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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 29th August, 2011

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CRL.L.P. 59/2011

STATE

..... Petitioner

Through : Mr. Dayan Krishnan, ASC.

Versus

PRADEEP KUMAR & ORS.

..... Respondents

Through: Mr. R.N. Sharma, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE G.P.MITTAL

1. Whether reporters of local papers may be allowed to see the Order? No.
2. To be referred to the Reporter or not? No.
3. Whether the Order should be reported in the Digest? No.

J U D G M E N T

G.P.MITTAL, J. (ORAL)

CrI. M.A.1296/2011 (Under Section 5 of the Limitation Act)

1. There is a delay of 168 days in filing the petition. The delay is accordingly condoned for the reasons as mentioned in the application.

CRL.L.P. 59/2011

2. The State seeks leave to appeal against the judgment dated 14.05.2010 in Sessions Case No.236/08 passed by the learned Additional Sessions Judge (ASJ), Rohini whereby the Respondents (accused) were acquitted of the charges for committing the offences punishable under Sections 498A/304-B/34 of the Indian Penal Code (IPC).

3. Ms. Reena (the deceased) daughter of the complainant Jai Bhagwan (PW-3) married the accused Pradeep Kumar on 29.05.2005. Kusum is the mother-in-law, Rajesh Kumar is the *Jeith*, Hemlata @ Rajjo is the *jethani* of the deceased. It is alleged that since inception of the marriage Reena was harassed and treated with cruelty for not bringing sufficient dowry. Santosh (PW-4) the deceased's mother paid her ₹ 10,000/- or ₹ 5,000/- on several occasions. The illegal demand made by the accused did not stop. It is alleged that on 26.04.2007 Manoj (PW-7) the deceased's younger brother went to Reena's matrimonial home to fetch her to the parental home in connection with Sudha's (Reena younger sister) marriage. All the accused, it is alleged, asked Manoj to convey to his parents that they were incurring more expenditure on Sudha's marriage, than was spent for Reena's marriage. Therefore, they ought to equalize the same by giving more amount to them (the accused). Manoj told this to his parents (PWs 3 and 4). According to the prosecution, on 06.05.2007 at the time of Sudha's wedding Pradeep did not allow Reena to go to the stage and made a demand of ₹2,00,000/- from PW-3. At the time of *Vidai* on 08.05.2007, a sum of ₹50,000/- was paid by Reena's father to Pradeep. Reena requested her parents to arrange the remaining sum of ₹ 1,50,000/- without any delay to save her life. Reena with Pradeep left for the matrimonial home on 08.05.2007 at about 10:30 A.M. That evening, PW-3 received a telephone call that Reena had been taken to the hospital. PW-3 and his family members reached DDU hospital, but Reena was not there. They went to the Police Station. It is alleged that PW-3's statement was recorded by the SDM only on 09.05.2007.
4. After completion of the investigation, a report under Section 173 Cr.P.C. was presented against the accused.
5. In order to bring home the guilt of the accused, the prosecution examined 15 witnesses. In their examination under Section 313 Cr.P.C., the accused denied the prosecution allegations and pleaded that they have been implicated falsely in order to extract money from them.

