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

Date of Hearing & Decision : 27th April, 2011

+ **CRL.A.No335-2011**

ZILE SINGH

..... Appellant

Through: Mr. Anukul Chandra Pradhan, Advocate.
versus

STATE OF DELHI

.....Respondent

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

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. Appellant Zile Singh, father of deceased Seema impugns the order dated 24.11.2010 passed by the learned Additional Sessions Judge (ASJ) by virtue of the newly added provision i.e. proviso to Section 372 Cr.P.C.
2. Seema died on 17.05.2007 due to asphyxia on account of ante mortem hanging leading to filing of charge-sheet under Section 173 Cr.P.C. against the present respondents i.e. husband and parents-in-law of the deceased and four others i.e. elder brothers of the husband and their wives.
3. Facts of the case can be extracted from para 2 to 6 of the impugned judgment. These are:-

“The case of the prosecution is that on 17.05.2007 on receipt of DD No.35 Police Burari, ASI Gita Ram along with Ct. Rajinder reached house no.296, village Burari, Delhi (house of the accused persons) where one lady Seema had hanged herself with her chunni from the ceiling fan. This information

was conveyed to the Executive Magistrate, Civil Lines, who conducted proceedings under Section 176 Cr.P.C. The Crime Branch Team was called at the spot and the spot was got inspected and photographed. The Executive Magistrate recorded the statement of the parents of the deceased on 18.05.2007, Zile Singh, the father and Laxmi the mother of the deceased Seema did not hold anyone responsible for the death of their daughter Seema. On 18.05.2007 Sh.B.K.Parchure, Executive Magistrate got conducted the post-mortem. On 05.06.2007 the Executive Magistrate sent the documents i.e. the statements of the parents of the deceased Seema alongwith inquest report under Section 176 Cr.P.C. for investigation and further action. In the report, the Executive Magistrate held that as per the statements of the parents of the deceased, no foul play was alleged in the death of their daughter Seema. The parents of the deceased Seema however again visited his office and again requested to get their statements recorded, as the previous statement given by them were not as per facts. According to them they had gathered some information regarding some foul play by the husband of their daughter with regard to her death. He recorded the statement of the parents of the deceased Seema. In their subsequent statements, they alleged that they doubted that their son-in-law accused Umesh had a hand in the death of their daughter Seema. They had made inquiries and it appeared that their son-in-law Umesh was responsible for the death of their daughter. Umesh did not listen to his parents also.

The SHO PS Timarpur sent the papers and the report of the Executive Magistrate to the Incharge PP Burari SI Yash Pal Singh for investigation.

Since there was contradiction in the statements of Zile Singh, SI Yash Pal Singh sent the matter for legal opinion to the Prosecution Branch, North District. SI Yash Pal Singh collected the papers from ASI Geeta Ram. On the pointing out of ASI Geeta Ram, SI Yash Pal Singh prepared the site plan. He arrested the accused Umesh. Thereafter, SI Yash Pal Singh was transferred and the investigation was handed over to SI Yashvir Singh.

On 29.10.2007, Zile Singh got recorded his third statement to the Executive Magistrate, Civil Lines, Delhi wherein, he stated that his daughter Seema was married to Umesh on 12.12.2006.

After marriage they were residing at village Burari, Nathur Pura Road, Mangal Bazar. After 10-15 days of the marriage, the in-laws of his daughter started harassing his daughter for dowry. His son-in-law Umesh demanded a gold chain and the parents-in-law of his daughter demanded ₹ 50,000/- in cash and one motor cycle. They also used to beat his daughter. His son-in-law Umesh had left his daughter at his house. His daughter Seema had narrated the demands made by her in-laws and her husband to her bhabhi (sister-in-law) Reena. With the intervention of the biradari people, his daughter Seema was sent to her matrimonial home. Thereafter her in laws started harassing his daughter for dowry demand. He further stated that her husband Umesh, her father-in-law Surat Singh, Jeth (brother-in-law) Ishwar, Mukesh and jethani (sister-in-law) Neha were harassing his daughter Seema for not bringing sufficient dowry. He did not know whether on 17.05.2007 her in-laws had hanged his daughter or his daughter had committed suicide.

