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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of hearing & decision: 23rd September, 2011

+ CRL.L.P. 260/2011
STATE

..... Petitioner

Through: Mr. Sanjay Lau, APP for the State.

versus

MUKESH KUMAR & ANR.

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE G. P. MITTAL

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

J U D G M E N T

S. RAVINDRA BHAT, J. (OPEN COURT)

1. The State seeks leave to Appeal against the judgment and order of the learned Addl. Sessions Judge dated 14.12.2010 in SC No.55/08 whereby the Respondents have been charged for the offence having committed under Section 498A/ 304B/ 34 IPC.
2. The prosecution allegations were that the first Respondent (hereinafter referred to as 'Mukesh') married Mamta, the youngest daughter of PW-2 and PW-3 on 10.05.2006. The allegations were that Mukesh left the services where he was previously employed on 18.07.2006 after that he made a demand to his in-laws for ₹ 50,000/- as he wanted to purchase a Chinese Welding Machine. His in-laws

allegedly paid ₹ 50,000/- after borrowing it from the other son-in-law (also named Mukesh). It was further alleged that on 24.09.2006 Mukesh made yet another demand for ₹ 50,000/- claiming that the amount paid earlier was inadequate. According to the prosecution his in-laws were not able to meet his entire demand but paid him ₹ 20,000/-. It was further alleged that often demands were made through Mamta, when she refused she was told that the amount she brought was inadequate. On 27.09.2006 Mamta was found hanging from the ceiling fan; according to the postmortem (which was conducted and the report of which was produced during the trial) the cause of the death was asphyxia on account of ligature pressure as a consequence of hanging. The Respondents were charged for having committed offence. They denied guilt and claimed trial. After considering the materials on record and the evidence, the Trial Court acquitted the respondents of the charges.

3. The State claims leave to appeal contending that the Trial Court has glossed over the material, particularly the cumulative effect of the testimonies of PW-8 and PW-9, which clearly establish that the accused had made repeated demands – that stood proved by the payment of ₹ 50,000/- in July, 2006 and subsequent payment of ₹ 20,000/- just 2 days before the death occurred in this case. It is contended that having regard to the very nature of the demand the Court fell into an error in not inferring that the accused were guilty of the offence, and for which the explanation had to be given by them in terms of Section 113 of Evidence Act read with Section 304B IPC.
4. We have carefully considered materials placed before us and the Trial Court's record. The prosecution relies on the testimonies of the parents of the deceased Mamta. Both spoke about two demands having been made by Mukesh, one in July, 2006 and the other in September, 2006 for ₹ 50,000/- each. The prosecution further elicited from these two witnesses another circumstance that during the marriage a motorcycle was presented and the demand for a motorcycle was again

made by the accused Mukesh. The testimonies of PW-8 and PW-9 were relied upon to corroborate the deposition of PW-2 and PW-3 viz-a-viz payment of ₹ 50,000/- and ₹ 20,000/-. PW-9 the elder son-in-law of PW-2 and PW-3 deposed having advanced ₹ 50,000/- which was made over to Mukesh earlier in July, 2006. PW-8 a neighbor, on the other hand deposed that he had given ₹ 20,000/-, which was given to Mukesh in partial fulfillment of his subsequent demand for ₹ 50,000/-. The Trial Court noticed that there were discrepancies in the testimonies of PW-2 and PW-3. One of these was that they were lacking in the date as to when the amounts were paid. More particularly the Trial Court noticed that PW-3 conflicted PW-2's statement on a material aspect. According to PW-3 the accused Mukesh had been paid ₹ 50,000/- just 15 days before the death occurred on 27.09.2006. PW-2 on the other hand stated that only ₹ 20,000/- was paid after the amount was borrowed from other son-in-law on 29.09.2006.

5. Another aspect, which impressed the Trial Court to conclude that the Respondents were not guilty beyond reasonable doubt, was the circumstance that the evidence pointed to Mukesh owning a motorcycle, which was registered in his name in November, 2005 – purchased before the marriage. The Trial Court in our view reasoned correctly. If that were the true position that demand was yet again for another motorcycle, logically he would have demanded a car or some amount for its purchase. The Trial Court took into consideration the evidence led by the prosecution and held that it failed to establish whether Mukesh used ₹ 50,000/- for importing the Chinese Welding Machine (which according to PW-2 and PW-3 was the purpose for demand in the first instance). The Trial Court also took into consideration another aspect i.e. PW-2 and PW-3 the parents-in-law of accused Mukesh and the parents of the deceased Mamta were unable to state whether he was working in a concern where his other family members were employed or whether he had started out as an independent Contractor. The Trial Court was of the opinion that the prosecution could not establish its case against the accused.

6. We are of the opinion that the reasoning of the Trial Court cannot be faulted. The part that we noticed is that the evidence of PW-2 and PW-3, which is most relevant for the prosecution, nowhere comes close to proving that Mamta was subjected to cruelty either physically or mentally. The best that the prosecution could show – through PW-3's evidence that the second Respondent Munni Devi used to grumble and complain that the amount paid and spent during the marriage of the couple was meager and they expected more. We need hardly emphasize that the lower threshold required to prove the offence under Section 304B IPC means that the foundational ingredients leading to the presumption, which the law mandates by Section 113 of the Evidence Act, have to be satisfied. The demands in connection with dowry and cruelty, even if held proved at the highest, the prosecution still had to prove that Mamta was compelled to commit suicide or that unnatural death took place as a result of cruelty. Section 304B IPC mandates that to complete the offence the prosecution must prove that the deceased was subjected to cruelty – an element entirely wanting in the present case.
7. It has been often said that High Court has to be satisfied while considering petition for leave to appeal preferred by the State against a judgment of acquittal that there exist substantial and compelling reasons to adopt such course of action; which includes; serious lapses, overlooking of material facts or wrong application of law in appreciation of evidence. Having regard to this standard, we are of the opinion that the Trial Court's reasoning acquitting the Respondents in this case is sound and does not call for any interference. The petition is, therefore, dismissed.

S. RAVINDRA BHAT, J.

G. P. MITTAL, J.

SEPTEMBER 23, 2011

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CLP 260/2011