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IN THE HIGH COURT OF DELHI AT NEW DELHI

DECIDED ON: 03.06.2011

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CRL.L.P. 123/2011

STATE

..... Petitioner

Through: Mr. Sanjay Lao, APP.

versus

KULDEEP & ORS

..... Respondents

Through: None.

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

MR. JUSTICE G.P. MITTAL

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

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

% **Crl. M.A.2832/2011 (U/S 5 of the Limitation Act) in Crl. LP.123 /2011**

This is an application filed by the State seeking condonation of delay of 12 days in filing the appeal.

The delay is condoned for the reasons mentioned in the application. The application stands disposed of.

CRL.L.P. 123/2011

1. The State seeks leave to appeal against judgment and order of the learned Additional Sessions Judge dated 25.10.2010 in Sessions Case No.66/2009. The respondent/accused were charged with having committed the offences punishable under Sections 498A and 304B IPC.

2. The prosecution's allegations were that on 10.02.2007, the deceased (hereafter referred to as "Meenu") married Kuldeep, the son of the other two accused Jagdish and Champa. The fourth accused Anju is his sister-in-law (Jethani). The prosecution alleged that Meenu was subjected constant harassment and cruelty which included on at least 2/3 occasions, instances of physical violence. The prosecution alleged that Meenu was beaten on 13.02.2007 and had even bled in the nose - a fact testified to by PW-7 & PW-8. The prosecution sought to prove that demands for dowry articles which included ₹ 50,000/-, a Motor Cycle for the accused Kuldeep and several other household articles, were made. When Meenu and her parents were unable to satisfy their demands, she was subject to cruelty daily. It was alleged that the Meenu on previous occasions visited her parents, when Kuldeep called her on telephone and abused her for not ensuring the dowry articles and an amount demands, were given and paid. It was also alleged that the Kuldeep had objected and not permitted Meenu to visit Agra even though she wanted to do so. The other instance of physical cruelty alleged was that she had been beaten and reported this on 16.04.2007.

3. The death of Meenu occurred on 24.04.2007. The postmortem report indicated that death was on account of hanging; ligature mark was found on her neck. The postmortem Doctor PW-4 had stated in his depositions about having found the words "meri maut ka karan mera pati kuldeep hai". On the basis of these evidence and circumstances, the prosecution alleged that the accused were responsible for Meenu's death. They were arrested; after conclusion of investigation, charges were framed. The accused pleaded not guilty and claimed trial. After considering the records and the materials placed before it, the Trial Court acquitted the accused.

4. It is urged by learned APP Mr. Sanjay Lao that this Court should grant leave to the State since the Trial Court has not appreciated the circumstances in the proper perspective. It is urged that besides the words found on the deceased's leg, there were several other strong incriminating circumstances, to implicate the accused, which included the testimony of PW-7, PW-8 and PW-9, indicating physical violence. The Trial Court, however, reasoned that these were not believable on account of various inconsistencies. Learned counsel urged that testimony of PW-7 and the statement made to the SDM on the date of the incident has to be considered from the perspective of a distraught and shocked father who naturally was unable to recollect the entirety of circumstances or even the sequence of events. Naturally, it would be unreasonable for anyone

to expect from him to pin point the dates and events and some omissions were bound to have crept it. The Trial Court ought to have given some leeway on this score while appreciating the witnesses' testimonies. Learned counsel submitted that so far as PW-8 and PW-9 are concerned, these witnesses corroborated the dowry demands and the physical cruelty meted out to the deceased Meenu. In these circumstances, urged the learned APP that the presumption under Section-113B of the Evidence Act operated. Since the accused did not proffer any explanation, the natural consequence ought to have been their conviction. Instead, the Trial Court fell into error in acquitting them.

5. We have considered the submissions; we have also gone through the Trial Court's records.

6. The reasoning of the Trial Court in regard to the testimonies of PW-7, PW-8 & PW-9 are extracted below: -

“10. PW7 Kewal Kishan is the complainant. He is father of the deceased. He deposed about marriage of the deceased and giving of fridge, DVD player and other dowry articles. He added that Meenu was beaten for demand of Rs. 50,000/-. He also included a new story that on receiving telephonic information about admission of his daughter in hospital, he rushed to hospital at Moti Nagar but could not get any clue. Thereafter they reached at the house of accused persons. Accused Anju was sweeping the floor of the room of his daughter but she did not tell anything about his daughter. On enquiry in neighbourhood, he was told that his daughter might be in Archaraya Govt. Hospital, Moti Nagar. In cross examination, he denied that his daughter before her marriage left the house of her maternal grandparents without any intimation to them and came back after 34 days. He denied that on 07.04.2007 Meenu had gone to Agra without consent and knowledge of her husband and in laws or that from Agra railway station, a telephone call came to his house from police booth which was attended by his eldest daughter Sonu or that he, his wife, mother-in-law, two brother-in-law Vinod and Madan, Kuldeep brought Meenu back from Agra to Delhi. He denied that his daughter was having love affairs with some other boy and was not happy with her marriage with accused Kuldeep. He was confronted with his statement Ex. PW6/A recorded by SDM where factum of delivery of dowry articles i.e. Fridge and DVD player are not mentioned. Similarly factum of demand of Rs. 50,000/- by accused is not mentioned in statement before SDM. Role of father-in-law and Jetani in abetting husband for demand of dowry is also not mentioned in statement before SDM.

