

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

Date of decision: 19.08.2011

+ **CRL.L.P. 149/2011**

STATE Petitioner
Through : Sh. Sanjay Lao, APP.

versus

MANOJ & ORS Respondents
Through : Sh. Bharat Sharma and Sh. Bijjan, Advocates.

CORAM:
MR. JUSTICE S. RAVINDRA BHAT
MR. JUSTICE G.P. MITTAL

- | | | |
|----|---|-----|
| 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. 3682/2011 (Under Section 5 of the Limitation Act) in CRL.L.P. 149/2011

Issue notice.

Sh. Bharat Sharma, Advocate accepts notice on behalf of the respondents.

There is a delay of 138 days in filing the appeal. He has no objection to the condonation of delay. The delay is accordingly condoned for the reasons as mentioned in

the application. The application stands disposed of accordingly.

CRL.L.P. 149/2011

1. The State, by the present petition seeks leave to appeal against a judgment and order of the learned Addl. Sessions Judge dated 24.07.2010, whereby the respondents were acquitted of the charges of having committed offence punishable under Sections 498A/304B/406/34 IPC. The prosecution case was that Manoj (the son of the other two respondents – Revti Prasad Sharma and Munni Devi) had married Hemlata @ Dolly on 30.11.2000. It was alleged that soon after the marriage and right upto the date of incident, i.e. 16.06.2004, Hemlata was ill-treated and subjected to cruelty. The prosecution also alleged that Hemlata was subjected to such cruelty before 16.06.2004, when she died. Initially, the charges were framed for offences under Sections 498A/34 IPC. Subsequently, the Trial Court amended the charges on 21.03.2006, and included the charges of the respondents having committed offence punishable under Section 304B IPC.

2. Hemlata's death was caused by *Asphyxia* as a result of hanging. The respondents/accused denied the charge and claimed trial. The prosecution examined about 14 witnesses and also relied on several material objects and articles. During the trial, it was proved – by the Post Mortem Doctor that the death in this case was resulted as a consequence of ligature injuries which could have been homicidal in nature. After considering the materials and the testimonies of witnesses, who deposed before it, the Trial Court acquitted the respondents. The State, therefore, seeks leave to appeal.

3. It is contended by Sh. Sanjay Lao, APP that the Trial Court adopted a hyper-technical approach and did not consider the evidence of the relatives, particularly PW-1, the father of the deceased, and PW-3, Anil - brother of the deceased, in its proper perspective. The prosecution allegations were that around the time of marriage, the respondents/accused had demanded that the deceased's parents ought to spend about Rs. 5-6 lakhs which was done, and that as part of the dowry demands, a car was purchased. Learned counsel submitted that the deposition of PW-1 conjointly considered with that of

PW-2, along with the materials placed on the record amply proved this allegation. It was emphasized here that the evidentiality of these two witnesses could not be discarded since the Sub-Divisional Magistrate (SDM), PW-5 corroborated that the deceased's relatives had spoken about the dowry demands at an earlier point of time, soon after the death of Hemlata. It was next argued that the Trial Court fell into error in not giving any credence to the prosecution version that Hemlata had contacted her relatives telephonically on 15.06.2004, i.e. just before her death. Learned counsel submitted here that this was subsequently spoken to by PW-1 – a factor that has been glaringly overlooked and misappreciated by the Trial Court in the impugned judgment.

4. Learned APP also argued that there was sufficient material in the form of depositions by the relatives of the deceased, to establish that the demands had been made, and cruelty meted out to the deceased soon before her death. In this regard, reliance was placed upon the testimonies of Hemlata's relatives, who had stated that a demand of Rs. 1 lakh had been made around the time that she committed suicide and that she had spoken about the acts of cruelty through beatings etc. given by Manoj or relatives/other respondents. Having regard to the totality of the aspects, submitted the counsel, the Court ought to consider the State's appeal for leave, and permit it to file an appeal.

5. We have carefully considered the submissions and have also gone through the Trial Court records, which were requisitioned for these proceedings. The Trial Court has, by elaborate reasoning, discussed threadbare, materials and evidence led before it and discerned several discrepancies which, in its opinion, weakened the prosecution story, which could not have measured to the standard of proof beyond reasonable doubt. Some of the aspects commented upon by the Trial Court are as follows:

- (a) Contrary to the prosecution allegations, there was absolutely no material on the record, either in the form of general or particular allegations, that demands were made in the time between 2001 (after the marriage) which took place in 2000, and 2003;
- (b) The allegations pertaining to cruelty and dowry demands made, apart from the one made at the time of marriage, were general and unspecific;
- (c) The prosecution story that some amount was paid for a kidney stone surgery to

Hemlata – Rs. 20,000/- could not be considered as a dowry demand. In this regard, the Trial Court relied upon the judgment of the Supreme Court in *Appasaheb v. State of Maharashtra* 2007 (1) AD (CrL.) (SC) 414;

(d) The prosecution's allegations about demand for and spending of Rs. 5-6 lakh had not been established by convincing evidence. In this regard, it was found that though the deceased's father, PW-1, stated that considerable amounts were withdrawn from his General Provident Fund (GPF) Account, no material had been placed on record in that regard. Similarly, the Court reasoned that the payment of Rs. 2,40,000/- made to Vikas Motors for purchase of Maruti Car could not be established as there was no proof that the Demand Draft was ever encashed;

(e) The discrepancy between the testimonies of PW-1 and 3 as regards various dowry demands from time to time;

(f) The prosecution's inability to lead credible evidence.

(g) The Trial Court was struck by the fact that PW-3 Anil deposed having gone to the deceased's matrimonial home after the marriage, for the *Vidaai* ceremony, and having found that the couple had gone on *honeymoon* – a fact which was admittedly known to the father – PW-1. Similarly, the circumstance that the deceased Hemlata completed her post-graduation by studying in Aligarh; though she was in Delhi, she used to commute everyday between Delhi and Aligarh. These two circumstances, the Trial Court strongly commented, discounted the prosecution version of cruelty and, on the other hand, pointed to the relationship between the deceased and her parents not being as was sought to be portrayed;

(h) Lastly, the prosecution's inability to prove the telephone calls allegedly made by Hemlata on 15.06.2004, deposed to by PW-3, by producing call details or any other documentary evidence.

6. It has been often said that the Court, while considering objections for grant of leave to appeal against the order of acquittal by the criminal Courts, should adopt a varying and circumspect approach. The High Court is expected to grant permission to appeal only where the judgment of the Trial Court discloses substantial and compelling

reasons in that regard. These include gross misappreciation of law or evidence and the adoption of an approach that has manifestly led to miscarriage of justice. On an overall conspectus of circumstances, we are of the opinion that the Trial Court has painstakingly gone through the judgment and each of its findings are well-reasoned. This is a case which, in our opinion, does not demand any view other than that which has been taken by the Trial Court in the impugned judgment. Consequently, there are no reasons for us to second-guess the findings and reappreciate the entire evidence. For these reasons, the petition has to fail and it is unmerited. It is accordingly dismissed.

S. RAVINDRA BHAT
(JUDGE)

G.P. MITTAL
(JUDGE)

AUGUST 19, 2011
‘ajk’