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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Hearing & Decision : 1st April, 2011

+ CRL.L.P. 63/2011

STATE

..... PETITIONER.

Through: Mr. Jaideep Malik, APP for the
State.

versus

SOHAN LAL & ORS.

.....RESPONDENTS.

Through: Nemo.

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

G.P.MITTAL

1. The State seeks leave to file an appeal against the judgment dated 17.02.2010 passed by the learned sessions Judge, New Delhi, whereby the respondents were acquitted of the charges under Sections 498A/304B read with Section 34 Indian Penal Code (IPC). Poonam (the deceased) daughter of Hukam Singh (PW-6) got married to respondent Dhanvir on 25.04.2002. She sustained burn injuries in her matrimonial home on 16.03.2003 i.e. within one year of her marriage. DD No.9 was recorded at police post IGNOU police station Mehrauli, Delhi at 1:00 PM that wife of

Dhanvir son of Sohan Lal had committed suicide in her House No.238, Harijan Basti, Maidangarhi. SHO and other police officials reached the spot. Crime team was called and scene of the incident was got photographed. A plastic can/container without lid was found present at the spot apart from one half burnt match stick and one half burnt match box. Dead body of Poonam was removed to AIIMS for conducting post mortem examination. Dr.Lt.Col.Abhijit Rudra (PW-17) performed autopsy and gave his report Ex.PW-17/A and found 100% burns on the body. The cause of death was opined to be ante mortem burns.

2. The SDM was informed and PW-6 Hukam Singh made statement Ex.PW-6/A to the SDM on the basis of which this case was registered. PW-6 disclosed to the SDM that the deceased was married to Dhanvir 10 months before the incident. At the time of marriage there was no demand of dowry from the in-laws of Poonam. On the occasion of Bidai father-in-law of Poonam demanded a gold ring and a chain. PW-6 could not satisfy the demand at that time but when Poonam visited her parents next time the demand was satisfied. According to PW-6 the in-laws of Poonam were still harassing her in spite of the demand being met. Poonam was being harassed and beaten for demand of dowry apart from her husband Dhanvir by her father-in-law Sohan Lal, mother-in-law Chandri, elder brothers of the husband, Shyam Sunder, Gian Singh and younger brother Raju.
3. PW-6 further informed the SDM that Poonam made a complaint to him several times. PW-6 also took 4/5 respectable persons of the village to the house of Poonam's in-laws to make them understand but they did not mend their ways. PW-6 managed to pay a sum of ₹ 40,000/- to the in-laws of Poonam after obtaining a loan thereof. Even thereafter husband of Poonam demanded a Maruti car which demand he was unable to meet. Poonam informed him on telephone that her in-laws were harassing her too much in connection with the dowry demands. PW-6 sent his son

Jawahar Singh to bring Poonam home. After some time a telephonic information was received from some person that Poonam had died on account of burn injuries. He (PW-6) reached Maidangarhi, at the house of the in-laws of Poonam, and came to know that the dead body had been taken to AIIMS. PW-6 further told SDM that his daughter had been burnt to death and harassed by her in-laws. He, therefore, sought necessary action against them.

4. The respondents pleaded not guilty to the charge. The prosecution thereupon examined 17 witnesses. The learned Additional Sessions Judge by impugned judgment found that the allegations with regard to the demand of dowry put forth by various witnesses were at variance with each other. The allegations of harassment and cruelty were vague and general. It was held that merely because deceased committed suicide in the matrimonial home no inference could be drawn that it must be an outcome of a cruelty or torturous act committed by the respondents or by any of them. He accordingly came to the conclusion that the prosecution had failed to prove its case against the accused/respondents and thus acquitted all of them of the charges under Section 498A/304B/34 IPC.
5. We have heard Mr. Jaideep Malik learned APP for the State and have perused the record.
6. The law does not allow the State to file an appeal against an order of acquittal. Under Section 378 (3) Cr.P.C., the State has to seek leave to file an appeal. Though, the powers of an Appellate Court are not limited while hearing an appeal against acquittal as it has the same powers as it has while hearing the appeal against an order of conviction. However, the fact remains that the presumption of innocence which is attached to every accused, unless he is proved guilty, is strengthened by an order of acquittal. Thus, the Courts interfere in an order of acquittal where the finding of the Trial Court is perverse or there is gross misapplication of

law. The Appellate Court interfered with the order of acquittal where there are compelling and substantial reasons.

