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

Date of Hearing & Decision: 8th August, 2011

+ CRL.L.P. 60/2011

STATE

..... Petitioner

Through: Mr. Rajesh Mahajan, Addl. Standing
Counsel with SI Prembir Singh, P.S.
Sultanpuri.

versus

SURAJ MEHTO & ORS

..... Respondent

Through: Mr. S. B. Dandpan with Mr. Kamlesh
Kumar Sharma, Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE G. P. MITTAL

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| 1. Whether reporters of local papers may be allowed to see the Order? | Yes |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the Order should be reported in the Digest? | Yes |

J U D G M E N T

MR. JUSTICE S. RAVINDRA BHAT, (OPEN COURT)

1. This judgment will dispose of the petition for leave to appeal preferred by the State challenging the judgment and order dated 30.04.2010 of learned Addl. Session Judge in SC No.137/2007. By the impugned judgment the Trial Court acquitted the Respondents, Suraj Mehto and Dhanwanti of the charges for having committed offences under Sections 498A/ 304B/ 34 IPC.
2. The prosecution had alleged that the Respondents were guilty of having

committed offences under Sections 498A/ 304B/ 34 IPC. The marriage between Suraj Mehto and Promila (hereinafter referred to as 'deceased') took place in April, 2005 at Mosnpur, District Chapra, Bihar. The prosecution alleged that at the time of marriage the accused/ Respondents had demanded a total amount of ₹ 50,000/-, which was paid to them. It was alleged that a further demand of ₹ 1,00,000/- was made to purchase a motorcycle. The deceased's mother (Deep Jhari, PW-7) and her son (Sanjay Kumar, PW-5) were unable to pay the entire amount but had paid ₹ 80,000/- approximately six months after the marriage. The deceased died on 16.06.2007; it was a case of burning. She was taken to LNJP Hospital and declared dead. The deceased's relatives statements were recorded during the investigation; the statements were recorded by the concerned SDM (PW-15) and the same were produced as Ex.PW-15/G. Based on the materials, collected during the investigation, the accused were charged for committing the offence under Sections 498A/ 304B/ 34 IPC. They entered the plea of not guilty and claimed trial. The prosecution examined 15 witnesses including the relatives of the deceased and after considering all these materials, the Trial Court was of the opinion that the prosecution could not establish the guilt beyond reasonable doubt and consequently acquitted them vide judgment dated 30.04.2010.

3. Mr. Rajesh Mahajan, learned Addl. Standing Counsel submits that the Trial Court fell into error in not considering the statements of the witnesses who were categorical that the deceased was subjected to harassment and cruelty soon before her death. It was submitted that the Trial Court misread Section 304B and concluded erroneously that the cruelty and harassment for the sake of dowry had not taken place soon before her death on 16.06.2007. The learned counsel submits that demands of dowry made at the time of marriage as well as thereafter; the cruelty meted to the deceased during the subsistence of her marriage, which included harassment before her death i.e. 16.06.2007 and unnatural death within 7 years of solemnization of her marriage, all of these qualify for the operation of presumption under Section 131B of Indian Evidence Act. It was submitted that the Trial Court fell into error in not appreciating this and concluded that the

accused were not guilty.

4. We have carefully considered the submissions and the Trial Court record, requisitioned for the purpose of these proceedings. PW-5 Sanjay Kumar (deceased's brother) deposed that two demands for dowry were made at the time of marriage i.e. ₹ 20,000/- and ₹ 30,000/-, which were fulfilled at the relevant time i.e. April, 2005. The next demand was made about 6 months later by the accused for purchasing a motorcycle; this witness as well as PW-7 (deceased's mother) deposed that ₹ 1,00,000/- was demanded, however, they could not give the amount; PW-5 had to prematurely encash a chit fund (committee) money, which led to accused being paid ₹ 80,000/- sometime in October, 2005. PW-5 and PW-7 are consistent upto this point. After this there is variance; PW-5 is silent whether any cruelty was meted out during the subsistence of the marriage at all. PW-7 (deceased's mother) deposed that the deceased daughter was harassed by the accused and his family members for not fulfilling the dowry demands. She deposed that even 2 months before her death i.e. 16.06.2007 the deceased told her about the harassment suffered by her.
5. The Trial Court considered the ingredients of Section 304B and analyzed them in its impugned judgment. It also considered the decision of the Supreme Court in *Hira Lal and Others v. State (Govt. of NCT) Delhi*, (2003) 8 SCC 80 to underline that there is no set time limit while interpreting the expression "soon before her death" occurring in Section 304B. The Court correctly interpreted the expression and gauged from the totality of circumstances in every given case. After analyzing the provisions of law, noting the testimonies and the relevant material witnesses, the court went on the impugned judgment and observed as follows: -