6. By the impugned judgment, the Trial Court held that the prosecution case against the accused was not proved beyond reasonable doubt as there was a delay in lodging the report with the SDM; there were improvements about the demand and its fulfillment; the complainant's statement regarding demand of ₹2,00,000/- on 06.05.2007 and payment of ₹ 50,000/- on 08.05.2007 was unbelievable as the case was set up by the complainant for the first time when he was examined in the Court as PW-3. It was further held that though PW-4 Santosh, the deceased's mother claimed having paid ₹5,000/- and ₹ 10,000/- on several occasions, but the same was not believable as she had no capacity to pay the amount due to her meager means as deposed to by her in the cross-examination. The accused were acquitted giving them benefit of doubt.
7. It is well settled that the High Court interferes in an order of acquittal and grants leave only when there are good and sufficient reasons to do so. It has been reiterated that there should be gross mis-appreciation of facts or mis-application of law resulting in miscarriage of justice.
8. The prosecution examined three witnesses to prove the allegation of demand of dowry, harassment and the cruelty inflicted on Reena. PW-3 Jai Bhagwan is Reena's father. He testified that on 06.05.2007 he married his fourth daughter Sudha. At the time of Sudha's marriage, all the accused demanded ₹ 2,00,000/- from him on the ground that he was incurring more expenditure on Sudha's marriage. On 08.05.2007 at the time of Pradeep's *Vidai*, he gave ₹50,000/- in cash to him, which he received from *Bhaat, Kanyadan, etc.* Pradeep and Reena left his house on 08.05.2007 at 10:00 a.m. In the evening, he received a message that Reena had been killed by her in-laws. PW-3 was silent about Manoj's visit to Reena's matrimonial home on 26.04.2007 and the demand by the accused to equalize the expenditure. In cross-examination, PW-3 deposed that he owned 12 *bighas* of agricultural land and had an annual income of ₹ 40,000/- from it. He was working as a *Munim* and getting a salary of ₹ 2,000/- to ₹ 3,000/-. It was only in the cross-examination by the learned APP that the witness stated that on 26.04.2007 the demand to equalize the

expenditure (by paying them the difference) was made to his son Manoj (aged about 14 years at the relevant time). PW-3 admitted that he did not make any statement to the police or to the SDM on 08.05.2007. He did not make any call to the Police Control Room. He admitted that on 09.05.2007 when he went to the SDM office, his other family members accompanied him. He deposed that his statement Ex.PW-3/A was not recorded correctly and the facts were twisted. PW-3 claimed that a complaint in this regard was made to the higher authority but no such complaint was produced, during trial. He was confronted with the previous statement where the demand of ₹2,00,000/- was not mentioned. The witness denied the suggestion that Pradeep had prohibited Reena from indulging in vulgar jokes and indecent behaviour with the brother-in-law and that Reena lost her cool and committed suicide on reaching matrimonial home.

9. PW-4 Santosh, the deceased's mother also made improvements regarding the demand of ₹ 2,00,000/- at the time of Sudha's marriage and payment of ₹ 50,000/- to Pradeep on 08.05.2007. Since she had made improvements in her deposition in the Court to the statement made to the SDM, she was confronted with her earlier statement. PW-4 admitted that she had not stated before any authority regarding her statement in the Court that since the birth of Reena's daughter and prior to that the accused Pradeep, *Jeth* Rajesh, Hemlata @ Rajjo *jethani* and mother-in-law Kusum started harassing Reena on account of dowry. She admitted that before making the statement in the Court, she did not inform any authority that the accused taunted her daughter for not giving furniture i.e. *almirah* and *bed*, etc. She admitted that prior to her statement in the Court, she did not lodge any complaint with any authority that the accused would beat Reena for not meeting the demand of furniture and money, etc. She further admitted that she had not stated before any authority prior to making the statement in the Court that a sum of ₹ 50,000/- was paid to her daughter out of the cash received in *Bhaat*, *Kanyadaan* and *Tika*. She stated that she had informed the SDM and the police that when her daughter asked her when rest of the amount would be paid, she told her that the arrangement would be made soon. She was confronted with her

previous statement Ex.PW-4/A where this was not recorded. She was also confronted with her previous statement that on 06.05.2007 Pradeep had not allowed Reena to go to the stage. This witness also denied the suggestion that Reena had committed suicide as she was prohibited from behaving indecent with her brother-in-law (*jija*).