7. The Supreme Court in ***Syed Peda Aowlia v. The Public Prosecutor, High Court of A.P., Hyderabad***, (2008) 11 SCC 394, summed up the law after referring to various earlier decisions as under:-

*“5. There is no embargo on the appellate Court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. 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. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. 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. See ***Bhagwan Singh and Ors. v. State of Madhya Pradesh***, (2002) 4 SCC 85. The principle to be followed by appellate Court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference.”*

8. The prosecution in order to establish its case produced 17 witnesses. PW-1 Jawahar Singh brother of the deceased, PW-4 Kishan Lal uncle of the deceased, PW-6 Hukam Singh father of the deceased and PW-7 Tota Ram a villager from the place of the parents of the deceased are the material witnesses examined by the prosecution to prove the allegations of demand of dowry and harassment meted out to Poonam.

9. On close of prosecution's evidence, the respondents were examined under Section 313 Cr.P.C. to enable them to explain the incriminating evidence appearing against them. All the respondents denied the acts of harassment or cruelty in connection with a demand of dowry or otherwise. The appellant Dhanvir, husband of the deceased Poonam stated that he never demanded any dowry nor he ever subjected his wife (Poonam) to cruelty. He treated her with love and affection and was unaware as to why she died (committed suicide). Rest of the respondents stated that they were residing separately from respondent Dhanvir and were separate from his mess. Respondent Shyam Sunder (brother of Dhanvir) went to the extent of stating that he did not have cordial relations with other respondents and, therefore, had not even invited the other respondents (accused) at the time of the wedding of his daughter.
10. Respondent Shyam Sunder produced DW-2 Hoshiyar Singh in support of his plea that he was not having good relationship with other respondents to belie the prosecutrix version that he was party to the dowry demands
11. DW-1 Tinku produced by the other respondents deposed that he never heard of any demand of dowry or any harassment being caused to Poonam by the accused persons. He testified that no panchayat was called by the parents of the deceased Poonam against the accused persons on the ground that the accused persons demanded dowry from Poonam. The Trial Court by impugned judgment held that the allegations with regard to the demand of dowry were not specific and allegations with regard to cruelty were vague and generic. The Trial Court held as under:

“Defence counsel argued and it appears he had a point that had it been a case that deceased was being tortured or harassed on account of demand of dowry or for any other reason then definitely she would have conveyed to any person living and residing in the immediate neighbourhood of her matrimonial home. Had it been any act, instances of physical assault or beating them someone living in the

neighbourhood of the deceased would have seen and observed or at least some kind of police report could have been lodged earlier. In the absence of any such evidence, testimony of witnesses PW-1, 4 & 6 cannot be believed for the fact that victim deceased Poonam was making telephone calls narrating cruelty or harassment being committed against her. To my view prosecution evidence fails to prove the issues of demand for dowry and on account of non fulfillment of such demand a torture or cruelty committed against deceased by accused persons. There is no evidence that deceased was subjected to cruelty or harassment just before her death on account of demand for dowry. Merely that deceased committed suicide no such inference can be drawn that it must be an outcome of a cruel or torturous act caused and committed by accused persons or any one of them. It is true that where deceased and husband were living together in a house and deceased took an extreme step of committing suicide then accused should have come forward with some explanation as to why and how deceased took that step of committing suicide but then absence of explanation from accused would have been appreciated had it been some evidence on record that cruelty or torture for demand of dowry or for any other reason was the cause and reason for deceased to commit suicide. In the absence of evidence from the prosecution, the absence of explanation from accused husband also cannot be taken to an extent of drawing any inference or conclusion that he was the cause and factor being this incident.”

