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IN THE HIGH COURT OF DELHI, AT NEW DELHI

Pronounced on : 02.06.2011

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CRL.L.P. No.79/2011

STATE

..... PETITIONER

Through: Mr. Lovkesh Sawhney, APP, for the State.

Versus

SUNDER LAL & ANR.

.....RESPONDENTS

Through: None.

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 |

Mr. Justice S. Ravindra Bhat (Open Court)

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1. The State has, by this Petition, sought leave to appeal against a judgment and order of the learned Additional Sessions Judge dated 13.05.2010 in S.C. No. 42/2009, by which the accused (hereafter referred to as "the respondent") was acquitted of the charge of having committed offences punishable under Sections 304-B, 498-A and 34 IPC.

2. The prosecution case is that in the night intervening 24/25.09.2008 at about 11:55 PM, Smt. Beena (the deceased) was admitted by Sunder Lal (the accused) to DDU hospital (later transferred to Safdarjung Hospital) with 98% burns. She was declared unfit to make a statement and on 25.09.2008 at about 08:40 PM she succumbed to her injuries; DD No. 105B was recorded to this effect. On 26.09.2008 the statement of PW-3 Santosh (mother of the deceased) and PW-4 Dhanpat Singh (father of the deceased) was recorded by PW-2 Surender Singh (Executive

Magistrate, Najafgarh) on the basis of which FIR No. 607/2008 was registered with PS Dwarka on 28.09.2008. PW-3 and 4 alleged that the accused Sunder Lal (the deceased's husband) and his mother Meva Devi (mother in law of the deceased) used to subject the deceased to cruelty and were demanding dowry. Accused Sunder Lal was arrested and charge sheet was filed against him; Meva Devi could not be arrested. Charge under sections 304-B and 498-A was framed against the accused.

3. The prosecution examined 19 witnesses and relied upon several exhibits. The Trial Court, after considering the same and after recording the statement of the respondent under Section 313 Cr.PC concluded that the prosecution was unable to bring home the guilt of the respondent beyond reasonable doubt and, therefore, acquitted him of all charges.

4. The material witnesses relied upon by the prosecution are PW-3(Santosh, mother of the deceased), PW-4(Dhanpat Singh, father of the deceased), PW-6 (Ramdeen Yadav, landlord of the premises where the accused and deceased used to reside) and PW-14(Vidya Devi, maternal aunt of the deceased). The Trial Court observed that in the statement made by PW-3 and PW-4 to the Executive Magistrate there is no mention of any money being paid to the accused. As per the deposition of PW-3 and 4 the total sum paid to the accused in the 5 years of the deceased's marriage was just ₹ 21,000/- , the Trial Court found this to be improbable. Had the accused been demanding dowry repeatedly he would not have been satisfied with just ₹ 21,000/- in 5 years. The Trial Court further noticed that the deceased's family had never made any complaint to the police regarding the harassment and demand of dowry made by the accused. The Trial Court observed that the deceased's parents were not able to give any specific dates or details regarding the dowry demand made by the accused. It was alleged by the prosecution that on 24.09.2008 PW-4 had received a phone call from the accused asking him (PW-4) to take the deceased to her maternal home or else he would kill her. The Trial Court did not find the deposition of PW-4 to be credible as the prosecution was not able to give any explanation as to why PW-4 did not take any steps to contact his daughter. Normal human conduct of a man would be to inform someone about the threat and take measures to protect his daughter; PW-4 did not even inform PW-14 (maternal aunt of the deceased who lives close to her matrimonial home) about the threat. He merely made one attempt to call back the accused and when he was unable to contact the accused, he did not make any further attempts. PW-4 did not make a complaint about the alleged

threat and was silent regarding it till the next day when he was informed about the burning incident. The Trial Court observed that PW-3 and PW-4 had deposed that the accused used to consume liquor and beat the deceased; however PW-6 (who resides in the same premises as the accused and deceased) categorically stated that he had never seen the accused consuming liquor or beating his wife. The Trial Court having regard to the material contradictions in the testimonies of PW-3 and 4 and the absence of any evidence showing that the deceased was subjected to any cruelty held that the charges framed against the accused have not been proved beyond reasonable doubt and accordingly acquitted the accused.