10. Manoj (PW-7) younger brother of Sudha was aged about 15 years at the time of recording his statement. He was, thus, less than 14 years on the date of Reena's death. This witness deposed that on 26.04.2007 he alongwith Pankaj went to Reena's matrimonial home. Her *Jeth*, *Jethani* and husband told him that they were spending more money on Sudha's marriage than what was spent for Reena's marriage and that they should be given money to equalize the expenditure. He deposed that on 04.05.2007 accused Pradeep went to their house and demanded ₹ 2,00,000/- (which is contrary to the stand taken by PWs 3 and 4, who stated that the demand was made on 06.05.2007 at the time of Sudha's marriage). He deposed that on 08.05.2007 the accused Pradeep was paid ₹ 50,000/- in cash. He deposed that Pradeep left their house on 08.05.2007 asking his father to arrange to send the balance amount of ₹ 1,50,000/-. This witness was also confronted with his previous statement regarding the demand of ₹2,00,000/- and payment of ₹50,000/- to Reena or Pradeep on 08.05.2007.
11. It is well settled that the version given in the Court for the first time cannot be relied if it does not find mention in statement under Section 161 Cr.P.C. (*Kehar Singh & Ors. v. The State (Delhi Admn.) AIR 1988 SC 1883; Onkar Nath Mishra v. State (NCT of Delhi) 2008 (1) JCC 65 (SC)*). Thus, apart from the fact that the testimonies of three witnesses, who were close relatives of the deceased being the parents and the younger brother, is not credible for projecting the improved version in the Court, the basis of case that amounts spent by the complainant for Sudha's marriage was more than what he spent for Reena's wedding is not borne out from the record. Rather, the record points to the contrary. All the three witnesses deposed that a sum of ₹ 2,00,000/- to ₹2,50,000/- were spent on Reena's marriage whereas only a sum of

₹1,00,000/- was spent for Sudha's wedding. Thus, there could not have been any grievance by the accused that more amount was being spent on Sudha's marriage. Secondly, the question of expenditure on Sudha's marriage was allegedly raised on 26.04.2007, whereas Sudha's marriage was yet to take place. Therefore, the accused would not be aware as to the amount to be spent on Sudha's wedding.

12. The Trial Court give its reasons for disbelieving the prosecution version in para 29 and 30, which are extracted herein:-

“29. The critical analysis of these three material witnesses established that there was no occasion when accused Pardeep demanded the expenses should be equalized because from the mouth of PW-7 Manoj, brother of deceased, it has come that they had spent more money in the marriage of deceased Reena. Similarly, in the testimony of PW-4 Smt. Santosh, mother of the deceased Reena, it has come that ₹ 2,50,000/- were spent in the marriage of deceased Reena. The other circumstances brought on record show that the FDR of Sudha itself encashed at the time of her marriage. The financial status has come that PW-3 Jai Bhagwan has been working as Munim and earning only ₹ 2,000/- to 3,000/- per month. In these circumstances of the family of the deceased Reena and contradictory statements of all the three material witnesses, it is not established beyond reasonable doubt that accused Pardeep demanded ₹ 2 lacs to equalize the expenses. It is pertinent to mention here that the name of other accused persons do not appear that they also participated in this demand.

30. Now coming to payment of ₹ 50,000/- as dowry on 8.5.2007 is concerned, these facts are contrary to the statement Ex.PW-3/A as already observed hereinabove that these facts are material improvement, which are not admissible as per law. These are the facts stated only against accused Pardeep and not against co-accused Hemlata, Rajesh Kumar and Kusum. Even the demand is contradictory according to the three material witnesses PW-3 Jai Bhagwan, PW-4 Smt. Santosh and PW-7 Manoj. Hence, on the basis of above observation and discussion, the prosecution failed to establish beyond reasonable doubt the following ingredients:-

- (i) that the victim was subjected to cruelty or harassment by her husband or any relative of her husband;*

(ii) Such cruelty or harassment should be for or in connection with the demand of dowry; and

(iii) It is established that such cruelty and harassment was made soon before her death”.

13. In our view, the conclusion reached by the Trial Court is reasonable and well founded. We do not find any ground to interfere with same. For these reasons the petition has to fail; the Criminal leave petition No.59/2011 is accordingly dismissed.

**G. P. MITTAL
(JUDGE)**

**S. RAVINDRA BHAT
(JUDGE)**

AUGUST 29, 2011

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