12. It is argued by the learned Additional Public Prosecutor that the Trial Court committed a grave error in not considering the statements of the witnesses regarding the demand of dowry made by the respondents and commission of cruelty and torture against the deceased on account of non-fulfillment of the dowry demand. It is submitted by the learned APP that the statements of the witnesses are reliable and truthful and that there was no apparent reason for false implication of the accused persons. The learned APP submits that the deceased made several telephonic calls to her brother and father and had told them about the cruelty and torture inflicted upon her. Panchayat was also called by the father of the deceased but the

miseries of the deceased Poonam did not come to an end. She was, therefore, compelled to take the extreme step of taking her life. The impugned order, therefore, is liable to be set aside.

13. Section 304-B IPC presumes the death of a married women to be a dowry death if her death is caused by any burns or bodily injuries or occurs otherwise than under normal circumstances within seven years of her marriage and if it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for or in connection with any demand for dowry. Though 'cruelty' as mentioned in Section 304-B has not been defined in the Section but Section 304-B IPC has to be read with Section 498-A IPC. The explanation to Section 498-A defines cruelty. The said definition of cruelty has to be read in Section 304-B as well. The cruelty as defined under Section 498 IPC consists of two parts. To attract Section 498-A it must be established that the cruelty or harassment to the wife was to force her to cause grave bodily injury or danger to life, limb or health whether mental or physical and harassment of the women should be with a view to coerce her relations to meet any unlawful demand of dowry for any property or valuable security.
14. In this case there is no complaint made either to the police or to any other authority regarding any demand of dowry or any harassment allegedly meted out to Poonam during the life time of Poonam. Though there are allegations of harassment and beatings being given by in-laws but there is no documentary evidence in the shape of any OPD slip or prescription from any doctor. In this background we have to analyse the evidence adduced by the prosecution to reach a conclusion whether the deceased was treated with cruelty as envisaged under Section 498-A IPC which ultimately forced her to end her life.
15. We have almost reproduced the entire statement (Ex.PW-6/A) made by

Hukam Singh (PW-6) father of deceased Poonam to the SDM on 17.03.2003 made one day after the death of Poonam which took place on 16.03.2003 on account of burn injuries. A close look at Ex.PW-6/A shows that except for the demand at the time of marriage the witness who is the father of the deceased and most concerned about her has not given the precise details as to when the demand of ₹ 40,000/- and thereafter the demand for a Maruti car was made by in-laws/husband of the deceased. There are general and vague allegations that Poonam was being harassed and given beatings. This is nowhere disclosed either in the complaint Ex.PW-6/A made to the SDM or in his statement in the court.

16. In addition to PW-6 the prosecution examined PW-1 Jawahar Singh brother of the deceased, PW-4 Kishan Lal uncle of the deceased and PW-7 Tota Ram a villager from the place of the parents of the deceased. As per the evidence led by the prosecution there were three demands one at the time of Bidai (the marriage) for a gold ring and a gold chain, then there was a demand for a sum of ₹ 40,000/- in lieu of a motor cycle followed by a demand for a Maruti car for Dhanvir husband of the deceased.
17. We have analysed the evidence produced by the prosecution and are of the view that there are contradictions as to the time and the manner of the alleged demands, moreover the evidence is completely lacking to show that any harassment much less than cruelty as envisaged under Section 498 IPC was meted out to the deceased.
18. According to PW-1 there was a demand for a gold ring and a chain made by Sohan Lal (father-in-law of the deceased) on the occasion of Bidai ceremony. This demand according to PW-1 was met after four or five months of the marriage.
19. PW-4 Kishan Lal on the other hand deposed that the demand was made for more money and a gold chain for Sohan Lal and a gold ring for each of

his four sons. This witness did not state anything as to when the demand was fulfilled.