"16. The respective testimonies of PW-5 Sanjay Kumar and PW-7 Deep Jhari reflect only demand of ₹ 1,00,000/- and one motorcycle stated to have been made by all the accused persons including accused Om Parkash (since expired). The deceased Promila was got married with accused Om Parkash (since expired) in the month of April, 2005. The testimony of PW-5 Sanjay Kumar reflected that the demand of ₹ 1,00,000/- and

motorcycle was satisfied by paying ₹ 80,000/- to accused Om Parkash in presence of accused Dhanwanti and thereafter as per the testimony of PW-5 Sanjay Kumar and PW-7 Deep Jhari, no demand of the dowry was made by all the accused or any of the accused. PW-7 Deep Jhari prior two months from the date of death also went to the matrimonial home of the deceased Promila and subsequent to this there is no allegation of any demand of dowry from the accused or any of the accused from deceased Promila. PW-7 Deep Jhari only deposed that at that time Promila had informed about the causing of harassment for the dowry. These allegations are general in nature and no specific demand is referred or mentioned by PW-5 Sanjay Kumar and PW-7 Deep Jhari.

17. The issue needs consideration is that whether the demand of ₹ 1,00,000/- and one motorcycle which was made by accused persons including Om Parkash (since expired) after six months of marriage is sufficient to constitute the dowry demand and subsequent harassment within the meaning of Section 304B IPC. As per the testimony of Pw-5 Sanjay Kumar the said demand of ₹ 1,00,000/- and one motorcycle was stated to be almost fulfilled when he paid ₹ 80,000/- to accused Om Parkash (since expired). However, the testimony of PW-5 Sanjay Kumar and PW-7 Deep Jhari reflect that PW-5 Sanjay Kumar has paid ₹ 80,000/- to accused persons after the encashment from one committee but the details were not mentioned. There is nothing on the record which can suggest that accused persons have actually paid ₹ 80,000/- to the accused persons except bald deposition of PW-5 Sanjay Kumar and PW-7 Deep Jhari.

18. It is not disputed that Promila has expired within seven years of the marriage under unnatural circumstances. However, the main ingredient of Section 304B IPC and Section 113B of the Indian Evidence Act is that the deceased must be subjected to harassment for dowry soon before her death. The marriage was performed in the month of April, 2005. As per the testimony of PW-5 Sanjay Kumar and PW-7 Deep Jhari, after six months of marriage, the accused persons have demanded ₹ 1,00,000/- and one motorcycle and expect the said demand there is no any other dowry demand made by PW-5 Sanjay Kumar and PW-7 Deep Jhari. As per PW-5 Sanjay Kumar the said was fulfilled and thereafter there was no evidence that the accused persons have raised dowry demands. PW-7 Deep Jhari had also visited the matrimonial house of deceased Promila two months prior to incident and thereafter no dowry demand was made by all accused or any of the accused. Even the incident of harassment and cruelty

done by the accused persons to deceased Promila due to the dowry demands are not mentioned in the respective testimonies of PW-5 and PW-7 except bald allegations. There must be existence of a proximate and live link between the effect of cruelty based on the dowry demand and the death concerned. The testimonies of PW-5 and PW-7 are not sufficient to connect the death of the Promila with the dowry demands alleged to have been made by the accused persons. During the entire period of two years of marriage of deceased Promila with accused Om Parkash i.e. till the time of death Promila only one incident of dowry demand has been mentioned by PW-5 Sanjay Kumar and PW-7 Deep Jhari. It was made after the six months of the marriage and thereafter there is no allegation of dowry demands. It appears that no dowry demand was made by the accused persons from the deceased Promila soon before her death. The prosecution has failed to prove that the deceased Promila has died due to the dowry demands made by all the accused. The prosecution has also examined other witnesses including the Investigating Officer but their respective testimonies also do not connect all the accused with alleged offence.”

6. We may add here that the prosecution story was that PW-5 (the son of PW-7, Deep Jhari) used to live in a joint family with her. Significantly, he did not depose about the dowry harassment at all or particularly dowry harassment any time before the death or the incident of 16.06.2007. Furthermore, PW-7 the mother did not mention or specify kind of harassment meted to the deceased. These two aspects assume considerable importance in this case because in order to attract the presumption under Section 113B the prosecution has to prove the bare foundational facts. This would include the acts of harassment – even though specific dates cannot possibly be mentioned by the witnesses at least by approximation they can be accounted for. More importantly, the prosecution has to be specific as to what kind of harassment it was, mental or physical; what was the act of cruelty in a given case has to be proved. In the present case no such specific act was alleged or proved.
7. It has been repeatedly stated over the last 5 decades or more that High Courts while considering the petition for leave to file appeal by the State against orders of acquittal has to be satisfied that there are compelling and substantial reasons to grant such reliefs and acquittal. It has been emphasized that an acquittal is the

affirmation of innocence which every citizen is entitled to enjoy. While permitting an appeal, therefore, the court has to be satisfied that the impugned judgment attacked by the State contains glaring errors and appreciation of law or material facts or betrays in breach, which has allowed to clear miscarriage of justice. We find none of these in the present case requiring the grant of leave.

8. The petition is, therefore, dismissed.

S. RAVINDRA BHAT, J.

G. P. MITTAL, J.

AUGUST 8, 2011

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