

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

Date of decision: 20.07.2011

+ **CRL.L.P. 117/2011**

STATE NCT OF DELHI

..... Petitioner

Through: Sh. Jaideep Malik, APP.

versus

NARESH AND 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 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. 2572/2011 (U/S 5 of the Limitation Act) in Crl. L.P. 117/2011**

For the reasons mentioned in the application, the application is allowed. Crl. M.A. 2572/2011 is accordingly disposed of.

Crl. L.P. 117/2011

1. The State, through this leave petition seeks leave to appeal against the judgment and order of the learned ASJ dated 30.08.2010 in S.C. No. 43/2008. The impugned judgment acquitted the respondents of the charge of having committed offences punishable under Sections 498/304/34 IPC.

2. The prosecution story was that Jyoti (hereafter referred to as “the deceased”) (who had married the respondent Naresh on 04.04.2003) had been treated cruelly, and the cruelty meted out to her compelled her to take her life; Jyoti committed suicide by hanging.

3. The respondents were accused of having committed the offences; after investigation they were charged for committing the offences. They entered the plea of not guilty and claimed trial. The prosecution relied upon the testimonies of 28 witnesses, besides several exhibits.

4. Learned APP argued that the Trial Court’s reasoning in acquitting the respondents cannot be sustained because it rejected the testimonies of PWs-1, 2 and 4, who were the relatives of the deceased, who deposed about the demands of dowry and cruelty meted out to Jyoti. It was submitted that PWs-1 and 2, the parents of the deceased, had recorded their statement to the police and the Sub-Divisional Magistrate (SDM) at the earliest available opportunity in which they clearly mentioned the incidents of cruelty and the specific demands for various amounts, made by the respondents. It was urged that both the witnesses were consistent on this aspect, i.e. that the demands were for ₹10,000/-, ₹20,000/-, ₹50,000/- and ₹1,00,000/-. Learned counsel underlined that both parents had significantly mentioned that in the initial years of marriage, the deceased Jyoti had not been ill-treated but subsequently she was harassed for one reason or the other.

5. Learned APP urged that the Trial Court did not give any importance to the deposition of PW-4, the deceased’s brother, who mentioned having received information on the fateful day about some quarrel in Jyoti’s matrimonial home and subsequently having received information about her death. It was submitted that this corroborated the fact of the acts of cruelty and demands for various amounts made by the respondents from time to time, which had been spoken of by PW-1 and PW-2. Learned counsel also argued that the deposition of PW-22, a minor witness, established that Jyoti was unhappy with marriage; according to him the witness had implicated the husband, i.e. one of the respondents in this case.

6. It is lastly urged that the Trial Court fell into error in appreciating and giving any importance to the depositions of the doctor – DW-4, who had deposed that the deceased

could have committed suicide on account of depression. The doctor had occasion to consider the OPD Card of the deceased and also examined the medical condition which she was suffering from. Apparently, the deceased used to receive treatment for some kind of depression.

7. This Court had called for the Trial Court records. We have considered the submissions of the learned APP. The prosecution sought to establish the allegations of cruelty in this case and depended largely on the depositions of PWs-1 and 2, the parents. As to the deposition of these two witnesses, the Trial Court analysed their evidence in the following terms:

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13. PW1 Munni Devi, PW2 Ram Chander and PW4 Rajesh are very material witnesses on this score. Let me see their testimony. PW1 Munni Devi has deposed that after marriage, her daughter was kept properly for some time but later on accused started harassing her and there used to be demands for various articles and cash. She deposed that accused Naresh used to give her beatings and her daughter Jyoti used to tell that whenever she used to meet her. She deposed that she used to console Jyoti to bear with the situation. She deposed that after birth of male child, her daughter Jyoti was kept properly for some time but again accused persons started harassing her and there was demand of ₹ 10,000/- on one occasion and of ₹ 20,000/- on another. She also deposed that she had paid an amount of ₹ 50,000/- to the accused as per their demand and thereafter there was demand of ₹ 1 lac which she could not fulfill as she was not in any such position. She deposed that on one occasion, there was quarrel at the matrimonial house of accused and her daughter was beaten up in her presence and she was pushed and Jyoti was sent back with her and both children were kept by accused persons. She deposed that after some days and approximately 8-10 days before Shiv Ratri, Naresh had come with two relatives to take Jyoti back. She deposed that one or two days before death of Jyoti, Jyoti called her up on telephone and asked them to take her back as she was being troubled or else she would be killed.

14. I have seen her cross-examination very carefully and minutely. It becomes apparent that her statement before the SDM was very short and snappy. She then claimed that her daughter Jyoti used to be harassed on account of dowry and all the accused had killed her. No further elaboration was given by her before SDM at all. However, in witness box, she has come up with enormous description. When it was asked whether she had told the SDM about the fact of demand of ₹ 10,000/-, ₹ 20,000/- and ₹ 50,000/-, she claimed that she did not remember. She does not know

the exact year when her daughter Jyoti got married. She has not given the date of birth of children of Jyoti. She has not bothered to tell the exact dates or months when the demand of ₹ 10,000/-, ₹ 20,000/-, ₹ 50,000/- or ₹ 1 lac were made. It becomes perceptible that when her deposition is compared with the statement which she had made before SDM, there is found to be vast improvement. Her testimony is unspecific and shorn of requisite details with respect to dates.

