumstances, the petitioner has failed to make out a case of cruelty against the respondent and that the deceased committed suicide on account cruelty inflicted on her pursuant to demands made for dowry. Thus, there are no grounds to grant leave to appeal to the petitioner and the decision of the Trial Court dated 19th January, 2010 cannot be faulted.

The learned counsel for the State Mr. Malik is also unable to point out any illegality or perversity in the said order, which would require any interference by this Court.

The petition for leave to appeal, in the facts and circumstances, is without any merit and therefore, the prayer of the petitioner to grant leave is declined and the petition is dismissed.

ANIL KUMAR, J.

S.L. BHAYANA, J.

DECEMBER 14, 2010