11. PW8 Vinod is uncle of deceased. He gave statement similar to that of PW7. In cross examination, he was confronted with his statement under Section 161 CrPC which is Ex. PW8/A. The factum of giving television and CD player in marriage is not mentioned in the said statement. Same is the fate of his noticing injury on nose and ear of Meenu on 13.02.2007. The factum of accused again informing this witness on phone "Ab Minu Ki Kahani Khatam Ho Gai Hai" does not find place in the statement Ex. PW8/A.

12. PW9 Smt. Rani is mother of the deceased. She gave statement similar to that of PW7 and PW8. In cross examination, she was confronted with her statement Ex. PW6/B recorded by SDM where the factum of parents delivering articles is not mentioned. Similarly factum of demand of Rs.50,000/-, accused other than Kuldeep instigating accused Kuldeep to give beatings for demand of dowry are not mentioned."

7. As far as the circumstances concerning the alleged words written on Meenu's leg are concerned, the Trial Court was unconvinced with the evidence and apart from discussing the depositions of the concerned witness PW-4, it also considered the testimony of PW-20 who admitted having not found the said words which allegedly implicated the accused, on the deceased's leg, when he saw the dead body before postmortem. The Trial Court also recorded as follows: -

"20. After completion of the prosecution evidence, statements of accused persons were recorded under Section 313 CrPC in which they expressed ignorance about steps taken by police during investigation. They admitted the factum of marriage of Meenu with accused Kuldeep. They denied that Meenu told her mother that she was beaten by accused Kuldeep for demand of motorcycle and Rs. 50,000/-. They denied that mother-in-law, father-in-law and Jetani used to instigate the husband to make demand of dowry. They denied that on 16-04-2007 Meenu called her father on phone or that during stay of Meenu at her father's house till 24-04-2007, accused Kuldeep used to abuse Meenu on phone. They had admitted arrest memos and personal search memos. According to them PWs who are relatives of the deceased are interested witnesses and have deposed falsely. The official witnesses are interested witnesses being police officials. They deposed falsely. They pleaded ignorance. The SDM did not correctly record statements of parents of deceased. Meenu was having love affairs with some other boy and was not happy with accused Kuldeep. They did not want to lead defence evidence.

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23. On the other hand, ld. Counsel for the accused persons vehemently argued that if confronted portions which are improvements over their previous statements are

excluded from statements of PW-7, PW-8, PW-9 and PW-12, no life is left in the case of prosecution. He submitted that the improvements elicited in the cross examination show that witnesses are not reliable. A person who makes different statements so as to suit his purpose is not a trustworthy witness.

24. The counsel for the accused also submitted that the parents of the deceased did not lodge any police report before death of the deceased that she was ever harassed or any dowry was demanded from her. Thus the allegations of demand of dowry and harassment are afterthought and do not inspire confidence.

25. The counsel for the accused went on to argue that the prosecution is tainted inasmuch as the words "Meri Maut Ka Karan Mera Pati Kuldeep Hai" on the leg of the deceased have been introduced later on. The same is evident from the fact that Investigating Officer did not find those words at the time he initially saw the dead body. These words were not shown to the parents of the deceased to find out that they were in handwriting of the deceased. They were not got compared from FSL from admitted handwriting of the deceased to find out that they were in the handwriting of the deceased. The explanation that their photo was not legible and so the efforts for comparison were not made, appears to be shaky. Doctor who conducted postmortem on the dead body has admitted that it is possible to write words with pen on dead body. The same makes defence of the accused that those words were written subsequently, probable."

8. PW-7 had first leveled allegations against the accused in his statement recorded before the SDM. However, his deposition before the Court reveal that several improvements were made. These included calls made by the husband Kuldeep and alleged abuses to Meenu; dowry demand for ₹ 50,000/-; alleged beatings on 16.04.2007; demands for articles such as DVD, Fridge etc at the behest of the accused; threat by Kuldeep to disgrace Meenu and her family members in the Panchayat, in case, the demands for dowry were not met with and the alleged search by PW-1 for the deceased in the vicinity of Moti Nagar in several hospitals.

9. Similarly, PW-8 had improved from her earlier version. Besides stating alleged demands of dowry, which were made in a general manner, this witness made specific mention about TV, DVD Player as well as Motor Cycle by the accused Kuldeep. Significantly, this witness did not mention anything about beatings said to have been given to the deceased by the Kuldeep on 13.02.2007.

10. PW-9, the deceased's mother who would have been a natural witness as far as beatings were concerned, was silent in her deposition as well as initial statements recorded before the Police. She too, made improvements in her statement by making statement of

demand of ₹ 50,000/- and Motor Cycle and alleged for the first time that Meenu had been injured 15/20 days back before her death.

11. The High Court does not review the evidence before the Trial Court as an appellate Court, where an acquittal is recorded. The approach of the Court - as endorsed by the numerous Supreme Court rulings - is that such acquittals are in affirmation of the presumption of innocence. Unlike, in the case of conviction, where the accused has a right to appeal, the State can only highlight gross inadequacies in the Trial Court reasoning, which measure up to the standards of substantial or compelling reasons which can persuade the High Court to permit an appeal against the acquittal. Such reasons include mis-appreciation of evidence or serious mis-application of law and adoption of an approach which would result in miscarriage of justice. On consideration of the entire conspectus of circumstances, and the depositions before the Trial Court and the material placed before it, we are unpersuaded that the prosecution has made out a case for grant of leave to appeal. There are no substantial or compelling reasons.

12. For these reasons, the petition has to fail and is, therefore, dismissed.

**S. RAVINDRA BHAT
(JUDGE)**

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

JUNE 03, 2011
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