20. PW-6 gave the quantum of demand to be a gold ring and a chain for Sohan Lal made by the Sohan Lal (father-in-law of the deceased) himself which was met after 15-20 days of the marriage.
21. PW-7 Tota Ram stated that the demand for gold ring and a chain was made by the in-laws of the deceased especially by accused Sohan Lal. He was also silent if the demand was fulfilled or not.
22. From the testimony of PW-1, PW-4 and PW-6 who are the close relations of the deceased it is difficult to reconcile as to what exactly was the demand made.
23. The second demand for ₹ 40,000/- is alleged to be made in lieu of a motor-cycle. PW-1 Jawahar Singh stated that this demand was made by Dhanvir and Shyam Sunder (husband and elder brother-in-law of the deceased) after August, 2002 (the marriage of Poonam with Dhanvir took place on 25.04.2002) when the family members had visited the accused persons and they (in-laws) promised not to demand any dowry in future. According to PW-1 this demand was fulfilled 10-12 days after it was made. PW-4 Kishan Lal on this demand testified that this demand was made by the in-laws of the deceased but he did not specify as to which of the accused made this demand. Similarly according to him this demand was made one or two months after the marriage and was met in January, 2003 when accused Shyam Sunder and Dhanvir visited the house of the deceased's parents.
24. According to PW-6 Hukum Singh this demand was made by all the accused persons after three to four months after the marriage and was fulfilled in January, 2003.
25. In respect of the demand of a Maruti car the version of PW-1 is that this

demand was made by accused Dhanvir after few months of the first demand whereas PW-4 Kishan Lal deposed that all the accused persons made this demand sometime in February, 2003 when PW-4, 6 along with four to five persons visited the matrimonial home of the deceased. PW-6 Hukum Singh testified that this demand was made by Dhanvir after 20/30 days of the previous incident and when PW-6 visited the house of the in-laws of the deceased along with 8-10 other persons.

26. There are not only contradictions vis-à-vis the witnesses examined by the prosecution in respect of the dowry demands but there are material improvements also to the statements made under Section 161 Cr.P.C. by the witnesses to the SDM/investigating officer. As per the statement Ex.PW-6/A made by PW-6 to the SDM, statement Ex.PW-1/DA made by PW-1 to the police and statement Ex.PW4/DA made by Kishan Lal to the police, there was no mention of demand of a motor-cycle nor the amount of ₹ 40,000/- was paid for purchase of any motor-cycle. In view of the contradictions and improvements the Trial Court rightly refused to rely upon the same.
27. The prosecution witnesses are completely silent as to how the deceased was treated with cruelty. The generic statements that deceased was given beatings without specifications as to how the beatings were given, whether any object/weapon was used to give those beatings and similarly without the details as to how the deceased was harassed would be insufficient to hold that the deceased was treated with cruelty within the meaning of Section 498-A IPC or that the deceased ended her life on account of the said cruelty.
28. We would here recall the decision in *State of Punjab v. Gurdip Singh*, (1996) 7 SCC 163, where a young bride Jyoti Bala died an unnatural death within seven years of her marriage and the allegations of maltreatment and cruelty with regard to the demand of dowry had not been substantiated by

the prosecution; the Supreme Court held that:-

“..... It appears to us that Jyoti Bala, quite young and yet to be seasoned with discord and unpleasantness in social intercourse and not yet gaining the practical wisdom and capability of adjustment against petulance and disharmony, became very sensitive and lost the normal frame of mind which might have induced her to end her life before it could fully blossom.”

29. In view of the foregoing discussions, we are of the view that the conclusions reached by the Trial Court cannot be faulted with. The view taken by the Trial Court was plausible and reasonable. In the circumstances, there is no ground to grant leave to file an appeal, the petition is accordingly dismissed.

(G.P. MITTAL)
JUDGE

(S. RAVINDRA BHAT)
JUDGE

APRIL 01, 2011
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