On the basis of the third statement of Zile Singh, SI Yashvir Singh got registered the case under Section 498-A/304-B/34 IPC. Accused Surat Singh the father-in-law, Kavita the jethani, Ishwar Singh the jeth, Mukesh the jeth and Neha the jethani were granted anticipatory bail from the court. They were formally arrested by the IO and were released on bail. Thereafter on 05.07.2008 accused Dhanno Devi was granted anticipatory bail. She was also formally arrested and was released on bail by the IO. After completion of investigation, challan was filed in the court. The case was committed to the Court of Sessions.”

4. Two elder brothers of the respondent Umesh and their wives were discharged by order dated 11.08.2009 passed by the learned Additional Sessions Judge whereas charges for the offence punishable under Section 498-A/304-B/34 IPC were framed against the respondent i.e. the husband and parents in law.
5. In order to establish its case the prosecution examined 18 witnesses. PW-1 Zile Singh father of the deceased, PW-2 Laxmi mother, PW-4 Sonu Kumar brother and PW-5 Reena Bhabhi (Seemas's brother's wife), PW-8

B.K.Parchure Executive Magistrate, PW-15 SI Yashpal Singh are crucial witnesses in the case. PWs 1,3,4 and 5 deposed about the demands of dowry by the respondents and cruelty inflicted upon Seema. PW-8 the Executive Magistrate recorded the initial statements of the parents of Seema on 18.05.2007 and also recorded subsequent statements of PW-1 on 05.06.2007 . PW-15 SI Yashpal Singh is the main investigating officer in the case.

6. The powers of the appellate court while hearing an appeal against acquittal are the same while hearing an appeal against the order of conviction. Yet the presumption of innocence which is attached to every accused unless proven guilty is strengthened and reinforced by order of acquittal. Thus the Court interferes in an order of acquittal where the findings of the Trial Court is perverse or there is gross misapplication of law resulting into miscarriage of justice; there have to be substantial and compelling reason to interfere with an order of acquittal.
7. In **Arulvelu and Anr. V.State & Anr.**, 2009 (10) SCC 206 the Supreme Court quoted with approval the preposition of law laid down in **Ghurey Lal v.State o Uttar Pradesh**, (2008) 10 SCC 450 which is extracted hereunder:

“1. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court’s acquittal bolsters the presumption that he is innocent.

2. The power of reviewing evidence is wide and the appellate court can re-appreciate the entire evidence on record. It can review the trial court’s conclusion with respect to both facts and law, but the Appellate Court must give due weight and consideration to the decision of the trial court.

3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.

4. 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.

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

8. A perusal of the statements made by the parents of Seema before the SDM on 18.05.2007, statement made by father of Seema before the SDM on 05.06.2007 and the subsequent statements made by PWs 1,2,4 and 5 show that there was gradual improvements in the prosecution version. The witnesses examined by the prosecution were, therefore, confronted with their earlier statements made before the SDM as also to the police. That is why the learned ASJ preferred not to rely upon the version given by PWs 1,2, 4 and 5 in the Court and preferred to acquit the respondents.
9. It is true that Seema committed suicide just within six months of her marriage. The question for consideration, is can the respondents be fastened with the liability under criminal law for the suicide committed by Seema.
10. It is argued by the learned counsel for the appellant that the testimonies of PWs 1,2, 4 and 5 regarding demand of dowry and harassment meted out to Seema is consistent, the parents of Seema could not be expected to be in a proper frame of mind to make a statement to the SDM on 18.05.2007 and, therefore, much importance cannot be attached to that statement to say that the witnesses have made improvements in their testimonies making them unworthy of credence.
11. PW-1 made a statement on 18.05.2007 (one day after the alleged suicide) before the Executive Magistrate and disclosed that after the marriage of Seema on 12.12.2006 he had not heard any complaint by his daughter against her in-laws. Her (Seema's) in-laws never demanded any dowry nor did they ever harass their daughter. He stated before the Executive Magistrate that he did not hold anybody responsible for the death of his daughter. To the same effect is the statement of PW-2 Laxmi (wife of PW-

1 and mother of Seema).