5. PW-6 Ramdeen Yadav, landlord of the premises where the accused and deceased used to reside has deposed that he did not hear the accused and the deceased quarrelling on the day of the incident; they had gone out with their minor son and returned home at about 08:30/09:00 PM. PW-6 heard the deceased's cries at about 10:30 PM and on reaching their house saw that the deceased was burnt and was sitting under a tap of water. The deceased asked for a cloth upon which the accused handed over a bed sheet. The accused took the deceased to the hospital. The Trial Court observed that since PW-6 was amongst the first people to reach the place of incident, his testimony is crucial. PW-6 nowhere in his deposition states that the deceased was burnt by the accused; had the accused been responsible for the burning the deceased he would have leveled some allegation against the accused. PW-6 has deposed that the accused and deceased used to keep kerosene oil in their room and it is possible that the deceased caught fire while cooking. The Trial Court further observed that had the accused poured kerosene oil on the deceased then there would have been some traces of the kerosene on the accused and the oil would have been present on some articles in the room (due to spilling); however there is no such evidence.

6. The learned APP argued that the Trial Court erred in not convicting the respondent, even though there was adequate material to implicate him for commission of the offences he was charged with. It was urged that a cumulative reading of the depositions of PW-3 and PW- 4, prove beyond a shade of doubt that the accused used to demand dowry and subject the deceased to cruelty. The Trial Court overlooked the fact that one day prior to the incident PW-4 had received a phone call from the accused threatening PW-4 that he would kill his daughter if he (PW-4) did not come and take her.

7. We have carefully considered the Trial Court records, which were summoned during the course of these proceedings, as well as the submissions of parties. The jurisdiction of the High Court, while considering a petition for leave to appeal, by the prosecution, is well defined. The court does not examine the impugned judgment as an appellate court; it has to be alive to any exceptional features in the Trial Court's judgment, which compel the exercise of its discretion to grant leave, and hear the appeal. Mere errors, in the Trial Court's order are insufficient; the legislature has advisedly not permitted appeals, a factor which has led the courts to say that a judgment of acquittal is an affirmation of the accused's innocence, which should not be lightly interfered with by the High Court, except for substantial and compelling reasons. As to what constitute such reasons, has been spelt out in *Chandrappa & Others v. State of Karnataka* (2007) 4 SCC 415 as follows:

"In light of the above, the High Court and other appellate courts should follow the well settled principles crystallized by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal :

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when :

(i) The trial court's conclusion with regard to the facts is palpably wrong;

(ii) The trial court's decision was based on an erroneous view of law;

(iii) The trial court's judgment is likely to result in "grave miscarriage of justice";

(iv) The entire approach of the trial court in dealing with the evidence was patently illegal;

(v) The trial court's judgment was manifestly unjust and unreasonable;

(vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the Ballistic expert, etc.

(vii) This list is intended to be illustrative, not exhaustive.

2. The Appellate Court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused.

Had the well settled principles been followed by the High Court, the accused would have been set free long ago. Though the appellate court's power is wide and extensive, it must be used with great care and caution."

8. Upon a careful consideration of the evidence led before the Trial Court, and the other materials placed before it, and after considering the submissions made by counsel, we are of the opinion that no substantial or compelling reasons exist warranting a second look into the case, as an Appellate Court. The Trial Court, in our opinion correctly inferred that it would be unsafe to rest a conviction on the testimonies of PW-3, PW-4 and PW-6. For these reasons, the petition, being unmerited, requires rejection. It is, therefore, dismissed.

S. RAVINDRA BHAT
(JUDGE)

G.P.MITTAL
(JUDGE)

June 02, 2011