15. *Her husband PW2 Ram Chander has also graced the witness box and according to him, Jyoti was kept properly for two years and thereafter all the accused persons had started harassing her on account of demand of cash amount and on one occasion, an amount of ₹ 10,000/- was demanded which was paid and about two months thereafter further demand of ₹ 20,000/- was made which was also paid. I have seen his statement which he had given before SDM. His such statement has been proved as Ex. PW2/A and in such statement, there is no mention of any demand of ₹ 10,000/- or ₹ 20,000/- either. Before SDM, he simply claimed that his daughter was being harassed by the accused persons and accused persons used to tell her to bring amount towards rent and electricity. Nothing else was mentioned by him before SDM. However, during trial he has come up with various new facts and it is not made clear by the prosecution as to why all these facts were not revealed by him when SDM had recorded his statement. This is despite the fact that he categorically deposed that he had mentioned so when SDM had recorded his statement but when confronted with his such previous statement, it was found that no such fact was mentioned.*

16. *As regards demand of ₹ 50,000/-, a new twist has been given by PW2 Ram Chander. He has deposed that accused persons had told him that they wanted to sell their house but he told them not to sell that and then he paid them an amount of ₹ 50,000/-. There is nothing to signify that there was ever any demand of ₹ 50,000/- from the side of accused persons. On the other hand, accused persons, if Ram Chander is to be believed, had simply told him that they were going to dispose of their house. They did not put forward any demand. It was Ram Chander who himself volunteered and made payment of ₹ 50,000/-. Such payment cannot fall within the ambit and definition of demand of dowry. He further deposed that thereafter ₹ 1 lac was demanded but they showed their inability to meet that demand. Ram Chander has not given any date as to when such ₹ 1 lac was demanded. In his cross-examination, he could not tell the date or month when such demand was made. Even as regards the demand of ₹ 10,000/- and ₹ 20,000/-, he came up with some new facts in his cross-examination. He claimed that a sum of ₹ 10,000/- was paid when his daughter Jyoti was blessed with a daughter and ₹ 20,000/- was paid when Jyoti was blessed with son. Payment, in this regard, seems to be*

customary in nature. At the time of birth of child, normally, gifts etc. are given and even if on such occasions, any such amount was paid, such amount cannot be said to be towards dowry demand. PW2 Ram Chander also does not know as to when he had met Jyoti lastly before her death. According to him as well as according to his wife PW1 Munni Devi, all the accused persons were living together. He deposed that he had visited the house of accused only once or twice. This is also not believable as marriage had taken place in the year 2003 and both sides were residents of Delhi and it would be hardly believable that Ram Chander would have visited Jyoti only once or twice during the tenure of five years.

17. Thus testimony of Ram Chander does not take the case of prosecution anywhere. Firstly, he has come up with vague allegations and has not able to give any specific dates or even months about the alleged demands. Secondly, averments regarding demand of ₹ 10,000/- and demand of ₹ 20,000/- evaporate in air since such amount was paid on the occasion of birth of children of Jyoti. Moreover, after birth of son, Jyoti was kept properly for two years even as per Ram Chander. As far as demand of ₹ 50,000/- is concerned, it has already been noticed above that there was no such demand from the side of accused. It was Ram Chander who had offered that sum so that accused persons are not compelled to sell their house. It was more of voluntary in nature and there is no material which may show that there was any such demand of ₹ 50,000/-. Thirdly, had it been so, Ram Chander would have certainly revealed these vital facts before the SDM. His statement is conspicuously silent about any such demand. He also does not know as to when a sum of ₹ 1 lac was demanded.

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8. So far as the deposition of PW-4 is concerned, the Trial Court reasoned that the witness was unspecific about the dates and the events, and most of the facts gathered by him were on account of what was allegedly stated by others. Besides this, the Trial Court concluded that the material discrepancies as well as the internal contradictions of the critical witnesses relied by the prosecution could not establish cruelty preceding the death of the deceased.

9. Unlike an appeal against conviction, the Criminal Procedure Code (Cr.PC) does not permit a second look at the material and provide for an appeal to the prosecution. The only appeal provided for, as a matter of right is as to the quantum of sentence imposed. The Cr.PC permits the State – if it is aggrieved by the findings of the Trial Court – to

petition the High Court, for leave to appeal. The reason for this is that a judgment acquitting an accused amounts to a badge of his innocence, which is mandated by law. Therefore, the Supreme Court rulings have consistently held that the High Court, while granting leave, have to be satisfied that there are substantial and compelling reasons to do so. Such criteria would include serious misapplication of law, overlooking material evidence and adoption of an approach by the Trial Court, which would result in a manifest miscarriage of justice.

10. Applying the criteria spelt out by the Supreme Court, we are of the opinion that the reasoning of the Trial Court in the impugned judgment, in acquitting the respondents, is sound. The depositions of PWs-1 and 2, as regards the demands for dowry or other accounts of alleged cruelty preceding the death of the deceased Jyoti contradict the statements made to the SDM at the earliest available opportunity. Besides this, the Court notes that the couple got married in 2003 and had two children. At one point, PW-1 stated that her daughter was treated appropriately after the birth of son. In these circumstances, it became crucial to pin-point the time when the demands for money were made, allegedly by the respondents upon the deceased's parents. Such specificity was, however, lacking. Apart from this, PW-4's testimony hinges on the facts gathered by him and the prosecution did not care to produce the witnesses who allegedly spoke to him or furnished him such information.

11. Having regard to the nature and conspectus of facts, and applying the standard applicable to such cases, we are of the opinion that there was not substantial or compelling reasons so as to persuade us to grant leave.

12. The Criminal Leave Petition is accordingly dismissed.

S. RAVINDRA BHAT
(JUDGE)

G. P. MITTAL
(JUDGE)

JULY 20, 2011
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