12. Second statement is made by PW-1 Zile Singh to the Executive Magistrate on 05.06.2007. He informed the Executive Magistrate that he had made a statement on 18.05.2007 and that he wanted to make another statement. He stated that there was involvement of his son-in-law Umesh son of Surat Singh in the death of his daughter. He (PW-1) went on to add that his son-in-law would not even listen to his own (Umesh) parents. On the basis of this statement an endorsement was made by PW-15 for registration of a case under Section 306 IPC.
13. The third statement Ex.PW1/B is made by PW-1 before the SDM on 14.06.2007 wherein Zile Singh disclosed that the in-laws of Seema started harassing her for dowry just 10-15 days after the marriage. Respondent Umesh made a demand of a gold chain whereas the parents-in-law wanted a motor-cycle and sum of ₹ 50,000/-. PW-1 further informed the Executive Magistrate that the respondents also gave beatings to Seema. PW-1 further informed the SDM that all these facts were stated by Seema to her *Bhabhi*. Seema remained in their house for about three months. He called the persons of *biradari* at his house and Seema was persuaded to go to her matrimonial home. Seema's in-laws again started harassing her and beating her for demand of dowry. Seema was compelled to take her life on 17.05.2007 by hanging herself. Zile Singh showed his ignorance if his daughter had committed suicide or she was killed by her in-laws. Zile Singh accused Umesh (husband), Surat Singh (father-in-law), husband's elder brothers (Ishwar Singh and Mukesh) and their wives (Kavita and Neha) of treating Seema with cruelty.
14. Zile Singh when examined in the Court as PW-1 repeated the allegations made in the third statement. During cross-examination PW-1 was confronted with the earlier statements Ex.PW-1/A and PW-1/DA. Though PW-1 denied having made any statement to the SDM and was confronted

with the statement Ex.PW-1/A made to the SDM, it may be seen that in the first statement dated 18.05.2007 PW-1 gave a clean chit to the husband and all family members of Umesh (husband of Seema). In the second statement he only blamed Umesh as the person responsible for the death of Seema without giving any details as to how he was responsible. In the second statement there is a mention that he had made a statement earlier and that he wanted to make another statement.

15. It was only in the third statement which was recorded on 29.10.2007 that PW-1 leveled allegations of demands of a gold chain, ₹ 50,000/- and motor-cycle by the husband and in-laws. PW-1 did not give any reason either in the third statement Ex.PW-1/DA recorded on 29.10.2007 or even in his examination recorded on 14.01.2010 as to why he gave a clean chit to Umesh and all the members of his family in the first statement and why they (family members of Umesh) were not named in the second statement.
16. Similarly PW-2 Laxmi also gave a clean chit to Umesh and in-laws of Seema in her first statement Ex.PW-2/A. This witness was also confronted with the earlier statement recorded by the Executive Magistrate and the police. There may be cases where the victim or the complainant may not be aware of a particular fact on the date when an earlier statement is made but it is not the case here. PWs 1, 2, 4 and 5 were aware of the alleged harassment and demand of dowry since the very beginning. Thus keeping silence for one and a half months and giving a clean chit on the day after death of the deceased Seema, makes the testimonies of PWs 1, 2, 4 and 5 to be suspect and motivated.
17. PW-4 Sonu Kumar not only gave traits of his sister Seema but also gave a new version. He was completely silent about the alleged demand of a gold chain, Rs.50,000/ or the motor cycle. He was allowed to be cross-examined by the learned APP and was confronted with the statement dated 14.06.2007 alleged to be made by him to the police during investigation.

He simply admitted having made that statement during investigation. This admission of making the statement Ex.PW4/A, however, does not improve the prosecution case. PWs 1 and 2 denied that Seema was hyper sensitive whereas PWs 4 and 5 the brother and Bhabi of Seema admitted that she was hyper-sensitive. When cross-examined PW-4 stated that Seema was very touchy and would start crying immediately even on being scolded lightly. PW-5 testified that Seema was having an emotional nature. She would get upset and angry over small things.

18. Thus on analysis of the evidence led by the prosecution particularly the testimonies of PWs 1,2 4 and 5, this court is of the view that the story of demand of dowry and harassment put forth by the parents of the deceased after a delay of more than a month was an afterthought. It is possible that Seema committed suicide because of her hyper sensitive nature which has surfaced during the examination of PWs 4 and 5 i.e. the brother and sister-in-law of Seema.
19. The learned ASJ was justified in coming to the conclusion that the case against the respondents was not proved beyond the shadow of all reasonable doubt. We do not find any error or infirmity in the impugned judgment. The appeal is without any merit and is dismissed accordingly.

G. P. MITTAL
(JUDGE)

S. RAVINDRA BHAT.
(JUDGE)

APRIL 27th 2011
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